

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.18263 of 2023**

Arising Out of PS. Case No.-139 Year-2021 Thana- HASANGANJ District- Katihar

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ANUP LAL SOREN @ ANUP LAL SUREN Son of Lakhi Soren Resident of  
village - Charkhi Narayanpur, Bhatwara, P.S.- Korha, District - Katihar

... .. Petitioner

Versus

1. The State of Bihar
2. Pushpa Murmu Daughter of Tala Murmu Resident of village – Pipra,  
Bhatwara, P.S.- Hasanganj, District - Katihar, At present W/o Babujee  
Marandi, Residing at Nurse Hostel, KMCH, Karim Bag, P.S.- Katihar  
Mufassil, District - Katihar, Pin Code - 854109

... .. Opposite Parties

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Code of Criminal Procedure, 1973—Section 482—Quashing—cognizance  
taken under Section 376 of IPC—no allegation to effect that the promise to  
marry given to O.P. No. 2 was false at very inception of relation—O.P. No. 2  
was in a relationship with petitioner for a period of ten years—both parties were  
major when the relationship between them started; O.P. No. 2 had willingly  
been staying with the petitioner and had relation—when the relationship not  
working out, it cannot be a ground for lodging a complaint case under Section  
376 of IPC—cognizance order quashed—application allowed.

(Paras 6, 8 and 9)

(2019)9 SCC 608—Relied upon.

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Appearance :

For the Petitioner : Mr.Manisha Prakash, Advocate  
For the Opposite Party : Mr.Arun Kumar Pandey, Addl Public Prosecutor

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH  
ORAL JUDGMENT  
Date : 15-04-2024

This application has been filed for quashing order dated 5.12.2022, passed in Hasanganj Police Station Case No. 139 of 2021/ GR Case No. 5094 of 2021,whereby and whereunder cognizance has been taken against the petitioner for offence punishable under section 376 of the Indian Penal Code.

2. As per the prosecution case as well as 164 Cr.P.C. statement of opposite party no.2, there was love affair between the opposite party no.2 and petitioner since last 10 years which resulted in a very close friendship which extended upto marriage but it could not be solemnized and she was physically assaulted by the petitioner on several occasions. It is further alleged that she became pregnant which was terminated, when the accused joined service in railway, he refused to marry her.

3. While denying the allegations, learned counsel for the petitioner submits that petitioner is quite innocent, has



committed no offence and has been falsely implicated in this case on false and concocted allegation. Opposite party no. 2 was appointed as A.N.M (Auxiliary Nurse Midwife) and was posted at Katihar Medical College and Hospital since 2010. Petitioner who is in government service in Department of Indian Railways and posted in Barauni as Loco Pilot Goods. The present case has been lodged at the instigation of advocate Kabirlal Mandal of Katihar Civil Court. This fact has also come in supervision report of S.P as well as Dy. S.P Katihar in which she had accepted that case has been lodged at the instance of the lawyer. Opposite party no.2 by profession is nurse and has refused to get her medically examined by the doctors when the Investigating Officer of the case made a request to get so.

4. Learned counsel for the petitioner submits that there was love affair between the parties and with consent of the informant/ opposite party no.2 , petitioner established physical relation for 10 years. Both of them engaged in sexual activity for quite some time which cannot be said to be induced and involuntary. As such, allegation of inducement and commission of rape is not made out against the petitioner and in such circumstance, continuance of criminal proceeding would be abuse of process of court.

5. On the other hand, learned A.P.P. for the State has opposed the arguments advanced on behalf of the petitioner. He submits that the petitioner is named in the FIR with specific allegation that he committed rape on the victim for 10 years and then refused to marry. From perusal of the FIR, it reflects that there is sufficient material on record against the petitioners and it cannot be said that prima facie no case is made out against these petitioners. Hence, no interference is required by this court



at this stage.

6. Heard learned counsel for the parties and perused the materials available on record. However, nobody appears for opposite party no.2 in spite of valid service of notice. On perusal of the complaint, it is revealed that there is no allegation to the effect that the promise to marry given to opposite party no.2 was false at the very inception of relation. On the contrary, it would appear from the contents of complaint that there was a subsequent refusal on the part of the petitioner to marry opposite party no.2. The present complaint is abuse of the process of court. It is the admitted case of the prosecution that opposite party no.2 was in relationship with the petitioner for a period of ten years. It is also admitted that when the relationship started, both of them were major. Opposite party no.2 had willingly been staying with the petitioner and had relationship. Now, if the relationship is not working out, it cannot be a ground for lodging complaint against the petitioner for offence punishable under section 376 of the IPC.

7. While dealing with a similar situation, Hon'ble Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra**, reported in **(2019) 9 SCC 608** has enunciated that the criminal proceeding initiated by the complainant against the petitioner is wholly unwarranted. Hon'ble Court has observed as follows:-

*“Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said*



*to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it.”*

8. In view of the foregoing discussions, order dated 5.12.2022, passed in Hasanganj Police Station Case No. 139 of 2021/ GR Case No. 5094 of 2021, is hereby quashed.

9. Accordingly, the present quashing application is allowed.

**(Prabhat Kumar Singh, J)**

Shashi

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.4.2024
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