

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78019 of 2019**

Arising Out of PS. Case No.-47 Year-2014 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Pushkar Anand Son of Umakant Mehta Permanent Resident of Rama Bhawan, Dilawarpur, P.S-Munger Kotwali, District-Munger (Bihar)

... .. Petitioner

Versus

1. The State of Bihar
 2. Nirmala Kumari, Sub Divisional Police Officer, Bhabua, Kaimur at Bhabua Bihar Opposite Parties
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Appearance :

For the Petitioner	:	Mr.Ravindra Kumar Shukla, Advocate Mr. Rana Vikram Singh, Advocate Mr. Pratyush Pratap Singh, Advocate Mr. Ritu Raj Shukla, Advocate
For the state	:	Mr. Kumar Veerendra Narayan, A.P.P.
For opposite party no.2	:	Mr. Vinay Ranjan, Advocate

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 18-09-2024

Earlier, petitioner had moved this Court for quashing F.I.R. of Mahila Police Station Case No. 47 of 2014 vide Cr. Misc. No. 17457/2016 but during its pendency, order taking cognizance for the offence punishable under sections 376(C), 354(B), 506 and 509 of Indian Penal Code, was passed by the Sub Divisional Judicial Magistrate, Kaimur at Bhabhua. Accordingly, I.A. No. 01/2019 was filed in the said case (Cr. Misc. No. 17457/2016) challenging cognizance order, but Cr.Mis.No. 17457/2016 was dismissed as withdrawn vide order dated 17.10.2019 (annexure 1).

2. This petition is directed against order dated 01.04.2019, passed in connection with Mahila Police Station Case No. 47 of 2014, by the Sub Divisional Judicial Magistrate



(SDJM), Kaimur at Bhabhua in connection with Mahila P.S. Case No. 47/2014, by which cognizance has been taken for the offences punishable under sections 376(C), 354(B), 506, 509 I.P.C. against the petitioner as well as for a direction to the court below not to proceed further after passing of the aforesaid order taking cognizance during the pendency of the present application before this Court.

3. Prosecution case giving rise to the present case is that the informant/ opposite party no.2 is the Sub Divisional Police Officer (SDPO), Bhabhua. It is alleged by her that only two days after her joining to the post of SDPO, Bhabhua, on 21.7.2014 the petitioner who was Superintendent of Police, Kaimur at Bhabhua started extending a friendly hand towards the informant through Facebook and WhatsApp messages. Since, the informant was posted as Sub- divisional Police Officer, Bhabhua, she developed a firm belief that the petitioner was seriously interested in marriage with her and she started talking to her family members. It is further alleged that since the petitioner started frequenting her residence, she gradually developed a close relationship with him and, thereafter, they also came into physical contact. After sometime, informant was also asked by the mother of the petitioner to convey her date and



time of her birth so that chances of matching of horoscope could be explored before solemnizing the marriage. It was during this period that the petitioner and the informant developed physical relations with each other and the intimacy continued till the day, when the petitioner refused proposal of marriage stating that the horoscope did not tally and she was having "Mangla-mangli Dosh". It is further alleged by the informant that on the pretext of marriage, the petitioner tortured her mentally and physically and when he threatened to spoil her career as a police officer in his official capacity, she lodged the present case. After institution of FIR, police completed investigation and submitted charge sheet no. 54 of 2018 dated 30.11.2018 for offences punishable under sections 376(C), 354A, 506 and 509 of the IPC against this petitioner only. Charge sheet was not submitted against father and mother of the petitioner as the allegation was found patently false and nothing could be found against them.

4. Mr. Ravindra Kumar Shukla, learned counsel for the petitioner, while placing the facts of the case, denies the accusations made by opposite party no.2 against the petitioner, submits that the present case has been lodged by opposite party no.2 only as a vendetta to the petitioner's action in taking up disciplinary proceedings against the opposite party no.2. FIR



was lodged on 29.12.2014 and just prior thereto on 27.12.2014, the petitioner as a Superintendent of Police, Kaimur at Bhabua had initiated disciplinary proceeding against her vide Letter No. 402 dated 27.12.2014 (Annexure-4). Consequently, faced with such a situation, she lodged the present case making malicious and baseless allegations against the petitioner with the sole intention of not only tarnishing his reputation, but also to ruin his career as an IPS Officer. During course of investigation, on 2.1.2015 opposite party no.2 was placed before a Medical Board and was examined at Sadar Hospital, Bhabua after taking her consent. Medical Board, after due examination of the informant, submitted its report in which allegation of sexual contact has not been substantiated against the petitioner. Facts to this effect is contained in paragraph 52 of the case diary. Meanwhile, petitioner preferred pre-arrest bail petition before this Court vide Cr.Misc. No. 20.5.2016 in which the Court, while granting interim protection to the petitioner, directed the medical examination of opposite party no.2 to be conducted by a Board of female gynecologists, nominated by the Principal or Principal In-charge/Superintendent/In-charge Superintendent, Patna Medical College and Hospital, Patna. It is worthwhile to state that earlier, opposite party no.2 had expressed some reservations



with respect to the Medical Board which had submitted its report, saying that the medical report was neither clear nor distinct and was thus wholly false. However, this time opposite party no.2 did not appear before the Medical Board and declined to face any further medical examination (annexure 4), rather she filed an affidavit dated 7.9.2016 to the effect that she was asked to appear before the Medical Board by this Court without taking her consent for the same. She further averred that report and other materials collected during investigations are already on record, hence no further medical examination is required at this stage for deciding the pre-arrest bail petition. This Court, having no option, relied on the medical examination report and other materials collected on the record, confirmed the interim bail to the petitioner vide order dated 8.9.2016.

5. Further reference is given to paragraph 83 of the case diary to show that when the Investigating Officer asked opposite party no.2 to give certain clarifications and also to hand over her mobile phone to send it to the Forensic Science Laboratory for certification and for verification of electronic messages, sent or received either on WhatsApp or through SMS referred to in the FIR, she refused to give the same and told the IO of the case to consult her after 05.05.2016, for reasons best



known to her. Learned counsel contends that in view of the provisions of law, without such certification, such electronic messages cannot be considered to be authentic and could not be used as an evidence against the petitioner.

6. It is also submitted by Mr. Shukla that since the petitioner had taken administrative action against the informant and reported the matter to the Additional Director General, Police Headquarters vide Memo no. 4162 dated 27.12.2014, the informant in counter blast lodged the FIR against the petitioner. Learned counsel submits that thus it can be concluded that facts of the case do not corroborate the prosecution case against the petitioner and in such condition, continuance of criminal proceeding would be abuse of process of court.

7. While assisting him, Shri Rana Vikram Singh, learned counsel for the petitioner, formulated two issues for the consideration of the Court as follows—

(I). Whether the offence of rape in terms of section 376 (c) IPC as alleged in the FIR is made out and;

(II). Whether there is a misconception of fact in terms of section 90 of the IPC which vitiates consent in the present case or whether there is merely a breach of promise to marry simplicitor.



8. Addressing the first issue, Shri Rana Vikram Singh, learned counsel for the petitioner placed averments made in the FIR as well as the medical report of opposite party no.2 which finds mention at paragraph 52 of the Case Diary and the affidavit filed by her as contained in Annexure -4 to this petition, flatly refusing to undergo any further medical examination, to buttress and substantiate his contention that there was no physical relation between the petitioner and informant at all. The entire edifice of prosecution case falls apart in view of the aforesaid facts which indisputably shows the prosecution of the petitioner.

9. Mr. Singh, thereafter, vigorously submits that if the allegation levelled in the FIR assuming to be true, while not admitting, then it must be borne in mind that if there was, at all, physical relation between the parties, it was purely a consensual kind because the petitioner has never resiled from his commitment to get married, rather due to circumstances beyond control of the parties, marriage could not be solemnized on account of mis-match of the Janampatrika (Janam-kundli, horoscope). It is very much evident from the FIR that informant herself informed about good behaviour and habits of the petitioner to her family members. The date of birth



and Kundli of the informant was given to the petitioner's mother for matching of Kundli and since things were moving in right direction and relation was supposed to culminate in marriage, the two got intimate but when informant's family asked about fixing date of marriage, the same was refused by the petitioner's family on the ground of non-matching of horoscope. In the society, matching of Janampatrika/horoscope is vital social obligation for solemnizing marriage.

10. Mr. Singh averred that if at all there was any relationship between the parties it was purely consensual. He further submits that the consent with respect to section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. This understanding of consent has also been set out in Explanation II of section 375 of IPC. At this stage, Rana Vikram Singh, learned counsel submits that there is a clearcut distinction between a false promise given on the understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled.



He points out that 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 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. The "consent" of a woman under section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act.

11. In support of his contention, he relies upon the judgment delivered by Hon'ble Supreme Court in **Deepak Gulati v. State of Haryana (2013 7 SCC 675)**, **Pramod Suryabhan Pawar vs. State of Maharashtra & anr. (Cr. Appeal No.1165 of 2019 order dated 21.08.2019)** and **Sonu@ Subhash Kumar vs. State of Uttar Pradesh & anr. (Cr. Appeal No. 233 of 2021 order dated 01.03.2021)**.

12. Mr. Singh further drew attention of the Court to paragraph 9 of the judgment delivered by Hon'ble Supreme Court in case of **Sonu (supra)** which is reproduced herein under:



“9. In *Pramod Suryabhan Pawar (supra)*, while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"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 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..."

10. Further, the Court has observed:

"To summarise the legal position that emerges from the above cases, the "consent of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

13. At last he submits that the contents of the FIR as well as the medical evidence leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

(i) The relationship between the appellant and the



second respondent was of a consensual nature;

(ii) The parties were in the relationship for about a period of 5 months; and

(iii) Subsequently, the marriage couldn't be solemnised on account of mis-match of their horoscope which was the circumstance beyond the control of the petitioner, leading to the lodging of the present FIR.

14. It is further case of the petitioner that in the entire FIR, there is no allegation that this petitioner ever committed act of criminal intimidation attracting offence punishable under section 506 of the IPC. Similarly, there is no allegation against the petitioner of insulting the modesty of opposite party no.2 or uttering any words, making any sound or gesture or exhibited any object or intruded upon the privacy of opposite party no.2 which is an offence punishable under section 509 of the IPC. Learned counsel submits that no case under sections 506 and 509 of the IPC is made out against the petitioner.

15. Thus, the punctilious analysis of the entire gamut of factual-medical evidence leave no doubt with respect to the falsity and concoctedness of the allegations which unflinchingly points towards to the malicious prosecution of the petitioner.

16. Mr. Singh, lastly submits that the Investigating



Officer of the case, in a hurry and haste manner, without completing the investigation on all the points, submitted charge sheet relying upon few paragraphs of the case diary and even these paragraphs are accepted, then also, no case is made out against the petitioner. More so, learned court has not applied judicial mind at all before passing order of cognizance alleged U/ss 376(C), 354(B), 506, 509 I.P.C. As such, allegation of inducement and commission of rape is not made out against the petitioner and in such circumstance, Hon'ble High Court can exercise its powers under Section 482 of the Code of Criminal Procedure (CrPC) to prevent abuse of the process of law or to secure the ends of justice.

17. Learned counsel for the State as well as Mr. Vinay Ranjan, learned counsel for the informant/ opposite party no.2 oppose the prayer of the petitioner. Mr. Vinay Ranjan, learned counsel for opposite party no.2 submits that apart from filing the FIR, opposite party no.2 also made a complaint before the department upon which, in the light of direction of the Hon'ble Supreme Court for prevention of women from sexual abuse at the work place, the matter was taken up by the Internal Enquiry Committee headed by Inspector General of Police constituted under "The Sexual Harassment of Women at Work Place



(Prevention, Prohibition and redressal) Act, 2013" and enquired the matter in detail. During course of enquiry, statements of several witnesses have been recorded by the said committee and after detail enquiry said Committee found the allegation made by opposite party no.2 to be true and hence recommended for initiation of departmental action against the petitioner. This fact would be evident from enquiry report which was communicated to the O.P no.2 vide memo no. 3881 dated 16.6.2015. A true copy of memo no.3881 dated 16.6.2015 along with copy of report of the enquiry committee is annexed herewith and marked as Annexure-A to this Counter Affidavit.

18. Learned counsel for opposite party no.2 further alleges that from perusal of enquiry report, it would be evident that petitioner has not only committed sexual abuse with the opposite party no.2 but also played with the sentiment of so many girls on the pretext of marriage and such fact would be evident from an affidavit submitted before the Committee by one Richa Mishra. A true copy of affidavit of Richa Mishra is annexed as Annexure-B to this Counter Affidavit. That apart, during course of investigation, the Investigating officer has recorded statement of the concerned persons. Their statements show that the petitioner, misusing his official position, made



physical relation with the opposite party no.2 on the pretext of marriage deceitfully. After investigation, I.O has submitted charge sheet against the petitioner under section 173 (2) of the Cr.P.C and thereafter considering the material collected by the IO in course of the investigation including the material available in the enquiry report of the Internal Enquiry Committee, the learned S.D.J.M, Kaimur at Bhabhua opined that more than prima facie material is available against the petitioner and consequently he was pleased to take cognizance of the offence punishable under section 376 (c), 354(B),506,509 of the Indian Penal Code. On going through the impugned cognizance order, it would transpire that the learned S.D.J.M thoroughly perused the material submitted by the IO through his Police report and referred several paragraphs of the case diary in the cognizance order and thus cognizance order is based on material. From perusal of the FIR, it reflects that there is sufficient material on record against the petitioner and it cannot be said that prima facie no case is made out against this petitioner. Learned counsel submits that the Hon'ble Supreme Court in the decision in case of **Narinder Singh v. State of Punjab** reported in **(2014) 6 SCC 2014 SCC 466**, has held that while the High Court has the power to quash FIRs, it should be cautious in



cases involving serious offenses like rape. The court emphasized that the gravity of the offense must be taken into account. Hence, no interference is required by this court at this stage.

19. Heard learned counsel for the parties and perused the materials available on record.

20. In this case, there is specific and direct allegation against the petitioner that on the allurements of marriage, the petitioner committed rape on opposite party no.2. No sooner the FIR dated 29.12.2014 was lodged, opposite party no.2 was examined by the Medical Board at Sadar Hospital, Bhabua on 2.1.2015 after taking her consent. Medical report opines that Fourchette found intact and membrane too was found intact. Meanwhile, opposite party no.2 raised finger on the Medical report, whereupon, this Court while hearing anticipatory bail petition of the petitioner vide order dated 20.5.2016, directed for another medical examination of opposite party no.2 to be conducted by a Board of female gynecologists, nominated by the Principal or Principal In-charge/Superintendent/In-charge Superintendent, Patna Medical College and Hospital, Patna. But this time, opposite party no.2 did not turn up for her medical examination, rather she filed an affidavit dated 7.9.2016 stating that when the earlier medical report is already on the on record,



hence no further medical examination is required at this stage.

21. It is the admitted case of the prosecution that opposite party no.2 was in relationship with the petitioner for quite sometime. It is also admitted that when the relationship started, both parties were major and opposite party no.2 had willingly been staying with the petitioner and established physical relation. Now, if the relationship is not working out for the reasons beyond control of the parties, it cannot be a ground for lodging a case against the petitioner for offence punishable under section 376 of the IPC. Hence, initiation of criminal proceeding by the informant against the petitioner is wholly unwarranted. Reliance is made to the decision of the Hon'ble Supreme Court in case of **Pramod Suryabhan Pawar (supra)**.

22. I also find substance in the submission of learned counsel for the petitioner that the proposal of marriage of opposite party no.2 was refused by the petitioner because of the reason which was not in control of the petitioner. Opposite party no.2 has herself mentioned in the FIR that petitioner's parents asked opposite party no.2 to provide the information regarding time, date and place of her birth to match the Janampatrika/horoscope for solemnization of marriage and when the Janampatrika/horoscope mismatched, then only



proposal of marriage was refused by the petitioner side. In this respect, reliance can be made to a decision of the Hon'ble Supreme Court in a case of **Deepak Gulati v. State of Haryana (2013 7 SCC 675)** in which it has been held that *'there may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact.'*

23. Hon'ble Supreme Court in case of **Sonu @ Subhash Kumar** has held that the Court can consider the application for quashing under Section 482 of Cr.P.C., if there is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. In the case in hand, it appears from the contents of the FIR that there was a subsequent refusal on the part of petitioner to marry opposite party no.2 which gave rise to the registration of the FIR.

24. The Court cannot brush aside the contention of learned counsel for the petitioner that no proper investigation of the case was done. Learned counsel for the petitioner has submitted that when the Investigating Officer asked opposite



party no.2 to give certain clarifications and also to hand over her mobile phone to send it to the Forensic Science Laboratory for certification and for verification of electronic messages, sent or received either on WhatsApp or through SMS referred to in the FIR, she refused to give the same and told the IO of the case to consult her after 05.05.2016, for reasons best known to her. There is substance in the submission of learned counsel that in view of the provisions of law, without such certification, such electronic messages cannot be considered to be authentic and could not be used as an evidence against the petitioner as alleged in the FIR. Hon'ble Supreme Court in case of **Lalita Kumari v. Government of Uttar Pradesh [2013] 14 S.C.R. 713** has emphasized the importance of proper investigation in cases of serious offenses, particularly against women.

25. However, in this case, during course of investigation, no cogent material has been collected which directly or even remotely suggest truthfulness of the accusation or complicity of the petitioner in the offence alleged against him in the FIR.

26. It has been held by Hon'ble Supreme Court in a number of decisions that (1) where the allegations made in the FIR or the complaint, even if they are taken at their face value



and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. It has also been held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the same cannot make out a case against the accused. In this regard, reference is made to the decision of Hon'ble Supreme Court, rendered in case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in AIR 1992 SC 604.

27. In view of the foregoing discussions, order dated 01.04.2019, passed by the Sub Divisional Judicial Magistrate (SDJM), Kaimur at Bhabhua in connection with Mahila P.S. Case No. 47/2014, by which cognizance has been taken for the offences punishable under sections 376(C), 354(B), 506, 509 I.P.C. against the petitioner is hereby quashed.

28. The application is accordingly allowed.

Shashi

(Prabhat Kumar Singh, J)

AFR/NAFR	AFR
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