

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on: 13.08.2021  
Pronounced on: 02.09.2021

CRMC No. 721/2018  
IA No. 1/2018  
CrlM No. 806/2019  
CrlM No. 1377/2019

c/w  
Bail App No. 98/2019  
CrlM No. 214/2020  
CrlM No. 825/2019

CRM(M) No. 148/2020  
CrlM No. 372/2020  
CrlM No. 495/2021

Bail App No. 45/2020  
CrlM No. 373/2020

1. Suresh Kumar  
2. Rakesh Kumar

....Petitioner/Appellant(s)

Through :- Mr. Jagpaal Singh, Advocate  
in CRMC No. 721/2018 & Bail App No.  
98/2019  
Mr. Vikas Sharma, Advocate in CRM(M) No.  
148/2020 & Bail App No. 45/2020

V/s

UT of J&K and another

....Respondent(s)

Through :- Mr. Adarsh Bhagat, GA for R-1  
in CRMC No. 721/2018 &  
Bail App No. 98/2019  
Mr. Aseem Sawhney, AAG for R- 1 in  
CRM(M) No. 148/2020 & Bail App No.  
45/2020  
Mr. S.C. Sharma, Advocate for R. No. 2 in  
CRMC No. 721/2018 & CRM(M) No.  
148/2020.

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. In CRMC No. 721/2018 titled "Suresh Kumar Vs. State of J & K (now U.T)", the petitioner has assailed the FIR bearing No. 226/2018

dated 24.08.2018, under section 376 RPC registered with Police Station, Samba and in CRM(M) No. 148/20 titled “Rakesh Kumar Vs. Union Territory of J&K”, the petitioner has assailed the FIR bearing No. 24/2020 dated 16.03.2020 under Section 376/420 IPC registered with Police Station, Janipur. As both the FIRs have been lodged by the same complainant, so both the petitions were clubbed together and are being disposed of by this common order.

**CRMC No.721/2018, Bail App No. 98/2019**

2. The petitioner is serving in Army and is at present posted at New Delhi. It is stated that the respondent No. 1 has registered the FIR impugned against the petitioner at the instance of respondent No. 2 with the intention to cause harassment to the petitioner and further blackmail the petitioner. It is further stated that the respondent No. 2 is a major lady of more than twenty-six (26) years of age and the petitioner No. 1 never promised the respondent No. 2 that he would marry her and further he has not committed any offence. The present FIR has been lodged by the respondent No. 2 in order to build pressure upon the petitioner so that the petitioner solemnizes the marriage with the respondent No. 2. It is further stated that the respondent No. 2 is in relation with one Dr. Ashish Batra and after the registration of FIR, the petitioner came to know about Dr. Ashish Batra. The petitioner contacted the said Dr. Ashish Batra, who handed over the WhatsApp chat between him as well as the respondent No. 2 to the petitioner and from the perusal of the WhatsApp chat, one can easily make an assessment about the character of respondent No. 2. Since the respondent No. 2 is in relationship with the said Dr. Ashish Batra, therefore, there is no

question of marrying the petitioner with respondent No. 2. In the WhatsApp chat, respondent No. 2 is talking of marrying Dr. Ashish Batra and she only wants to spoil the life of the petitioner and his family. In WhatsApp chat, the respondent No. 2 has admitted that she was not interested to marry the petitioner and was instead interested in marrying Dr. Ashish Batra. The petitioner has prayed for quashing F.I.R primarily on the ground that the allegations levelled in the FIR are frivolous and no such incident of sexual intercourse has ever occurred. Since the marriage proposal could not mature, the respondent No. 2 in order to build the pressure upon the petitioner and to blackmail him has got the said FIR registered against him. It is further stated that the general allegations have been levelled against the petitioner that he has committed sexual intercourse with the respondent No. 2 with the promise that the petitioner will marry her. It is further stated that in FIR impugned, there is no mention of date, time or place of the alleged occurrence. The petitioner has also filed affidavit of Dr Ashish Batra and also the supplementary affidavit regarding the lodging of another FIR by the respondent No. 2 against Rakesh Kumar, who is the petitioner in the other petition that is clubbed with the instant petition.

3. Response stands filed by both the respondents. Mr. Sawhney, learned AAG submits that the response filed in Bail Application be considered as response to the present petition also.

4. It is stated by respondent No. 1 that the complainant used WhatsApp on her phone and incidentally, both the petitioner and the prosecutrix started sending messages through WhatsApp. The complainant being resident of village believed that the petitioner will solemnize marriage

with her. The petitioner assured the complainant that he will solemnize the marriage with her and thereafter, as and when the petitioner found time, he used to commit rape with the complainant against her consent and when the complainant asked the petitioner to solemnize the marriage, he refused to solemnize the marriage. On the application filed by the complainant, F.I.R No. 226/2018 under Section 376 IPC was registered in Police Station, Samba and the statement of the prosecutrix was also recorded under Section 164-A Cr.PC.

5. The respondent No. 2 has filed the response, in which she has stated that she has never resorted to any blackmailing or pressurizing tactics and further that she has filed the true complaint but now she does not want to continue with the present litigation, as she is at the verge of settlement in her life by entering into matrimonial tie and as such, has stated that she has no objection in the event the F.I.R is quashed.

6. Mr. Jagpal Singh, learned counsel for the petitioner has vehemently argued that in the instant case, the complainant has shown herself to be a rustic villager whereas, in the complaint filed by the complainant against Rakesh Kumar in the connected petition, the complainant has shown herself to be pursuing higher studies. It is further submitted that the respondent No. 2 is in habit of filing false and frivolous case against the innocent persons just to harass and extract the money. He further submitted that no offence under Section 376 IPC is made out.

7. Mr. Aseem Sawhney, learned AAG submits that the offence under Section 376 IPC is made out and notwithstanding the response filed by the respondent No. 2, the petition has no merit.

8. Heard and perused the record.

9. From the record, it is evident that on 24.08.2018, the prosecutrix submitted an application under Section 156(3) Cr.PC duly endorsed by the Chief Judicial Magistrate, Samba in which it was stated that the complainant came into contact with the petitioner through WhatsApp and they started exchanging messages. The petitioner had assured the complainant that he will marry her but he committed breach of trust and as and when he found time, he used to commit rape with the complainant and every time, he used to rape the complainant against her consent. The complainant asked the petitioner as he had committed rape with the complainant under the assurance and garb of the marriage and as such, he should marry with her but the petitioner refused. The petitioner has committed an offence, so he is required to be dealt under law. On this, impugned F.I.R was registered.

10. A bare perusal of the F.I.R would show that there are allegations against the petitioner for having sexual relationship with the complainant on the pretext of marriage. Further, her statement was also recorded. In her statement recorded under Section 164-A Cr.PC, she has deposed that the petitioner has maintained physical relationship with her and for the last two years, the petitioner is not marrying her and he has defamed her. Further, that the petitioner disclosed her phone number and made her video viral in order to defame her and unknown boys call her and disturb her. Further she has stated that Dr. Ashish Batra tells her not to marry Suresh Kumar and Dr. Ashish Batra asked her to marry him otherwise, he will circulate her photos. She further states that she wants to marry Suresh Kumar and wants to take legal action against Dr. Ashish Batra. It is evident that the

whole grievance of the petitioner is with regard to the non-solemnization of the marriage with the petitioner. No date, year, month and place of commission of rape has been mentioned by the complainant in her statement.

**CRM(M) No. 148/2020, Bail App No. 45/2020**

11. This petition has been filed by the petitioner for quashing F.I.R No. 24/2020 dated 16.03.2020 under Section 376/420 IPC registered by respondent No. 1 at the instance of respondent No. 2. It is stated that the petitioner is a Doctor by profession and is presently posted at Community Health Centre, Katra. It is further stated that the petitioner was astonished when he came to know that the F.I.R has been registered against him at the instance of respondent No. 2. It is further submitted that respondent No. 2 is a major lady of more than 28 years of age and has earlier filed F.I.R against the Army personnel. It is further submitted that the petitioner never ever promised the respondent No. 2 that he would marry her and no such offence as alleged in the said F.I.R was ever committed by the petitioner with respondent No. 2. The petitioner has impugned the F.I.R on the ground that the same has been lodged in a mala-fide manner only to harass the petitioner and he never had any sexual intercourse with respondent No. 2 and further no date, time or place of alleged occurrence has been mentioned in the F.I.R. It is further submitted that respondent No. 1 registered the present F.I.R against the petitioner pursuant to the directions by the Excise Magistrate vide order dated 01.10.2019 in an application under Section 156(3) Cr.PC as the respondent No. 2 had filed the complaint against the respondent No. 1 under Section 166-A IPC and as the learned Magistrate took the cognizance in the said complaint, the respondent No. 1 was left with no other option but to

register F.I.R despite the fact that the detailed report was submitted before the Magistrate, which clearly states that the allegations levelled by respondent No. 2 are false and incorrect. Respondent No. 2 has lodged different F.I.Rs against different persons in different police stations by changing the residential address and the present F.I.R too is one of such example.

12. Response stands filed by the respondent No. 1, in which it is stated that while deciding the petition under Section 482 Cr.PC, the evidence cannot be appreciated and it is further stated that on 16.03.2020, the complainant lodged a written report with police station, Janipur that she is pursuing higher study in University of Jammu and in the year, 2018, the petitioner became friend with the complainant through social media and used to chat with her. It is further alleged that the petitioner told her that he is Doctor and was serving in Government Hospital, Katra and further told her that he personally knows her and likes her and insisted the complainant to talk to him on telephone. Accordingly, the phone numbers were exchanged and both of them were in contact with each other through mobile phone. The petitioner proposed to marry the complainant and they started meeting each other at different places as per the choice of the petitioner. The petitioner also met the mother of the complainant and told her that he wanted to marry the complainant and also gifted one ring to the complainant. Thereafter, the petitioner started insisting the complainant to have physical relationship with her and the petitioner raped her on the pretext of marrying her.

13. Respondent No. 2 has also filed response in which she has stated that she is at verge of settlement of her life by entering into matrimonial tie and does not want to continue with the litigation and as such, she has no objection if the F.I.R is quashed.

14. Mr. Vikas Sharma, learned counsel for the petitioner has argued that no offence is made out against the petitioner. The complainant is a habitual blackmailer, who has not only blackmailed the petitioner but also one Suresh Kumar as well as one Dr. Aashish Vinod Batra.

15. Mr. Aseem Sawhney, learned AAG submits that the offence under Section 376 IPC is made out and notwithstanding the response filed by the respondent No. 2, the petition has no merit.

16. Heard and perused the record.

17. A perusal of the record reveals that the petitioner became friend with the complainant through social media and used to chat with her. The petitioner told the complainant that he was Doctor and was serving in Government Hospital, Katra and further told her that he personally knows her and likes her and insisted the complainant to talk to him on telephone. Accordingly, the phone numbers were exchanged and both of them were in contact with each other through mobile phone. The petitioner proposed to marry the complainant and they started meeting each other at different places as per the choice of the petitioner. The petitioner also met the mother of the complainant and told her that he wanted to marry the complainant and also gifted one ring to the complainant. Thereafter, on the assurance of the petitioner that he will marry her, the petitioner developed physical relationship with the complainant and the respondent No. 2 believing that the petitioner will marry her, she also advanced an amount of Rs. 2 lac to the



petitioner for opening a clinic at Katra. The complainant also gave gold chain and clothes to the petitioner in the belief that he will marry her. One day, the petitioner told her that he cannot marry her as his parents had selected a girl for him and he cannot go beyond the choice of his parents. On hearing this, the complainant was shocked and told him as to why he had spoilt her life. The complainant reported the matter to the police station on 23.09.2019 and filed a written complaint against the petitioner and when nothing was done, she filed the application under section 156(3) Cr.P.C.

18. The report was also submitted by the SHO Police Station, Janipur on 13.12.2019, in which it was stated that the respondent No. 2 is not having a good character and it was found that she had lodged one false F.I.R against one Suresh Kumar bearing No. 226/2018 with Police Station, Samba and further in the said report, it was stated that the false application has been filed by the respondent No. 2. In this case also, the respondent No. 2 has leveled similar allegations with regard to indulging in sexual relationship on the pretext of marriage as in the connected petition titled “Suresh Kumar Vs. State of J&K”.

### **DISCUSSION**

19. In both the F.I.Rs, one thing is clear that respondent No. 2 has been changing her stands time and again. In one F.I.R she has stated herself to be rustic villager, whereas, in other F.I.R she has stated that she has been pursuing higher studies. In both the F.I.Rs, there are common allegations with regard to the commission of rape on the pretext of marriage and no date and place of occurrence has been mentioned in either of the F.I.Rs. In both the FIRs the occurrences have been mentioned with regard to the year 2018

as well and it reflects the conduct of respondent No. 2 that she indulged in sexual relationship with two persons on the promise of marriage in the year 2018. This Court has no hesitation to hold that from the conduct of the respondent No. 2, it is evident that a false and frivolous F.I.Rs have been lodged by respondent No. 2 against both the petitioners.

20. Otherwise also, law is well settled that when there is allegation that the sexual relationships were made on the basis of false promise of marriage, then it has to be established that promise of marriage was a false promise, given in bad faith and with no intention of being adhered to at the time it was given. In **Pramod Suryabhan Pawar v. State of Maharashtra**, reported in (2019) 9 SCC 608, the Apex Court quashed the FIR by observing as under:

“18. 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.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on

multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

**19.3.** The appellant expressed his reservations about marrying the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

**20.** The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

**21.** The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfill his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred.”

21. Further, the Apex Court in **Sonu @ Subhash Kumar vs. State of Uttar Pradesh and another**, reported in **2021 (2) JKJ (SC) 337**, has referred to following three important aspects while quashing the charge sheet:

“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 one and half year; and

iii. Subsequently, appellant had expressed disinclination to marry the second respondent which led to the registration of F.I.R”

22. Thus, both the petitions are fit case for showing indulgence as per the law laid down in Bhajan Lal's case and as such in view of what has been discussed above, both the petitions are allowed. The impugned F.I.Rs bearing Nos. 226/2018 dated 24.08.2018, under section 376 RPC registered with Police Station, Samba and 24/2020 dated 16.03.2020 under Section 376/420 IPC registered with Police Station, Janipur are quashed. As the main F.I.Rs stand quashed, so no further orders are required to be passed in the bail applications.

23. Disposed of.

**(Rajnish Oswal)**  
**Judge**

**JAMMU**  
02.09.2021  
Tarun