

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th MARCH, 2022

IN THE MATTER OF:

+ **CRL.M.C. 2960/2021 & CRL.M.A. 18641/2021 (Stay)**

CAPT SIMRANJIT SINGH SAMBHI Petitioner

Through Mr. K.K. Manan, Senior Advocate
with Ms. Udit Bali, Advocate.

versus

STATE (NCT OF DELHI) AND ANR Respondents

Through Ms. Neelam Sharma, APP for the
State with W/ASI Saroj, PS Tilak
Nagar

Mr. Shikhar Tandon, Advocate for
the prosecutrix along with prosecutrix
in person.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The present writ petition is filed under Section 482 Cr.P.C seeking quashing of FIR No. 143/2021 at PS Tilak Nagar on 02.03.2021 for offences under Section 376(2) (n), 354, 354A IPC.

2. The Relevant facts of the case are chronologically given as hereunder-

i. On 08.10.2020, the complainant addressed a complaint to the S.H.O. Tilak Nagar. It was stated therein that she was in a relationship with the Petitioner for three years and when she was told by the Petitioner that he was a divorcee the complainant was shocked. It was stated that the Petitioner had promised to marry her while he was in a relationship with

someone else. It was stated that the Petitioner went to her house and abused and assaulted her.

- ii. On 9.10.2020, the complainant withdrew the complaint given on 8.10.2020 stating that there was a misunderstanding between the Petitioner and her which was later resolved.
- iii. On 13.2.2021, another complaint was given by the complainant to the SHO Tilak Nagar stating that she had lodged a complaint that the petitioner promised to marry the complainant four months ago and after reconciling with her had asked for nine-month of time to marry the complainant. It is stated that the Petitioner went to her house, abused her and then beat her severely.
- iv. The complainant gave yet another complaint to the S.H.O. Tilak Nagar which was recorded vide LC-381/SHO/TN on 13.02.2021. It was stated that the Petitioner and the complainant became friends four years ago and that he would frequently visit the complainant's house. It is stated that about a year ago the petitioner visited her house, at a time when her mother had gone to Punjab and her sister was in the other room, the Petitioner forced her to have intercourse with him by promising to marry her. It is stated that the Petitioner and complainant would roam around with each other and he would blackmail the complainant by showing her explicit videos of her with an intention to threaten her as his uncle and mother did not want the Petitioner and complainant to get married. It is stated when the Petitioner stopped talking to her, she visited the house of the Petitioner where the mother, uncle and brother-in-law of the

Petitioner turned the complainant out of the house from the gate in front of neighbours and did not allow her to meet the Petitioner. It is stated that the Petitioner's uncle told her that he would not allow the Petitioner to marry her and sent her vulgar videos. It is stated that the Petitioner resiled from marrying the complainant after establishing physical relations with her on the false promise of marriage.

- v. Another complaint dated 19.02.2021 was lodged by the complainant. It was stated by her that she met the Petitioner via Facebook, after 3-4 months of chatting, the Petitioner introduced himself as a pilot in Air India and in April 2017 Petitioner started coercing the complainant to meet him. After repeated requests, on 17.4.2017 the complainant agreed to meet the Petitioner at Royalush Banquet Hall at Wazirpur which was owned by her brother-in-law and spent 3-4 hours with him, after which the Petitioner dropped the complainant at her house. It is stated that he started visiting her house more frequently, became familiar with her mother and brother and claimed to be unmarried. It is stated on 10.5.2017, she was called to the birthday party of the mother of the Petitioner, at his residence from where the Petitioner picked her up. It is stated that on 15.8.2017, the Petitioner came over to the house of the complainant when her mother had gone to Punjab, her brother was not at home and her sister Manpreet was in her bedroom and he gave her a bottle of juice and said to the complainant that they will celebrate Independence Day. It is stated that after consuming the liquid she became unconscious and on waking

up she found herself naked covered in a bed sheet and shouted and abused the petitioner for raping her after lacing her drink with some intoxicant. The Petitioner sat on the bed and threatened her by showing her video of him having intercourse with her. It is stated that the Petitioner blackmailed complainant saying that he will make the video viral by sharing it on facebook and forcibly established sexual relations with her until 18.8.2020. It is further stated that on 7.10.2020 the Petitioner called the complainant to his house to settle the issue of marriage with her and on reaching the house the complainant was stopped from entering the house by the mother, brother-in-law (Udit Sabhrawal) and uncle (Cuckoo Walia) of the Petitioner and threatened her with dire consequences. It is stated that the Petitioner's brother-in-law outraged her modesty and his uncle touched her inappropriately and she, fearing for her safety, escaped from there.

- vi. Based on the above complaint, FIR No. 143/2021 dated 2.3.2021 at PS Tilak Nagar for offences under Section 376(2)(n), 354 and 354A IPC was registered against the petitioner and his family members.
- vii. The complainant refused to be medically examined at DDU Hospital and vide MLC No. 95/2021 on 02/03/2021.
- viii. During investigation, the Petitioner's mobile phone was seized and its CDR & CAF were sought to be retrieved to see if the Petitioner had obscene videos of the complainant. Further, the CDR's and CAF's of complainant and co-accused are yet to be received. It was noted that the co-accused Khushwajeet

Alhuwalia and Udit Sabhrawal have cooperated with interrogations and were not arrested during investigation.

ix. This Court granted protection from arrest to the Petitioner by order dated 15.3.2021 in Bail Application No. 886/2021.

x. Chargesheet was filed on 29.5.2021.

3. It was submitted by the Ld. Counsel for the Complainant that the matter had been compromised amicably and stated that the complainant has no objection to quash FIR No. 143/2021 at Paschim Vihar Police Station against the Petitioner. This Court firmly declined the prayer staying cognizant of the principle that the High Court shall not exercise their plenary powers under Section 482 CrPC to quash heinous offences such as rape, murder, dacoity etc, that are essentially crimes against the society and not merely an individual, as has been held in a catena of judgments of the Supreme Court [Refer- Gian Singh V. State of Punjab (2012)10 SCC 303; State of Madhya Pradesh V. Lakshmi Naryanan (2019) 5 SCC 408 ; Parbatbhai Aahir V. State of Gujarat (2017) 9 SCC) 641] and requested the learned Senior Counsel to argue on the merits of the case.

4. Mr. K.K. Manan, Ld. Senior Counsel appearing for the Petitioner submitted that the Petitioner and Complainant were in a long-term relationship of four years which turned sour and the Petitioner was being falsely implicated in the matter. He submitted that there is a delay of four years in filing of the FIR with respect to incident complained of. He contended that the complainant had previously on 8/10/2020 filed a written complaint to the S.H.O. Tilak Nagar stating that the Petitioner had promised to marry her and assaulted her and that the said complaint was retracted by her on 9.10.2020 stating that she had harmoniously resolved her issue with the Petitioner.

5. He submitted that the complainant's version of the story is completely fabricated and is based on hoax statements given to the Police at different points of time and that there are marked discrepancies between the FIR lodged and the Section 164 statement of the complainant. He contends that there has been material improvement in her statements given to the Police at every juncture, right from the start of her complaints i.e. from 8.10.2020, to complaint of 13.2.2021, to complaint of 19.2.2021, to the FIR filed on 02.03.2021 and finally to her Section 164 statement recorded at the time of investigation. Further, he submitted that the complainant during investigation refused to get her internal medical examination done and did not submit her mobile phone to the investigating agency.

6. Mr. Manan argued that the Petitioner was granted anticipatory protection from arrest by the High Court and sincerely cooperated with the investigating agency at all times. He further argued that the Petitioner had lodged a complaint dated 24.2.2021 with the Commissioner of Police and the Dy. Commissioner of Police for offences under Sections 384, 386, 388, 419, 420, 506 read with 120B & 34 IPC against the complainant stating he was being extorted for money by the complainant and that she circulated his objectionable photographs to his friends and family. He states that the complaint letter was supplied with video footages of the days on which the complainant visited the house of the Petitioner. He submitted that on this complaint, FIR No. 389/ 2021 at PS Paschim Vihar got registered on 19.5.2021.

7. He submitted that there was no promise to marry the complainant and relied on the judgments of the Apex Court in Pramod Suryabhan Pawar V. State of Maharashtra(2019) 9 SCC 609, Sonu@ Subash Kumar V. State of Uttar Pradesh(2021) SCC Online SC 181 and submitted that there is a

difference between false promise to marry and breach of promise with the difference being that in false promise to marry one has, to induce the complainant from the inception only for engaging in sexual relations with her without any intention to marry her at all whereas breach of promise would be when a person had the intention of keeping the promise at the time of establishing sexual relations.

8. Per contra, Ms. Neelam Sharma, Ld. APP for the State, vehemently opposed the quashing of FIR registered against the Petitioner. She submitted that the offence of rape is a grave offence and notwithstanding the all-encompassing power of the Court under Section 482 CrPC, it should be circumspect in exercising its power in cases where heinous allegations are made. She submitted that allegations contained in FIR were serious in as much as the complainant was given a stupefying drink whereafter she became semi-conscious and the Petitioner raped her and recorded her in an intimate position to blackmail her. She contended that the discrepancies in her FIR and Section 164 statement have to be evaluated during Trial and not in the instant proceedings.

9. She placed reliance on the judgments in Bhawna Bai V. Ghyanshyam (2020) 2 SCC 417, State of Rajasthan V. Ashok Kumar Kashyap (2021) SCCOnline SC 314 and order dated 06.01.2022 in Hazrat Deen V. State of U.P. (SLP. CRL.9552/2021) to contend that a Court could not discharge an accused merely on the discrepancy in the FIR and Section 164 statement of a prosecutrix and submitted that the same must be dealt with during Trial and not pre-emptively dealt under Section 482 proceedings. She further submitted that the Petitioner was protected by the orders of this Court which had been extended from time to time and apprehended no danger to his liberty. Therefore no interference was warranted by this Court for exercising

its powers under Section 482 CrPC and submitted that this petition be dismissed.

10. The learned counsel for the Complainant did not address any arguments.

11. Heard Mr. K.K. Manan, Ld. Senior Counsel appearing for the Petitioner, and Ms. Neelam Sharma, Ld. APP for the State, and perused the material on record.

12. Material on record submits that the complainant gave her first complaint against the Petitioner on 8.10.2020 wherein she was aggrieved by the Petitioner's decision to not marry her. She retracted her complaint on the next day i.e. 9.10.2020. She again filed a complaint with the S.H.O on 13.02.2021 wherein she stated that the Petitioner had sought for nine months' time to deliberate on the offer of marriage and now refuted his position taken earlier. She filed another complaint on the same day with the S.H.O. wherein she narrated an incident that had happened four years ago as per which he had forced himself upon her against her wishes and that when she visited the house of the Petitioner, she was manhandled by the relatives of the Petitioner. She filed one more complaint on 19.2.2021 containing the same allegations and additionally, it was stated that in 2017 when the Petitioner allegedly committed intercourse against her will, he allegedly gave her an intoxicating juice and filmed an obscene video of her based on which the impugned FIR was lodged. Each subsequent complaint made by the complainant contains improvements from the last one.

13. Further, the Petitioner also lodged a complaint on 24.2.2021 which was later converted into an FIR No. 381/2021 with the S.H.O. P.S. Paschim Vihar stating that he met the complainant in 2017, developed a friendship and after the death of his father in August 2020 the complainant started

blackmailing him to marry her and threatened to lodge a false case against him if he didn't pay Rs. 1 crore to her. It was further stated in the complaint that she took explicit pictures of him and threatened to make it viral if her demands were not met. It is stated that he paid the complainant 1.5 lakh rupees to withdraw the complaint she had lodged on 8.10.2020. The Petitioner submitted CCTV recordings of the dates on which the complainant barged into his house and extorted the Petitioner and threatened to ruin the family's peace.

14. The complainant in the FIR stated that she was given juice by the Petitioner which made her semi-conscious whereas in her Section 164 statement she stated she was given wine by the petitioner. She did not file a complaint and did not get herself medically examined which would have substantiated that she had been given some intoxicating substance. In the FIR, it was stated that on 15.8.2017 when the Petitioner visited her house, her mother was in Punjab attending the funeral/last rites of her brother, whereas in her 164 statement she stated that her mother is bed ridden and unable to walk. She stated in her Section 164 statement that she was divorced and the Petitioner still established relations with her assuring her he would marry her, whereas in the FIR there was no such allegation. Further, in the FIR, it is stated that when she went the Petitioner's house on 7.10.2020, the petitioner's brother-in-law and uncle chased her out of the house and that whereas in her 164 statement she states that when she was turned out of the Petitioner's house and that the petitioner's uncle and brother-in-law told her that if she wanted to marry the Petitioner, she would have to establish sexual relations with the uncle and brother-in-law. The 164 statement also states that the Petitioner threatened to kill the complainant on

13.02.2021, which is in contrast with the FIR which records no such allegation.

15. A perusal of the material on record indicates that the complainant and the Petitioner were in a consensual relationship with each other for four years before the impugned FIR was filed against the Petitioner, alleging establishing sexual relations with the complainant under a false promise to marry.

16. The Apex Court has succinctly laid down as to when the consent of a women under Section 375 IPC is vitiated on the ground of "misconception of facts". In Deepak Gulati v. State of Haryana, (2013) 7 SCC 675, the Apex Court has observed as under:-

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which

he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. 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. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.” (emphasis supplied)

17. While dealing with a petition under Section 482 CrPC, in a case of establishing sexual relationship on false promise to marry, the Apex Court while quashing the FIR in Pramod Suryabhan Pawar v. State of Maharashtra & Anr., (2019) 9 SCC 608 after relying on the judgment of Deepak Gulati (supra), the Apex Court has observed as under:-

"16. 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. 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.....

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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." (emphasis supplied)

18. In yet another case while quashing an FIR alleging an offence of Section 375 IPC in case of a promise to marry, the Apex Court in Sonu @ Subhash Kumar v. State of Uttar Pradesh & Anr., 2021 SCC OnLine SC 181 after relying on Pramod Suryabhan Pawar (supra), has observed as under:-

"11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation

to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

19. In the FIR, it is stated that the mother and the uncle of the petitioner did not want the petitioner to get married to the complainant and that when she visited the house of the petitioner, the mother, uncle and the brother of the petitioner turned the complainant out of the house in front of neighbours who did not allow her to marry the petitioner. The complainant has not only alleged the complaints against the petitioner but also against the uncles and his brothers-in-law.

20. Section 90 IPC stipulates that consent given under fear or misconception cannot be said to be consent. In this context, it becomes relevant to factor in the aspect that the prosecutrix was in a long-term relationship spanning a period of four years and the FIR was only filed after the said relationship ended on hostile terms. Therefore, it cannot be said that the consent so accorded for establishment of physical relationship was predicated upon misconception of fear. The chargesheet mentions that the complainant refused to get medically examined and did not initially cooperate with the investigation. The material on record so far establishes that there are substantial embellishments in the Section 164 statement that are not mentioned in the FIR. Apart from that, there are notable

discrepancies in each of the successive complaints of the petitioner, that make it seem that a private dispute is being aggravated for ulterior purposes and the process of the law is being used as a tool for settling personal scores.

21. Taking into account the material contradictions and keeping in mind substantial improvements made by the complainant at every stage, this Court of the opinion that it is fit for this Court to exercise its power under Section 482 CrPC to quash the present FIR. Resultantly, FIR No. 143/2021 filed at PS Paschim Vihar for offences under Section 376(2)n, 354, 354-A IPC and all proceedings emanating therefrom is hereby quashed.

22. The petition is disposed of with the above observations along with pending application(s), if any.

MARCH 07, 2022

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SUBRAMONIUM PRASAD, J

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