

Jothiragawan vs The State Rep. By The Inspector Of Police on 24 March, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2025 INSC 386

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....OF 2025
[@ SPECIAL LEAVE PETITION (CRL) NO.6821 OF 2024]

JOTHIRAGAWAN

...APPELLANT

VERSUS

STATE REP. BY THE
INSPECTOR OF POLICE & ANR.

...RESPONDENTS

JUDGMENT

K. VINOD CHANDRAN, J.

Leave Granted.

2. An application made under Section 482 of the Code of Criminal Procedure¹ was rejected by the High 1 For brevity 'Cr.P.C.' Court of Judicature at Madras; which is impugned herein.

3. We heard Mr. M. P. Parthiban, learned Counsel for the petitioner, Mr. Sabarish Subramanian, learned Counsel for the State and Mr. Vairawan A.S. learned Counsel for the complainant.

4. The learned Counsel for the appellant submitted that there were multiple interactions by the complainant and the accused, who were both major individuals, which clearly indicates consent on the part of the complainant, the alleged victim. It is argued that there was never a promise of marriage given by the accused so as to induce the complainant into a physical relationship. This is

also not evident from the statements of the victim in the complaint that was given before the police; whereas consent is evident therefrom. There can be no prosecution lodged for rape based on the complaint. Insofar as the allegation of promise of marriage to induce the complainant to consent, the learned Counsel relies on a judgment of this Court in “Prithvirajan vs. The State Represented by the Inspector of Police & Another²” passed on 20.01.2025.

5. Learned Standing Counsel appearing for the State points out that there is no reason to interfere at this stage, especially since the statements given by the victim clearly indicates that she was coerced into a physical relationship. Only a trial would reveal what actually transpired and there is no reason to now invoke the extraordinary jurisdiction under Section 482 of the Cr.P.C. Learned Counsel appearing for the victim, however, asserts that the victim has specifically alleged inducement on the promise of marriage, which brings it under Section 90 of the Indian Penal Code³ being a consent on clear misrepresentation and misconception. The charge is of rape and cheating; the fraudulent² Criminal Appeal No.282 of 2025 @ SLP(Crl.) No.12663 of 2022³ For brevity ‘I.P.C.’ inducement being evident from the promise which was not kept.

6. The High Court had relied on a decision of this Court and found that the victim and the accused were aged about 22 years, were close relatives and the complaint given by the victim clearly indicates that the accused obtained a forced consent from her by giving a promise to marry her. It was also found that the victim had categorically stated that subsequently the accused had refused to marry her. Whether the accused had duped the victim to have sexual intercourse with him on the promise of marriage, was a matter of trial, held the Learned Sessions Judge. The application hence, was dismissed.

7. We have gone through the First Information Statement made by the complainant and the statement given before the Police which would form the basis of the trial. Unless the ingredients of an offence under Section 376 of the I.P.C. comes forth from these documents; which read together reveal identical statements, there cannot be any continuation of the prosecution. In this context, we also have to notice Prithivirajan² from which paragraph 7 is extracted hereunder:

“7. The instant case is one of consensual relationship between the appellant and prosecutrix. Even otherwise, it does not appear from the record that the initial promise to marry allegedly made by the appellant was false to begin with. Perusal of FIR itself suggests that the alleged promise to marry could not be fulfilled by the appellant due to intervening circumstances. Consequently, the relationship ended because of which the present FIR came to be registered. Under these circumstances, letting the appellant face trial would be nothing short of an abuse of the process of the Court. This cannot be permitted.”

8. As per the complaint and the statement given by the victim, the couple had sexual intercourse thrice.

They first met in a family function, where they both exchanged their phone numbers. After a few days, the accused expressed his desire to marry the victim, when the victim categorically told him

that she was studying and she would think it over, after completing her studies. Thus, started a relationship which resulted in frequent conversations and exchange of messages over the mobile phone and intermittent visits by the accused, to the house of the victim's grandmother, where she was residing; as stated by the complainant herself. On 17.04.2021, at the request of the accused, the victim accompanied him to a movie after which, she felt dizzy and they took a room in a hotel where according to the victim, there was an 'abrupt and unexpected' sexual intercourse, under coercion against her wish. Despite protesting and crying out the accused continued the act, after which she told him that he had ruined her life. It was at this juncture, that a promise was made by the accused, putting his hand on her head, that he would marry her. From the statements recorded we do not find any inducement by the accused, with a promise of marriage, before the alleged crime, leading to the sexual intercourse. The marriage proposal was not accepted by the victim and there is not even a statement that she succumbed to the sexual intercourse on such proposal; being made. It is the definite case put forth by the victim that the accused had acted unexpectedly and she was coerced into a sexual intercourse despite her protests. The promise as stated, if at all, was after the intercourse.

9. The complaint proceeds that again on the pretext of discussing marriage, the accused called the victim and she willingly accompanied him to the very same hotel. It was stated that the accused made entries in the hotel register, falsifying their names. On entering the room when the victim wanted to talk about marriage, it is the specific statement that the accused refused to talk about it till they had an intercourse and thus again the victim was coerced into a sexual intercourse. At this stage also, there is no promise of marriage or any inducement thereby and the allegation was that the accused threatened her that he would not marry, if she did not have sexual intercourse with him and then forcibly had such intercourse. These are mutually destructive contentions, since, if there is consent, there cannot be alleged forceful intercourse and it could only be contended that consent was obtained on misrepresentation or coercion.

10. It is also the categorical statement of the victim that after both instances the victim was mentally upset but this did not prevent her from, still again going to the very same hotel at the request of the accused, a third time. The story was repeated, of the talk of marriage having been kept aside till the sexual intercourse had been carried out, again forcefully. There is also an allegation of threat and coercion before they had physical relationship. It is the victim's case that after the three incidents, the complainant refused to pick up the telephone and when the victim eventually could contact him, he refused to solemnise their relationship by a valid marriage.

11. We have already found that there is no promise of marriage to coerce consent from the victim for sexual intercourse; as forthcoming from the statements made by the victim. The promise if any was after the first physical intercourse and even later the allegation was forceful intercourse without any consent. In all the three instances it was the allegation that, the intercourse was on threat and coercion and there is no consent spoken of by the victim, in which case there cannot be any inducement found, on a promise held out. The allegation of forceful intercourse on threat and coercion is also not believable, given the relationship admitted between the parties and the willing and repeated excursions to hotel rooms.

12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the sexual relationship admitted by both the parties was without the consent of the victim. That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms.

13. Having heard both sides in this case, we have absolutely no doubt in our mind that the criminal proceedings initiated against the present appellant are nothing but an abuse of process of the court. This is precisely a case where the High Court should have interfered in exercise of its inherent and extraordinary powers under Section 482 of the Cr.P.C. These proceedings cannot go on. Hence, we direct that the proceedings initiated at the instance of the complainant which are presently going on before Sessions Judge (Mahila Court), Erode in S.C. No. 49 of 2022, be hereby quashed.

14. Accordingly, the appeal stands allowed on the aforesaid terms.

15. Pending application(s), if any, shall stand disposed of.

....., J.

[SUDHANSHU DHULIA], J.

[K. VINOD CHANDRAN] NEW DELHI;

March 24, 2025.