

SONU @ SUBHASH KUMAR

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v.

STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 233 of 2021)

MARCH 01, 2021

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M.R. SHAH, JJ.]**

Code of Criminal Procedure, 1973: s.482 – Second respondent lodged FIR against the appellant alleging that appellant developed friendship with her and assured that he would marry her – Appellant and second respondent developed physical relationship for about one and a half years and subsequently appellant expressed disinclination to marry her – Charge sheet filed against appellant under s.376 IPC – s.482 application filed by appellant for quashing the charge-sheet – High Court dismissed the application with direction that appellant may move trial court to seek discharge at appropriate stage – Hence instant appeal – Held: To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established – 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 – In the instant case, the FIR and statement under s.164 Cr.P.C showed that the relationship between the appellant and second respondent was consensual in nature – There was no allegation to the effect that the promise to marry given to the second respondent was false at the inception – On the contrary, the contents of the FIR showed 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, the High Court was in error in declining to entertain the petition under s.482 on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established – Penal Code, 1860 – ss.375, 376.

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A **Allowing the appeal, the Court**

HELD: 1. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed
B **a physical relationship which spread over a period of one and a half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the**
C **appellant returned to his home town at Jhansi on 5 January 2018 when he had made a phone call to her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the appellant that the appellant did not wish to marry her. The contents of the statement under Section**
D **164 of Cr.PC also indicate that the second respondent had “voluntarily developed relationship of husband-wife with him”. The second respondent has then stated that “now, he and his family members are refusing to marry with me”. The second respondent has further stated that “my sole grievance is that Sonu is refusing to marry with me”. [Para 7][142-B-E]**
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2. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge: The relationship between the appellant and the second respondent was of a consensual nature; The parties were in the relationship
F **for about a period of one and a half years; and Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR. [Para 8][142-F-G]**

3. 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
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of the FIR. On these facts, the High Court was in error in declining to entertain the petition under Section 482 of Cr.PC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established. [Para 11][143-E-G] A

Pramod Suryabhan Pawar v State of Maharashtra (2019) 9 SCC 608 : [2019] 11 SCR 423 – relied on. B

Case Law Reference

[2019] 11 SCR 423 relied on para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 233 Of 2021 C

From the Judgment and Order dated 26.9.2019 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 35811 of 2019

Amit Pawan, Anand Nandan, Advs. for the Appellant.

Vishnu Shankar Jain, Chanakya Gupta, Simant Kumar, Ravi Prakash, Ms. Jaishree Raj Soni, Sandeep Malik, Vagisha Nandini, Vikram Singh Arya, Advs. for the Respondents. D

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted. E

2. This appeal, by way of an SLP, arises from a judgment of a learned Single Judge of the High Court of Judicature at Allahabad dated 26 September 2019 in Criminal Miscellaneous Application No 35811 of 2019. The above application was instituted under Section 482 of the Code of Criminal Procedure 1973¹ for quashing the charge sheet dated 25 April 2018 in Case No 1066/IX/19 arising out of Case Crime No 121 of 2008 under Section 376 of the Indian Penal Code 1860² at PS Kotwali, District Mathura. The High Court dismissed the application with a direction that the appellant herein may move the trial Court to seek discharge at the appropriate stage. However, the High Court directed that if the appellant moves an application for bail before the competent Court, the application should be disposed of in accordance with law. In the meantime, the appellant was protected against coercive action for a F G

¹ “CrPC”

² “IPC”

- A period of thirty days and was directed to appear before the Competent Court within the aforesaid period.

3. In order to consider the grievance of the appellant, it would be necessary to advert to the contents of the FIR. The FIR was lodged by the second respondent on 7 February 2018. The FIR, which is registered on the basis of a written complaint of the second respondent to the SHO, PS Kotwali, Mathura, states that the second respondent developed friendship with the appellant and that he assured that he would marry her. It has then stated that she was exploited physically for one and a half years and that the second respondent had also spoken to the parents and sister of the appellant. It has been stated that the father of the appellant had informed the second respondent that he would arrange the marriage of the appellant with her. After a lapse of about a year and a half, the appellant is stated to have gone back to his home town which is Jhansi on 5 January 2018 and made a phone call to the second respondent that, since he wishes to perform a “court marriage”, the second respondent may come to Jhansi. This was on the ground that the appellant could not travel to Mathura where the second respondent lived. The second respondent has alleged that she proceeded to Jhansi, but on reaching the residence of the appellant, she was informed by the father of the appellant that the appellant does not wish to marry her. The appellant’s father also stated that the appellant did not desire to meet her and further asked her to take some money and leave from there. The FIR further records that the second respondent was assaulted by the appellant’s sister and thrown out of the appellant’s house. The statement of the second respondent was recorded under Section 164 of CrPC. The entirety of the statement is extracted below:

- F “Statement U/s 164 Cr.P.C.

Name of victim: Geeta D/o Ram Babu, Age 25 years, stated on oath that -

- G I had love affair with Sonu S/o Kamlesh, age 27 years, for the last 1-1/2 years. He used to tell to marry with me. I got influenced by his talks. I voluntarily developed relationship of husband-wife with him. Now, he and his family members are refusing to marry with me. On 5th January, 2018 Sonu went to Jhansi and from there also he kept on taking [sic talking] with me on phone. He called me to Jhansi and then on 21.01.2018 without informing anybody in my home, I went to Jhansi on the address given by Sonu. His
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father met me there and told me that they are not intending to solemniz'e my marriage with Sonu and advised me to ran away from there after taking some money. Sonu's mother Shobha and sister Neha assaulted me. On 21.1.2018 I stayed at Jhansi station and then on the train [sic train] of 12 O' clock in the night I came back to Mathura. My sole grievance is that Sonu is refusing to marry with me. I have studied upto class 6th. I have nothing more to say.

It is certified that the above statement has been given by the victim with her own voluntary wish and without any force or pressure.

Recorded by

Sd/- .

6.3.18

Heard and verified

Sd/- _

Victim"

4. Mr Amit Pawan, learned counsel appearing on behalf of the appellant, has relied upon a decision of this Court in **Pramod Suryabhan Pawar v State of Maharashtra**³. Learned counsel submitted that the relationship between the appellant and the second respondent was consensual in nature. It has been urged that a bare reading of the FIR as well as the statement under Section 164 of CrPC would indicate that there was absolutely no intent on the part of the appellant, when he entered upon the relationship, not to marry the second respondent nor can it be even suggested that the promise to marry was false. Hence, it has been submitted that no offence has been made out within the meaning of Section 376 of IPC.

5. On the other hand, Mr Simant Kumar, learned counsel appearing on behalf of the second respondent, supported the judgment of the High Court stating that the FIR would indicate that the complaint of the second respondent on the basis of which the FIR was registered would indicate that the second respondent had developed a friendship with the appellant who had assured that he would marry her.

³ (2019) 9 SCC 608

A 6. Mr Vishnu Shankar Jain, learned counsel appearing on behalf of the State of Uttar Pradesh, has similarly supported the decision of the High Court, relying on the observations contained in paragraph 16 of the decision of this Court in **Pramod Suryabhan Pawar** (supra).

B 7. On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed a physical relationship which spread over a period of one and a half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the appellant returned to his home town at Jhansi on 5 January 2018 when he had made a phone call to her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the appellant that the appellant did not wish to marry her. The contents of the statement under Section 164 of CrPC also indicate that the second respondent had “voluntarily developed relationship of husband-wife with him”. The second respondent has then stated that “now, he and his family members are refusing to marry with me”. The second respondent has further stated that “my sole grievance is that Sonu is refusing to marry with me”.

E 8. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

- F (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 a half years; and
- G (iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.

H 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 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...”

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.”

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.

12. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 26 September 2019. In view of the reasons which have been adduced earlier, the charge sheet dated 25 April 2018, which has been filed in pursuance of the investigation which took place, shall stand quashed. The order of the trial Court dated 3 October 2018 taking cognizance shall accordingly stand quashed and set aside.

A 13. In view of the above order, Mr Amit Pawan, learned counsel appearing on behalf of the appellant, states that no further step shall be taken in respect of the cross-FIR which was registered against the second respondent at the behest of the appellant.

14. Pending application, if any, stands disposed of.

Devika Gujral

Appeal allowed