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MCRC-54650-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 7<sup>th</sup> OF JANUARY, 2026MISC. CRIMINAL CASE No. 54650 of 2023

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Appearance:

Shri Harshit Sharma - Advocate for the petitioner.

Shri Satendra Singh Sikarwar - PP for the State.

Shri Yogesh Singhal- Advocate for the respondent No.2.

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ORDER

1. The instant petition has been filed under Section 482 of the Cr.P.C. for quashing/challenging the validity of the charge sheet No.656/2013 filed in relations to FIR registered at Crime No.971/2023 at Police Station Kotwali, District Morena for the offences punishable under Sections 498A, 376(2)(n), 377, 323, 294 of the IPC wherefore, the JMFC, Morena has taken cognizance of the offences vide order dated 25.11.2023 in RCT No. 2314/2023 and setting aside of all other consequential proceedings arising therewith qua the present petitioner in relation to the aforesaid crime number as well as case number.

2. The prosecution case in brief is that the petitioner and respondent no.2/prosecutrix entered into wedlock on dated 26.06.2022 wherein the parents of the respondent no.2 on their own volition & capacity



gave rupees to the tune of Rs. 21 lakhs & 15 tola gold in marriage. After some days, the petitioner & respondent no.2 started quarrelling on trivial issues and it is alleged that petitioner used to exert violence on the private respondent No.2. It is further alleged that on dated 01.03.2023, when the petitioner went for a meeting to Indore accompanying respondent no.2, in the morning they had fight and when the petitioner came back from the meeting at around 08.00 PM, where the respondent no.2 was sitting in the temple and petitioner asked her to get back home, wherein as he was afraid, she refused to go and it is alleged that petitioner smashed the head of the respondent no.2 on the wall and assaulted her due to which she suffered injuries, wherefore, she came to her maternal house and reported the incident at Mahila Thana Padav, Gwalior wherein after counselling, the dispute was subsided and she went back to her matrimonial home. Further, it is also alleged that petitioner used to forcefully make physical relation with respondent no.2 & has also against her will, committed unnatural acts on many occasions against her. It is further alleged that on 28.08.2023, despite respondent no.2's refusal, the petitioner hurled abuses and assaulted her, of which she complained to her sister & mother and she was counselled to report the same, on the basis of which the impugned FIR bearing Crime No. 971/2023 came to be registered at P.S.-Kotwali, District Morena (M.P.) on dated 01.10.2023 for the offences alleged u/s. 498A, 376(2)(n), 377, -323, 294 of the Indian Penal Code, 1860.

3. During the pendency of the investigation, the petitioner at the very inception preferred a quashment petition u/s. 482 of Cr.P.C. 1973 which



came to be withdrawn at the every outset with liberty to file a fresh petition with better particulars with the aid of charge sheet vide order dated 26.10.2023 passed in MCRC No. 48394/2023 and subsequently preferred bail application u/s. 438 of Cr.P.C. 1973 before learned trial court which was dismissed and assailed before the Hon'ble Court wherein the Hon'ble Court was pleased to grant the benefit of anticipatory bail to the petitioner vide order dated 02.11.2023 passed in MCRC No. 49316/2023.

4. Along with the disposal of the anticipatory bail application preferred by the petitioner, there was also a petition preferred by the prosecutrix/respondent for arresting the petitioner, but as the relief of anticipatory bail was granted in the favor of petitioner, therefore, the said petition on behalf of prosecutrix/respondent came to be dismissed as infructuous vide order dated 02.11.2023 passed in MCRC No. 49439/2023.

5. Henceforth, in the conspectus of the aforesaid and being disconsolate as well as crestfallen by the impugned F.I.R. & corollary charge sheet filed wherein cognizance was taken & as the entire proceedings is a matter of counterblast to divorce & other proceedings previously instituted by the petitioner coupled with the factum that only to settle personal scores & to harass the petitioner wherein none of the alleged offences prima facie is made out even if the entire prosecution story is accepted in its entirety and in view of the liberty granted by the Court, this present second petition u/s. 482 of Cr.P.C. 1973 is herewith being preferred.

6. Learned counsel for the petitioner submitted that the petitioner in the present case has no connection with the allegations so brought by the



respondent no.2 as far as his involvement in the alleged offence is concerned. Right from the beginning when the marriage got solemnized, there erupted dispute between the petitioner & respondent no.2 on trivial issues in pursuance of which even counselling session took place when the respondent initially approached the Mahila Thana Padav complaining against the petitioner which came out to be a domestic dispute and nothing more than that, wherefore, even a Raji Nama between the rival parties was entered on 20.06.2023, wherein no issue regarding as has been alleged in the impugned FIR has surfaced and it was admitted fact that the dispute was only in respect to husband-wife relation and as they were living separately, after this rajinama they again started to live with each other.

7. Even after the concerted efforts of family from both the sides as seen in annexed rajinama, nothing changed and the violent actions of the respondent no.2 came to peak on 28.08.2023, when she assaulted not only the petitioner, but also his father, mother and grandmother. A complaint of said actions was even reported by the father of the petitioner to P.S. Kotwali, District Morena (M.P.) on the same date, i.e. 28.08.2023, seeking indulgence of the police authorities for the purposes of securing their interest, which in itself shows that it was respondent no.2, who acted with ill-will and for the reasons best known to her, she disturbed the family life of the petitioner & his kins as well as went to her maternal home, which shows that lastly she lived in her matrimonial household.

8. Being afraid from the situation that the respondent no.2 would implicate the petitioner and his family members in false cases as well as will



harass the petitioner & his family for settling her personal scores and to bring petitioner's actual grievance before the redressing authorities coupled with the factum of showing his innocence that no misdeeds have been committed by him, he preferred representations on dated~ 01.09.2023 & 13.09.2023 to In-charge of P.S. Kotwali, District Morena.(M.P.), but no action was taken on the same.

9. When nothing changed in the relation as established between the petitioner and the respondent no.2 as well as when the respondent no.2 deserted the petitioner & hurled violent actions, the petitioner was bent upon to prefer an application u/s. 13 of the HMA 1955 praying for the grant of decree of divorce for nullifying the marriage on the ground of cruelty and the same came to be filed before the family court on 06.09.2023, wherefore, after recording of the initial statement of the petitioner in divorce case on 12.09.2023, the summons were issued to the respondent no.2 in the divorce case which was refused to be taken by the respondent no.2 as the attestation on the envelope sent for service bears as of dated 30.09.2023 and only when the respondent no.2 came to be known about the institution of divorce proceedings, as a matter of counterblast, the very next day, the impugned FIR was lodged on fictitious allegations only to harass the petitioner as well as for exerting pressure to come to her terms.

10. It is an established principle of law, that humans may lie, but the circumstances would always tell truth & basing the contention on the maxim res ipsa loquitur, it is pertinent to place the WhatsApp chats and photographs, which in itself shows that the respondent no.2 acted inappropriately and



owes distinct relation with other persons as well as was throughout living peacefully and only when the petitioner interdicted in her life to seek answers as to his curiosity regarding messages & calls which he saw in respondent no.2's mobile, baffled the respondent no.2 and brought the instant prosecution to be lodged against the petitioner with all wild allegations which one can even not imagine, so as to make herself appear to be correct and the petitioner as wrong in all facets.

11. In view of the recent judgment of the Hon'ble Apex Court delivered in the case of Mohammad Wajid & Anr. v. State of U.P. & Ors. reported in 2023 LiveLaw (SC) 624: 2023 INSC 683, the petitioner craves kind indulgence of the Hon'ble Court in the instant matter.

12. So far as the allegation or offence as forming part of the impugned FIR which pertains to section 376(2)(n) & 377 of the Indian Penal Code, 1860, in view of the exception as envisaged u/s. 375 of IPC 1860, both the offences are not made out in view of the amendments as brought out by the Criminal Law (Amendment) Act, 2013 and the petitioner owes force from the recent decision of the Hon'ble Court as delivered in the case of Umang Singhar v. State of M.P. & Anr. dated 21.09.2023 delivered in MCRC No.59600/2022.

13. Even the medical examination report of the prosecutrix indicates nothing in respect of unnatural sex & no definite opinion was given by examining Doctor in respect of fellatio or buggery as no injury sings were visible or detected.

14. So far as offence u/s. 498A of IPC 1860 is concerned, there is no





allegation of demand of dowry and bringing the case in the ambit of unlawful demand fails and also the part one of the definition of cruelty is not attracted and hence, no prima facie offence as punishable u/s. 498A of IPC 1860 is made out.

15. Another important aspect which is to be brought in kind notice of the Court is that the offence so alleged u/s. 294 of IPC is concerned is also not made out as public place is missing & even essential ingredient of annoyance to others is absent, which even not makes the offence u/s. 294 of IPC.

16. After reading down of offences u/s. 376(2)(n), 377, 498A-& 294 of IPC 1860, the only offence which remains on the FIR is section 323 of IPC 1860, which is non-cognizable in nature and hence, no FIR in respect to the same could sustain and also, the allegations are vague which is primarily levelled so as to give a reflection of prima facie case in the FIR by stating certain averments maliciously and therefore, this is the perfect case of malicious prosecution lodged on the behest of the respondent wife so as to harass the petitioner, only as a matter of counter-blast to the divorce case and the complaints hurled by the petitioner and his family members. There is no previous complaint of any sort annexed with the charge sheet and only to harass the petitioner to give an impression of saint, image of prosecutrix, the instant prosecution by way of lodging impugned FIR is stalled and as coordinate bench of this Hon'ble Court has observed in the case of Rajan & Anr. v. State of M.P. & Anr. vide judgment dated 17.08.2023 passed in MCRC No. 35596/2018 that now a days matrimonial dispute lodged by wife



comes with a package of 5 cases along with section 498A IPC proceedings and recent trend has all together showed the invocation of section 377 of IPC1860 to great heights, which is nothing but an abuse of the process of the court.

17. It is also worth mentioning that the prosecutrix/respondent recently preferred an application u/s. 125 of Cr.P.C. for maintenance before the learned court of Principal Judge, Family Court, Gwalior (M.P.) and despite being a professional, qualified and working lady, only to create pressure of multiple cases against the petitioner.

18. Continuation of the proceedings in the present matter-against the petitioner is clear abuse of the process of the law and will result in causing injustice towards the petitioner if the same is continued and trial is sought to be initiated as the FIR also suffers from delay. Hence, this petition may be allowed and the charge sheet no. 656/2013 filed in relation to F.I.R. bearing Crime No. 971/2023 registered at Police Station Kotwali, District Morena, M.P. for the offences u/s. 498A, 376(2)(n), 377, 323, 294 of the IPC as well as order of taking cognizance dated 25.11.2023 passed in RCT No. 2314/2023 by the court of JMFC, District Morena (M.P.) and all other consequential proceedings arising in relation to the aforesaid crime number & case number, may kindly be quashed and set aside.

19. Learned counsel for the respondent/State as well as counsel for the respondent No.2/prosecutrix opposed the prayer and prayed for its rejection.

20. Heard counsel for the rival parties and perused the entire record with due care.





21. Considering the rival submissions, the documentary material available on record and the law relatable to the issue in hand, the core question which is drifted towards the surface is "Whether the offence of Section 377 IPC between husband and wife can be weighed parallel to the offence of rape as defined under section 375 IPC"

22. Even, the primary argument of the learned counsel for the petitioner was that when Section 375 IPC defines 'rape' and also by way of amendment in 2013, Exception-2 has been provided which bespeaks that sexual intercourse or sexual acts by a man with his own wife is not a rape and therefore if any unnatural sex as defined under section 377 is committed by the husband with his wife, then it can also not be treated to be an offence. Secondly, as per the learned counsel for the petitioner, the impugned FIR is nothing but a malicious prosecution inasmuch as it has been lodged with intent to get ill-gotten gains by extorting money/property due to matrimonial discord between husband and wife; without disclosing any date, time and place of committing offence and also runs short of any explanation about the tardy complaint. Neither the allegations made against the petitioner are specific but are general and omnibus in nature, nor has it been explained by any encouraging evidence. Thus, the petitioner's prosecution is apparently an abuse of process of law, which to secure the ends of justice, is liable to be annulled at the threshold. It is further argued that in the facts and circumstances of the case, vis-a-vis the existing legal position when Section 375 defines 'rape' specifying the offender and victim, and also the body parts which can be used for committing an offence, but repealing the said



provision with regard to relation of husband and wife then doctrine of 'implied repeal would also be applicable considering the unnatural offence.

23. Section 375 IPC defines the offence of rape. Exception 2 to Section 375 specifically says that sexual intercourse by a man with his own wife is not rape provided the wife is not under 18 years of age. This Exception is commonly referred to as the marital rape exception under Indian law. Because Section 376 IPC punishes rape as defined in Section 375, where the Exception applies, no offence under Section 376 can be made out.

24. The Hon'ble Apex Court in the case of Kuldeep Singh v. The State of Punjab & Ors. 2025 INSC 130) has held that *because the complainant and the accused were legally married, and the intercourse fell under Exception 2 to Section 375, no prima facie case of rape under Section 376 IPC was made out.*

25. The Apex in the aforesaid case also held that:-

- (i) The marriage was voluntary and consensual
- (ii) The wife did not make any allegations of rape in her written statements in related family proceedings
- (iii) There was no evidence of coercion or force.

26. Therefore, this Court is of the considered opinion that Sexual intercourse by a man with his own wife, where the wife is a major and there is no force/coercion, falls within Exception 2 of Section 375 IPC; hence, a charge under Section 376 IPC cannot be sustained. Here in this case, where the wife is not under age, sexual intercourse or sexual act by the husband



**with his wife cannot be termed as rape**, even if alleged to be without consent as under the amended Section 375 IPC, the marital exception applies, making Section 376 and 377 offences not attracted in such cases.

27. But, this Court is also of the opinion that forced **unnatural** sex by a husband on his wife amounts to **cruelty under Section 498A IPC**, but **cannot be prosecuted as rape under Section 376 IPC** as in a Section 377 context (unnatural acts), the marital rape concept is not recognized under current law because of the Express marital exception in Section 375.

28. After going into the depth of submissions made by the learned counsel for the petitioner, it is imperative to go-through the definition of 'rape', in that, for committing rape, as per Section 375(a), an offender is a 'man' who uses the part of the body (a) Penis, as per Section 375(b) body-parts other than penis and 375(c) any other object. Simultaneously, the said definition describes - at the receiving end the body parts are (a) Vagina, (b) Urethra, (c) Anus, (d) Mouth and (e) other body parts. Considering the offence of Section 377 i.e. unnatural, although it is not well-equipped and offender is not defined therein but body parts are well defined, which are also included in Section 375 i.e. carnal Intercourse against the order of nature. At this juncture, it is indispensable to see what is unnatural. The Supreme Court in a petition challenging the constitutionality of Section 377 IPC criminalizes 'carnal intercourse against the order of nature' which among other things has been interpreted to include oral and anal sex. Obviously, This Court finds that Section 377 of IPC is not well-equipped. Unnatural offence has also not been defined anywhere. The five-judge bench of the Supreme Court in the



case of Navtej Singh Johar and other Vs. Union of India [(2018) 10 SCC 1] testing the constitutionality of said provision although held that some parts of Section 377 are unconstitutional and finally held if unnatural offence is done with consent then offence of Section 377 IPC is not made out. The view of the Supreme Court is considered in the light of amended definition of Section 375 and the relationship for which exception provided for not taking consent i.e. between husband & wife and not making offence of Section 376, the definition of rape as provided under Section 375 includes penetration of penis in the parts of the body i.e. vagina, urethra or anus of a woman, even though, the consent is not required then as to how between husband and wife any unnatural offence is made out. Apparently, there is repugnancy in these two situations in the light of definition of Section 375 and unnatural offence of Section 377. It is a settled principle of law that if the provisions of latter enactment are so inconsistent or repugnant to the provisions of an earlier one that the two cannot stand together the earlier is abrogated by the latter.

28. The view taken by the Constitutional Bench of the Supreme Court in the case of Navtej Singh Johar (supra) observing that due to legislative changes, some of the offences of Section 377 have become redundant and held as under:-

"423 At this point, we look at some of the legislative changes that have taken place in India's criminal law since the enactment of the Penal Code. The Criminal Law (Amendment) Act 2013 imported certain understandings of the concept of sexual intercourse into its expansive definition of rape in Section 375 of the Indian Penal Code, which now goes beyond penile-vaginal penetrative. It has been argued that if 'sexual



intercourse' now includes many acts which were covered under Section 377, those acts are clearly not 'against the order of nature' anymore. They are, in fact, part of the changed meaning of sexual intercourse itself. This means that much of Section 377 has not only been rendered redundant but that the very word 'unnatural' cannot have the meaning that was attributed to it before the 2013 amendment. Section 375 defines the expression rape in an expansive sense, to include any one of several acts committed by a man in relation to a woman. The offence of rape is established if those acts are committed against her will or without the free consent of the woman. Section 375 is a clear indicator that in a heterosexual context, certain physical acts between a man and woman are excluded from the operation of penal law if they are consenting adults. Many of these acts which would have been within the purview of Section 377, stand excluded from criminal liability when they take place in the course of consensual heterosexual contact. Parliament has ruled against them being regarded against the 'order of nature', in the context of Section 375. Yet those acts continue to be subject to criminal liability, if two adult men or women were to engage in consensual sexual contact. This is a violation of Article 14."

29. At this point, if the amended definition of Section 375 is seen, it is clear that two things are common in the offence of Section 375 and Section 377 firstly the relationship between whom offence is committed i.e. husband and wife and secondly consent between the offender and victim. As per the amended definition, *if offender and victim are husband and wife then consent is immaterial and no offence under Section 375 is made out* and as such there is no punishment under Section 376 of IPC. For offence of 377, as has been laid down by the Supreme Court in *Navtej Singh Johar (supra)*, if consent is there offence of Section 377 is not made out. At the same time, *as per the*



*definition of Section 375, the offender is classified as a 'man', here in the present case is a 'husband' and victim is a 'woman' and here she is a 'wife' and parts of the body which are used for carnal intercourse are also common. The offence between husband and wife is not made out under Section 375 as per the repeal made by way of amendment and there is repugnancy in the situation when everything is repealed under Section 375 then how offence under Section 377 would be attracted if it is committed between husband and wife.*

30. According to the facts and circumstances and in view of the law laid down by the Supreme Court in case of State of Haryana and others Vs. Bhajan Lal and other 1992 Supp (1) SCC 335 and the guidelines framed therein for quashing the FIR where a criminal proceeding is manifestly attended with mala fide and or proceeding is maliciously instituted with an ulterior motive or wreaking vengeance on the accused and with a view of spite him due to private and personal grudge, can be quashed. The relevant paragraph of said decision is reproduced hereunder:

"102. (1) Where the allegations made in the first information report 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

**(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.**

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.





(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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."

31. Here in the present case, this court finds that offence under Section 377 of the IPC has been alleged against the petitioner/husband by the respondent/wife, but relevant medical reports have not been collected and only on the oral submissions, the trial for the offence under Section 377 of the IPC has been commenced against the petitioner. The validity of the offence also falls under more doubt, when it is has been alleged at the time when there is an extreme matrimonial dispute between the husband and wife before the family court. Even the medical examination report of the prosecutrix indicates nothing in respect of unnatural sex & no definite opinion was given by examining Doctor in respect of fellatio or buggery as no injury sings were visible or detected.

32. So far as consideration on the offence under Section 498A, 323 and 294 of the IPC is concerned, the prosecution has established its case, therefore, the validity of the aforesaid offences is required to be proved during trial before the appropriate court/s at appropriate stage. Hence, this court has not drawn any view on the aforesaid offences.

33. Hence, considering overall facts and circumstances of the case, the



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instant petition is **partly allowed** to the extent that offence alleged against the petitioner under Sections 376(2)(n) and 377 of the IPC registered vide crime No.971/2023 is hereby quashed. **However, the offence under the same crime number under Sections 323, 294 and 498-A is hereby maintained.**

(RAJESH KUMAR GUPTA )  
JUDGE

Vishal