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MCRC-26644-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 11th OF NOVEMBER, 2025MISC. CRIMINAL CASE No. 26644 of 2023*GIRRAJ SHARMA**Versus**THE STATE OF MADHYA PRADESH*

Appearance:

Mr. Amit Lahoti - Advocate for the petitioner.

Mr. Purshottam Tanwar - Panel Lawyer for respondent/State.

Mr. Sanjay Kumar Sharma - Advocate for the respondent [COMP].

ORDER

This petition under Section 482 of Cr.P.C. has been preferred by the petitioner for quashment of FIR bearing Crime No.645/2021 registered at Police Station Kotwali, District Shivpuri for offence punishable under Sections 376, 506, 420 and 384 of IPC and Section 67 of Information Technology (Amendment) Act, 2000.

2. As per the prosecution case, the complainant, along with her father, submitted an application and supporting documents alleging that the petitioner fraudulently misled the complainant with a promise of marriage and, on one occasion, committed sexual intercourse against her consent and wishes after administering an intoxicating substance while she was present at his house. The application further stated that the petitioner captured obscene photographs of her and used them to blackmail her, attempting to



dishonestly obtain the maintenance amount she received following her separation from her husband. The prosecutrix, fearing humiliation and scandal, initially did not disclose the incident. However, the petitioner continued to criminally intimidate the complainant both inside and outside her house. This subsequent series of incidents compelled her to approach the police station, on the basis of which the aforesaid offence was registered against the present petitioner.

3. Learned counsel for the petitioner submits that the prosecutrix is a major lady serving as an Assistant District Prosecution Officer (ADPO). She lodged the FIR on 14.11.2021 against the petitioner, alleging that she was posted as an ADPO at Chhatarpur Court at the relevant time, and is currently working as an ADPO at Sheopur Court. While serving at Chhatarpur, she came into contact with the petitioner. As per her own version, the prosecutrix was a divorced lady at that time. It is alleged that the petitioner made a false promise of marriage and, on that pretext, maintained physical relations with her. It is further alleged that, prior to the physical relationship, the petitioner administered an intoxicating substance to her, causing her to become unconscious. Thereafter, without her will and consent, the petitioner committed rape and also took certain obscene photographs of her. Subsequently, the petitioner allegedly blackmailed the prosecutrix using those photographs and continued to have physical relations with her on several occasions.

4. It is further submitted that, as per the FIR, the prosecutrix had been acquainted with the petitioner since 2018 and they were in a consensual



relationship for several years. No specific date, time, or incident has been mentioned in the FIR to constitute the alleged offence of rape. The prosecutrix continued to maintain an intimate relationship with the petitioner over a long period, which clearly reflects that the relationship was consensual and based on mutual affection.

5. It is further submitted that, even if all the allegations in the FIR and the statement of the prosecutrix recorded under Section 164 Cr.P.C. are taken at face value, no offence as alleged is made out against the petitioner. It is a matter of record that, as per her own version, the prosecutrix had been acquainted with the petitioner since 2018 and they were in a consensual relationship for several years. The FIR was lodged only in 2021, much after the alleged relationship had begun. Even in her statement under Section 164 Cr.P.C., the prosecutrix admitted that the petitioner had promised to marry her, but she later came to know that the petitioner was already married. In these circumstances, and considering the factual background of the case, the matter is squarely covered by various judgments of the Hon'ble Supreme Court, wherein consensual relationships under a promise of marriage do not attract the ingredients of Section 376 IPC.

6. It is further submitted that the allegations levelled by the prosecutrix in the FIR are false, concocted, and motivated. The alleged threats by the petitioner are also unsubstantiated by any legal evidence. Hence, the entire FIR stands vitiated and does not disclose the commission of any cognizable offence.

7. It is further submitted that the relationship between the prosecutrix



and the petitioner was purely consensual, and both parties had spent considerable time together of their own free will. Once such consensual physical intimacy has occurred between two adults, it cannot subsequently be termed as rape merely because the petitioner refused to marry the prosecutrix. The consent of the prosecutrix was not induced by any deceitful promise or false assurance. The petitioner and prosecutrix were known to each other for a long time and were in a relationship. When the petitioner declined to marry, the prosecutrix, in a revengeful manner and to misuse the process of law, lodged the present false FIR against him.

8. It is further submitted that the F.I.R. was initially lodged under Sections 376, 506, and 384 of the I.P.C., and during investigation, Section 420 of the I.P.C and Section 67 of IT Act were added. Thereafter, the charge-sheet was filed before the competent Court. It is further submitted that in the present facts and circumstances, Section 420 of the I.P.C. is not attracted. Even if the petitioner had sexual relations with the prosecutrix several times on the false pretext of marriage, this act does not fall under the definition of the offence of cheating, therefore, Section 420 of the I.P.C. is not made out against the present applicant.

9. It is further submitted that the prosecutrix had matrimonial disputes with her husband and subsequently obtained a divorce. The petitioner had no role in her matrimonial discord or divorce proceedings. Thus, it is prayed that the impugned FIR be quashed. To bolster these submissions, reliance is placed on the judgment of the Hon'ble Apex Court rendered in the case of *Pramod Suryabhan Pawar vs. State of Maharashtra*



and Anr., reported in (2019) SCC Online SC 1073.

10. Learned Public Prosecutor for the respondent/State and counsel for the complainant, while opposing the prayer for quashing of the FIR, submit that the allegations levelled in the FIR, when taken at their face value, clearly disclose the commission of cognizable offences under Sections 376, 506, and 384 of the IPC. The petitioner, under the guise of a promise to marry, allegedly established repeated physical relations with the prosecutrix and thereafter refused to solemnize the marriage. The contents of the FIR make out a *prima facie* case, and hence, the FIR cannot be quashed at the threshold. They submit that the question of whether the consent of the prosecutrix was free and voluntary or was obtained on the false pretext of marriage is a matter of trial and requires appreciation of evidence. Under these circumstances, they prayed for dismissal of the present petition.

11. Counsel for the complainant has drawn the attention of this Court to the statement of the prosecutrix, wherein, she specifically stated that on January 2, 2018, while she was in Shivpuri and waiting for a bus to go to her workplace, i.e., Chhatarpur, the accused/petitioner arrived in his white four-wheeler and asked her where she was going. She told him that she was going to Chhatarpur, and he said he was also going there. He asked her to come with him. She got into the car with him. On the way, he said that he needed to pick up some documents from home. The accused then stopped the car at his home in Vijaypuram Colony and took her inside. There was no one present. Thereafter, the petitioner-accused brought tea and biscuits laced with some intoxicant. After consuming them, she fell unconscious and, while



still intoxicated, he committed rape upon the prosecutrix. He also took several obscene photographs of her. By showing these photographs, the accused raped the prosecutrix several times without her consent or wish and threatened to make the photographs viral. The accused demanded money several times, and she was forced to give him money.

12. At the stage of considering an application under Section 482 of Cr.P.C., the Court is not expected to conduct a roving inquiry or evaluate the evidentiary value of the allegations. If the contents of the FIR disclose the commission of any offence, the criminal proceedings cannot be quashed merely on the basis of disputed facts or the probable defence of the accused. In support of his contention, he has relied upon the judgment passed by the Delhi High Court in CrI. M.C. No. 4228/2023 (**Divyansh Bajpai v. State (Govt. of NCT of Delhi) and Anr.**), wherein, the Court has held that Section 90 of the IPC provides that "consent is known to be given under fear or misconception." Based on these submissions, counsel for the complainant argues that the allegations are substantive and warrant a full-fledged trial. The Complainant opposes the quashing of the FIR, asserting that preemptive interference by this Court would deny her the opportunity to establish the truth and seek justice through due process.

13. Heard counsel for the parties and peruse the record.

14. From the contents of the FIR and the statement of the prosecutrix recorded under Section 164 of the Cr.P.C., it is palpably clear that the petitioner and the prosecutrix were well acquainted with each other for a long time. There existed a love affair between them, and they had developed



physical relations which continued for a considerable period. However, before arriving at any conclusive finding on the basis of the material available on record and the submissions advanced by learned counsel for the parties, it is appropriate to first take note of the law laid down by the Hon'ble Supreme Court and the various High Courts on the issue.

15. The Supreme Court in case of [Prashant v. State (NCT of Delhi)] Delhi 2024 INSC 879 dealing with similar circumstances has observed as under:-

"17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then."

16. In case of Shiv Pratap Singh Rana v. State of Madhya Pradesh & Anr. reported in 2024 INSC 481, the Supreme Court considering the long



relationship between the parties has observed as under:-

"25. From the factual matrix of the case, the following relevant features can be culled out:

(i) the relationship between the appellant and the prosecutrix was of a consensual nature;

(ii) the parties were in a relationship for a period of almost two years; and

(iii) though there were talks between the parties and their family members regarding marriage, the same did not fructify leading to lodging of FIR.

26. That being the position and having regard to the facts and circumstances of the case, we are of the view that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, impugned order of the High Court dated 03.10.2019 and the order of the Sessions Judge dated 24.04.2019 are hereby set aside and quashed."

17. Further, in case of **Mahesh Damu v. The State of Maharashtra & Anr.** reported in 2024 INSC 897, the observation made by the Supreme

Court is as under:-

"22. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus MCRC-54176-2023 with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil



relationship of which the Court must also be mindful."

18. Further in case of **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra** and another reported in AIR 2019 SC 327, considering the existing facts and circumstances of the case, which are almost similar to the case in hand, has observed as under:-

"20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus : (Deelip Singh [Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253] , SCC p. 106, para 35) "35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to MCRC-54176-2023 marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] at para 24 come to the aid of the appellants."

19. Likewise in a case of **Deepak Gulati v. State of Haryana**) reported in (2013) 7 SCC 675, the Supreme 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."

20. The Supreme Court in case of **Sonu @ Subhash Kumar v. State of Uttar Pradesh and Anr.** [Criminal Appeal No.233 of 2021 (Arising out of SLP (Cri) No. 11218 of 2019)], has observed as under:-

"10. Bearing in mind the tests which have been enunciated in the above decision [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903], 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 482CrPC, 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 MCRC-54176-2023 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 482CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

21. In case of **Maheshwar Tigga v. State of Jharkhand** reported in (2020) 10 SCC 108, the observation made by the Supreme Court is as follows:-

"13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under Section 375 IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the eye of the law. In the facts of the present case, we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury."

22. Further, in case of **Pramod Suryabhan Pawar v. State of Maharashtra** reported in (2019) 9 SCC 608, the Supreme Court has considered the similar circumstances and observed as under:-

"12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various MCRC-54176-2023 alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In Dhruvaram Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] which was a case involving the invoking of the jurisdiction under Section 482, this Court observed :(SCC para 15) "15. ... An inference as to consent



can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 :(2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12) "

12. ... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

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14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509], this Court held : (SCC para 12)

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

23. The Supreme Court in case of **Uday v. State of Karnataka** reported in (2003) 4 SCC 46, dealing with the factual circumstances existing in the said case has observed as under:-

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix



to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the MCRC-54176-2023 question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

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23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.

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25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe MCRC-54176-2023 that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had



consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the MCRC-54176-2023 prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent."

24. The Supreme Court in case of **State of Haryana and others v. Bhajan Lal and others** reported in of 1992 Supp (1) SCC 335, has laid down the criteria/categories as to under what circumstances the Court should exercise the power provided under Section 482 of CrPC or extraordinary jurisdiction provided under Article 226 of the Constitution of India so as to quash the proceedings. The categories of the cases in which interference is permissible quoted by the Supreme Court, are as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the



exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(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.

25. As per the submissions made by the counsel for the petitioner, the



present case falls within category Nos.1, 3 and 5 as laid down by the Supreme Court in the said case.

26. In view of aforesaid, Sections 376, 506, 420 of IPC are not made out against the present petitioner.

27. So far as the offence under Section 384 of the IPC and Section 67 of IT Act is concerned, the prosecutrix alleges that the petitioner attempted to extort money by showing her obscene photographs. However, the record indicates a conflicting fact: a cheque of HDFC Bank amounting to ₹3,00,000/- was issued by the petitioner to the prosecutrix. Given this payment from the petitioner to the prosecutrix, the allegation of extortion against the present petitioner is highly doubtful prima facie.

28. The facts of the present case reveal that both the prosecutrix and the petitioner are major adults who were in a consensual relationship for approximately 2-3 years. At the time they entered into the relationship, the complainant/prosecutrix was admittedly married and, knowing well that the petitioner could not have married her at that time, she entered into a bigamous relationship. Thus, the very conduct of the complainant/prosecutrix implies that their physical relationship was the result of mutual consent and free will. Subsequently, due to personal reasons, the petitioner declined to marry the prosecutrix, which led to the registration of the FIR. The allegations, even if taken at their face value, therefore do not constitute the offence under Section 376 IPC or any other cognizable offence. Therefore, the judgment relied upon by the counsel for the complainant is distinguishable from the present facts and circumstance of the case.



Continuation of the criminal proceedings would, therefore, amount to an abuse of the process of law. Accordingly, the prosecution initiated against him deserves to be quashed in light of the law laid down by the Hon'ble Supreme Court in *Bhajan Lal* (supra), while exercising the inherent powers conferred under Section 482 of the CrPC.

29. Accordingly, the petition succeeds and is hereby allowed. The FIR registered against the petitioner vide Crime No.645/2021 registered at Police Station Kotwali, District Shivpuri for offence punishable under Sections 376, 506, 420 and 384 of IPC and Section 67 of Information Technology (Amendment) Act, 2000 is hereby quashed, along with all consequential proceedings arising therefrom.

30. Accordingly, the petition stands allowed and disposed of. No order as to costs.

(RAJESH KUMAR GUPTA)
JUDGE

(LJ*)