

Reserved on : 20.06.2024
Pronounced on : 28.06.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.7704 OF 2022

BETWEEN:

SRI. XXXX

... PETITIONER

(BY SRI. TEJAS N., ADVOCATE)

AND:

1 . STATE OF KARNATAKA BY
JAGAJEEVANRAM NAGAR POLICE
BENGALURU - 560 030

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR
HCK, BENGALURU - 01)

2 . MS. XXXX

... RESPONDENTS

(BY SRI. HARISH GANAPATHI, HCGP FOR R1;
SRI. H.SUNIL KUMAR, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN S.C.NO.1383/2021 ON THE FILE OF THE HON'BLE LIII ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BANGALORE (CCH-54) AS AN ABUSE OF PROCESS OF LAW, WHICH IS ARISING OUT OF CR.NO.171/2018 OF JAGAJEEVANRAM NAGAR P.S, BANGALORE FOR THE OFFENCES U/S 417, 376, 493, AND 506 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in S.C.No.1383 of 2021 pending before LIII Additional City Civil and Sessions Judge, Bengaluru arising out of crime in Crime No.171 of 2018 registered for offences punishable under Sections 376 and 417 of the IPC.

2. Facts, in brief, adumbrated are as follows:-

The 2nd respondent is the complainant. It is the case of the prosecution that the complainant is a resident of Hosahalli Main Road, Padarayanapura, Bengaluru. The petitioner who was also a resident of the same area was running a mobile service and re-

charge centre. The complainant comes in contact with the petitioner, as every now and then the complainant used to visit the shop of the petitioner to get her pre-paid sim re-charged. The story begins in the year 2012. It is the case of the prosecution that the complainant and the petitioner developed friendship which then get into physical relationship and all the escapades used to happen in the shop itself. A crime then comes to be registered on 03-07-2018 on the ground that the petitioner had last of the incident of sexual intercourse with the complainant on 07-04-2018 and thereafter he began to avoid answering calls of the complainant and the complainant comes to know that he got engaged with some other girl. Therefore, the complaint comes to be registered for the aforesaid offences. On registration of the complaint, the petitioner was arrested and interrogated, at which point in time, he is said to have confessed that he has indulged in physical relationship with the complainant on the pretext of marriage. All these happen after registration of crime in Crime No.171 of 2018 for the afore-said offences. The Police, after investigation, file a charge sheet against the petitioner for the aforesaid offences along with the offences punishable under Sections 493 and 506 of the IPC. The learned

Magistrate takes cognizance of the offences against the petitioner on 04-04-2019 and issues process. Since the offences alleged were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions and is presently pending before the Court of Sessions as S.C.No.1383 of 2021. Aggrieved by the same, the petitioner is before this Court calling in question the proceedings before the Court of Sessions.

3. Heard Sri N.Tejas, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Sri H. Sunil Kumar, learned counsel appearing for respondent No.2.

4. The learned counsel appearing for the petitioner submits that in the year 2012 the petitioner was running a mobile re-charge and service shop. Complainant used to visit the shop frequently to get her mobile re-charged. Since she became a regular customer, the 2nd respondent herself developed friendship with the petitioner and the friendship turned into relationship. On 20-04-2018 the complainant visits the shop and asks the petitioner why he is

evading her, to which the petitioner appears to have informed that he was no more interested in her and that he got engaged to another girl and requested not to disturb his personal life. This is projected to be a rape in the complaint by blackmailing for extortion of money and all other instances including the complainant trying to commit suicide by consuming phenol.

4.1. The learned counsel would submit that none of the above factors are true. The relationship was completely consensual and whatever happened has happened not for a day, but for over six years. Further he has made it clear that always there was no promise of marriage between the two; it was only consensual relationship. It is his further submission that the complainant herself began to harass the petitioner and demanded ₹10/- lakhs and alleging extortion the petitioner himself has registered a crime in Crime No.172 of 2018 which is also on 03-07-2018 and the Police after investigation have filed a charge sheet against the complainant.

5. Per contra, the learned counsel Sri H. Sunil Kumar appearing for the 2nd respondent would vehemently refute the submissions to contend that the complainant, at the first instance, registers a complaint on 18-06-2018. The allegation in the said complaint was that the petitioner threatened the complainant to have physical relationship with her. The complaint was forwarded right from the Commissioner of Police to the officers of the jurisdictional Police Stations. Therefore, at the first instance, it is the complaint that was registered by the complainant. That having not taken forward in an appropriate manner, the impugned complaint comes to be registered on 03-07-2018. This is taken forward and the Police have filed a charge sheet even. It is his case that the petitioner has indulged in sexual relationship with the complainant only on the pretext of marriage which was from the outset false. Therefore, it becomes a false promise of marriage.

5.1. The learned counsel would take this Court through the complaint filed by the petitioner against the complainant to demonstrate that the intention of the petitioner was only friendship and not marriage. Therefore, it was false promise of marriage. He

would submit that all these matters would require a trial in the least to be conducted against the petitioner wherein it is for the petitioner to come out clean in a full blown trial.

6. The learned High Court Government Pleader would also toe the lines of the learned counsel appearing for the complainant to contend that the police after investigation have filed a charge sheet in both the cases – one registered by the petitioner against the complainant and the present complaint filed by the complainant against the petitioner. Though it is not a case and counter case, both have to be tried, even for the offence of rape in the impugned complaint. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute, but the dates and events require a little reiteration. The undisputed facts are that the petitioner owns a mobile service and re-charge shop at

Padarayanapura, Bangalore. The complainant is also a resident of the same area. In the year 2012 the petitioner and the complainant get to know each other, as the complainant used to visit the shop for getting her mobile re-charged. They became friends and the friendship flowers into relationship and the relationship flowers into sexual relationship. The story goes on for 6 years. Alleging that on 07-04-2018, the last of the date on which the two have had sexual relationship and then the petitioner has evaded the calls of the complainant, two complaints come to be registered on 03-07-2018 against each other – one in Crime No.172 of 2018 by the petitioner against the complainant for offences punishable under Sections 384, 355, 511 and 34 of the IPC and the other by the complainant against the petitioner in the impugned crime in Crime No.171 of 2018 for the aforesaid offences. Both the crimes are registered on the same day.

9. The Police conduct investigation in the complaint so registered by the complainant and file a charge sheet against the petitioner. It, therefore, becomes necessary to notice the complaint and the summary of the charge sheet as obtaining in

Column No.7. The complaint dated 03-07-2018 registered by the complainant reads as follows:

“ಯಿಂದ,

ದಿನಾಂಕ 03-07-2018

ಅಮ್ಪಿನ್‌ತಾಜ್ ಬಿನ್ ಮೊಹಮ್ಮದ್ ಗಫೂರ್,
24 ವರ್ಷ, ನಂ.20/3, 3ನೇ ಶ್ರಾಸ್, ದೇವರಾಜ
ಅರಸು ನಗರ, ಹಳೇಗುಡ್ಡದಹಳ್ಳಿ, ಜಿ.ಜಿ.ನಗರ,
ಬೆಂಗಳೂರು ಮೊ.ನಂ.9538095786

ರವರಿಗೆ,

ಫೋಲಿಸ್ ಸಬ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್,
ಜಿ.ಜಿ.ನಗರ ಫೋಲಿಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು ನಗರ

ಮಾನ್ಯರೇ,

ವಿಷಯ:-ಮೊಹಮ್ಮದ್ ಖಾನ್ ಎಂಬುವವನ ಮೇಲೆ ದೂರು

ನಾನು ಮೇಲೆ ತಿಳಿಸಿರುವ ವಿಳಾಸದಲ್ಲಿ ನನ್ನ ತಂದೆ-ತಾಯಿಯೊಂದಿಗೆ ವಾಸವಾಗಿದ್ದುಕೊಂಡು ಮನೆಯಲ್ಲಿಯೇ ಇರುತ್ತೇನೆ. ಮೊಹಮ್ಮದ್ ಖಾನ್ ಎಂಬುವವರು ಹೊಸಹಳ್ಳಿ ಮುಖ್ಯ ರಸ್ತೆಯಲ್ಲಿ ಖಾನ್ ಟೆಲಿಕಾಂ ಎಂಬ ಮೊಬೈಲ್ ರೀಚಾರ್ಜ್ ಮತ್ತು ಸರ್ವಿಸ್ ಅಂಗಡಿಯನ್ನು ನಡೆಸಿಕೊಂಡಿರುತ್ತಾರೆ. 2012 ನೇ ಇಸವಿಯಲ್ಲಿ ನಾನು ಮೊಹಮ್ಮದ್ ಖಾನ್ ರವರ ಮೊಬೈಲ್ ಅಂಗಡಿಗೆ ಮೊಬೈಲ್ ಕರೆನ್ಸಿಯನ್ನು ರೀಚಾರ್ಜ್ ಮಾಡಿಸಲು ಹೋದ ಸಮಯದಲ್ಲಿ ನಮ್ಮಿಬ್ಬರ ನಡುವೆ ಸ್ನೇಹ ಬೆಳೆದು ದಿನ ಕಳೆದಂತೆ ನಿಧಾನವಾಗಿ ಸ್ನೇಹ ಪ್ರೀತಿಗೆ ತಿರುಗಿ ಇಬ್ಬರೂ ಪರಸ್ಪರ ಪ್ರೀತಿಸುತ್ತಿದ್ದೆವು.

ಈ ಸಮಯದಲ್ಲಿ ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆ ಎಂದು ನಂಬಿಕೆ ಬರುವಂತೆ ನನ್ನನ್ನು ನಂಬಿಸಿ ತನ್ನ ಜೊತೆ ದೈಹಿಕ ಸಂಪರ್ಕ ನಡೆಸುವಂತೆ ಕೇಳಿಕೊಂಡನು. ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನನ್ನು ಮದುವೆಯಾಗುವುದಾಗಿ ನಂಬಿಸಿದ್ದರಿಂದ ನಾನು ಅವನ ಜೊತೆ ದೈಹಿಕ ಸಂಪರ್ಕ ಹೊಂದಲು ಒಪ್ಪಿಕೊಂಡೆನು. ನಾನು ಮೊಹಮ್ಮದ್ ಖಾನ್ ಜೊತೆಯಲ್ಲಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಹೊಂದಲು ಒಪ್ಪಿಕೊಂಡ ನಂತರ ಆತನು ಸುಮಾರು 6 ವರ್ಷಗಳಿಂದ ತನ್ನ ಮೊಬೈಲ್ ಕರೆನ್ಸಿ ಅಂಗಡಿಯಲ್ಲಿ ಮತ್ತು ಆತನ ಮನೆಯಲ್ಲಿ ಯಾರೂ ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ತನ್ನ ಮನೆಯಲ್ಲಿ ನನ್ನ ಜೊತೆ ದೈಹಿಕ ಸಂಪರ್ಕ ನಡೆಸಲು ವ್ಯವಸ್ಥೆ ಮಾಡಿಕೊಂಡು ನನ್ನ ಜೊತೆ ಹಲವಾರು ಬಾರಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ನಡೆಸಿದನು. ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆ ಎಂದು ನಂಬಿಸಿದ್ದರಿಂದ ನಾನು ಅವನ ಜೊತೆ ದೈಹಿಕ ಸಂಪರ್ಕ ನಡೆಸಲು ವಿರೋಧ ಮಾಡಲಿಲ್ಲ. ದಿನಾಂಕ 07-04-2018 ರಂದು ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನ ಜೊತೆ ಆತನ ಮೊಬೈಲ್ ಕರೆನ್ಸಿ ರಿಚಾರ್ಜ್ ಅಂಗಡಿಯಲ್ಲಿ ಕೊನೆಯ ಬಾರಿ ನನ್ನ ಜೊತೆ ದೈಹಿಕ ಸಂಪರ್ಕ ನಡೆಸಿದನು.

ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನ ಜೊತೆ ಕೊನೆಯ ಸಲ ದೈಹಿಕ ಸಂಪರ್ಕ ಹೊಂದಿದ ನಂತರ ಅವನು ನನ್ನನ್ನು ಭೇಟಿ ಮಾಡದೇ, ಫೋನ್ ಮಾಡಿದರೆ ಫೋನ್‌ನ್ನು ತೆಗೆಯುತ್ತಿರಲಿಲ್ಲ. ನನ್ನ ಸ್ನೇಹಿತರು ಮೊಹಮ್ಮದ್ ಖಾನ್ ಗೆ ಬೇರೆ ಹುಡುಗಿಯೊಂದಿಗೆ ಎಂಗೇಜ್‌ಮೆಂಟ್ ಆಗಿದೆ ಎಂದು ತಿಳಿಸಿದರು. ಆಗ ನಾನು ಮೊಹಮ್ಮದ್ ಖಾನ್ ಗೆ ಫೋನ್ ಮಾಡಿ ನನ್ನನ್ನು ಪ್ರೀತಿಸಿ ಬೇರೆ ಹುಡುಗಿಯ ಜೊತೆ ಎಂಗೇಜ್‌ಮೆಂಟ್ ಮಾಡಿಕೊಂಡಿದ್ದೀಯಾ ಎಂದು ಕೇಳಿದಾಗ ನನಗೆ ಇಷ್ಟವಿಲ್ಲದಿದ್ದರೂ ಮನೆಯಲ್ಲಿ ಎಂಗೇಜ್‌ಮೆಂಟ್ ಮಾಡಿದ್ದಾರೆ? ಅವಳು ನನಗೂ ಇಷ್ಟವಿಲ್ಲ. ನಾನು ನಿನ್ನನ್ನೇ ಮದುವೆಯಾಗುತ್ತೇನೆ ಎಂದು ತಿಳಿಸಿದ್ದನು.

ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನನ್ನು ಮಾತನಾಡಿಸದೇ ಅವಾಯ್ದು ಮಾಡುತ್ತಿದ್ದರಿಂದ ದಿನಾಂಕ 20- 04-2018 ರಂದು ನಾನು ಹೊಸಹಳ್ಳಿ ಮುಖ್ಯ ರಸ್ತೆಯಲ್ಲಿರುವ ಆತನ ಮೊಬೈಲ್ ಕರೆನ್ಸಿ ರಿಚಾರ್ಜ್ ಅಂಗಡಿಗೆ ಹೋಗಿ ಮೊಹಮ್ಮದ್ ಖಾನ್‌ನನ್ನು ನನ್ನನ್ನು ಏಕೆ ಆವೋಯ್ದು ಮಾಡುತ್ತಿದ್ದೀಯಾ? ಎಂದು ಕೇಳಿದಾಗ ಅವನು ನನಗೆ ನೀನು ಇಷ್ಟವಿಲ್ಲ, ನನಗೆ ಬೇರೆ ಹುಡುಗಿಯ ಜೊತೆ ಎಂಗೇಜ್‌ಮೆಂಟ್ ಆಗಿದೆ. ನಿನ್ನನ್ನು ನಾನು ಮದುವೆ ಆಗುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿದನು. ಈ ವಿಚಾರವನ್ನು ನಾನು ನಮ್ಮ ತಾಯಿ ಮತ್ತು ಅಣ್ಣನೊಂದಿಗೆ ವಿಚಾರ ಮಾಡಿ ಮೊಹಮ್ಮದ್ ಖಾನ್‌ಗೆ ನಮ್ಮ ಸಮುದಾಯದ ಹಿರಿಯರಿಂದ ಬುದ್ಧಿವಾದ ಹೇಳಿಸಿದರೂ ಸಹ ಅವನು ನನ್ನನ್ನು ಮದುವೆಯಾಗಲು ನಿರಾಕರಿಸಿರುತ್ತಾನೆ. ಮೊಹಮ್ಮದ್ ಖಾನ್ ನನ್ನನ್ನು ಮದುವೆಯಾಗಬಹುದೆಂದು ಇಲ್ಲಿಯವರೆಗೆ ಆತನ ಮೇಲೆ ದೂರನ್ನು ನೀಡಿರಲಿಲ್ಲ. ಈಗ ತಡವಾಗಿ ಬಂದು ದೂರನ್ನು ನೀಡುತ್ತಿದ್ದು, ನನ್ನನ್ನು ಮದುವೆಯಾಗುವುದಾಗಿ ನಂಬಿಸಿ ನನ್ನ ಜೊತೆ ಹಲವಾರು ಬಾರಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಹೊಂದಿ ನನ್ನನ್ನು ಮದುವೆ ಆಗದೇ ಮೋಸ ಮಾಡಿರುವ ಮೊಹಮ್ಮದ್ ಖಾನ್ ಮೇಲೆ ಸೂಕ್ತ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/-
(ಅಮ್ನಿನ್‌ತಾಜ್)”

The summary of the charge sheet filed after investigation by the Police reads as follows:

“ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂ 04 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿತನು ಇದೇ ಬೆಂಗಳೂರು ನಗರದ ಜಿಗಜೀವನ್‌ರಾಂ ನಗರ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನಲ್ಲಿರುವ ಪಾದರಾಯನ ಪುರದ ಹೊಸಹಳ್ಳಿ ಮುಖ್ಯರಸ್ತೆ, 8ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿ ಖಾನ್ ಟೆಲಿಕಾಂ ಮೊಬೈಲ್ ಸರ್ವೀಸ್ ಅಂಗಡಿಯನ್ನು ಇಟ್ಟುಕೊಂಡಿದ್ದು, ಈಗ್ಗೆ ಸುಮಾರು 2012 ರಲ್ಲಿ ಸಾಕ್ಷಿ-1 ರವರು ಆರೋಪಿತನ ಮೊಬೈಲ್ ಅಂಗಡಿಗೆ ಮೊಬೈಲ್ ರಿಚಾರ್ಜ್ ಮಾಡಿಸಲು ಹೋದಾಗ ಪರಿಚಯವಾಗಿ, ಪರಸ್ಪರ ಇಬ್ಬರೂ ಪ್ರೀತಿಸುತ್ತಿದ್ದು, ಸ್ವಲ್ಪ ದಿನಗಳ ನಂತರ ಆರೋಪಿತನು ಸಾಕ್ಷಿ-1 ರವರನ್ನು ಮದುವೆಯಾಗುವುದಾಗಿ ಹೇಳಿ ನಂಬಿಕೆಯುಂಟು ಮಾಡಿ ಸದರಿ ಮೇಲ್ಕಂಡ ವಿಚಾರದ ಮೊಬೈಲ್ ಅಂಡಿಯಲ್ಲಿ ಮತ್ತು ಅಲ್ಲದೇ ಆರೋಪಿತನು ತನ್ನ ವಾಸವಿರುವ ಇದೇ ಬೆಂಗಳೂರು

ನಗರದ ಪಾದರಾಯನಪುರದ 8ನೇ ಮುಖ್ಯರಸ್ತೆಯಲ್ಲಿರುವ ಮನೆ ನಂ.4-57 ರ ಮನೆಯಲ್ಲಿ ಸಹ ಯಾರೂ ಇಲ್ಲದಾಗ ಸಾಕ್ಷಿ-1ರವರನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಿ ಹಲವಾರು ಬಾರಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡಿದ್ದನು. ಹೀಗೆ ಆರೋಪಿತನು ಸುಮಾರು 6ವರ್ಷಗಳ ಕಾಲ ಸಾಕ್ಷಿ-1ರವರ ಜೊತೆಯಲ್ಲಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡುತ್ತಾ ಮದುವೆ ಯಾಗುವುದಾಗಿ ನಂಬಿಕೆಯುಂಟು ಮಾಡಿದ್ದನು. ದಿನಾಂಕ 07-04-2018 ರಂದು ಕೊನೆಯ ಬಾರಿ ಸಾಕ್ಷಿ-1ರವರ ಜೊತೆಯಲ್ಲಿ ಆರೋಪಿತನು ತನ್ನ ಮೇಲ್ಕಂಡ ಮೊಬೈಲ್ ಅಂಗಡಿಯಲ್ಲಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡಿದ್ದನು. ಇದಾದ ನಂತರ 2018 ಎಪ್ರಿಲ್ ತಿಂಗಳ ನಂತರ ಆರೋಪಿತನು ಸಾಕ್ಷಿ-1ರವರನ್ನು ಕಡೆಗಣಿಸಲು ಪ್ರಾರಂಭಿಸಿದ್ದು, ಈ ಬಗ್ಗೆ ಸಾಕ್ಷಿ 1ರವರು ಆರೋಪಿತನನ್ನು ಕೇಳಿದಾಗ ತನಗೆ ನಿನ್ನನ್ನು ಮದುವೆಯಾಗಲು ಇಷ್ಟವಿಲ್ಲವೆಂದು, ತಮ್ಮ ಮನೆಯಲ್ಲಿ ತನಗೆ ಬೇರೆ ಮದುವೆ ಮಾಡುತ್ತಾರೆಯೆಂದು ಹದರಿಸಿ ಕಳುಹಿಸಿದ್ದನು. ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಮದುವೆಯಾಗುವುದಾಗಿ ನಂಬಿಸಿ, ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡಿ, ಈಗ ಮದುವೆಯಾಗುವುದಿಲ್ಲವೆಂದು ಹೇಳಿ ಆತನಿಗೆ ಅವಮಾನ ಮಾಡಿ, ನಂಬಿಕೆ ದ್ರೋಹ ಮಾಡಿದ್ದನು.

ಆಧಾರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ಆರೋಪಿತನ ವಿರುದ್ಧ ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ

(Emphasis added)

Since the charge sheet was filed for offences as afore-stated including the offence punishable under Section 376 of the IPC, it is exclusively triable in the Court of Sessions, accordingly the case is committed to the Court of Sessions in S.C.No.1383 of 2021. The complaint so registered by the petitioner is also necessary to be noticed. It reads as follows:

"From,
xxxxx
S/o K.Oosman Khan
Residing at No.U-57, 8th Main Road,
Padarayanapura, Bengaluru-560 026.

To,
The Inspector of Police
J J R Nagar Police Station,
Bengaluru -560 026.

Sir,

Sub:- Regarding attempt to extortion and threatening with malicious prosecution by xxxx, resident of Vinayaka Nagar, J.J.R. Nagar, Bengaluru-560 026 and her Associates.

I, xxxxx, the under signed would like to bring the following facts for necessary, immediate legal action against the persons which names as follows:

- 1. That I am residing at the above mentioned address along with my parents. I am doing mobile accessories and transfer of currency, sales, services at Khan Telecom, No.26/3, Hosahalli Main Road, Padarayana- pura, Bengaluru-560 026.*
- 2. That the above said lady xxxx, aged about 25 years, came to be acquainted with me as she used to come to my shop for recharging currency and other necessary work. I got acquainted with her and she also given her telephone number and we were become a friends only in talking terms since from one and half to two years. Apart from friendship, there is nothing otherwise with one another.*
- 3. That during the course of our friendship I casually informed her that I am getting married with my parents choice bride. At that time she expressed her intention that she is intending to marry me. I advised her that I had no such intention since only friendship. I also informed her about my engagement, ceremony conducted on 15-02-2018 at Bismilla Shadi Mahal Tannery road, Bengaluru.*
- 4. That inspite of the same, on 15-04-2018 the relatives of the said lady xxxx namely Nadeem, Nawaz, and Habeb Khan, residents of BTM Layout along with the said xxxx called upon me for negotiation at 8th Main Road, Padarayanapura, Bengaluru. In the said place said xxxx stated that she is in friendship with me for the past 2 years, and forced me to marry her supported by above said persons who accompanied them. When I***

refused the same, those persons assaulted me with hands and threatened me with dire consequences for not agreeing to marry the said xxxx. At that juncture the said xxxx assaulted me and beaten me with her slipper and same has been recorded in the mobile by the followers of xxxx i.e. Mr.Nadeen, Nawaz and Habeeb Khan. And further asked me to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) or else they would make the video viral in social media. Further they gave the dead line to pay the amount on or before 10-06-2018.

5. That since I did not pay the demanded amount by the said lady made the video viral via face book and whats up, U-tube with an intention to break up my marriage fixed by my parents in social media.

6. That I subsequently I came to know that the said xxxx along with the above said persons have filed a false complaint against me in J.J.R Nagar Police Station. Thereafter I approached the Hon'ble Court and obtained the Anticipatory Bail in Cr.Mis. Pet. 3644/2018 dated: 19-05-2018.

7. That inspite of above happenings the said lady xxxx and her associates are threatening me with filing of false heinous criminal case against me only with an intention to spoil my future and to extort of Rs. 10,00,000/- from me.

Hence, I request your goodself to take legal action against the said lady xxxx and his followers Nawaz, Nadeem and Habeeb Khan and grant protection to me.

Kindly do the needful and oblige.

Thanking you,

*Sd/-
(xxxxxxx)"*

(Emphasis added)

The petitioner alleges that despite being told the fact that the petitioner has never intended to marry the complainant and the acts being consensual, complainant was demanding money and, therefore, it is a case of extortion. The petitioner narrates every instance which would not be germane for resolution of the issue in the present *lis*. The Police conduct investigation against the complainant in Crime No.172 of 2018 and file a charge sheet for offences punishable under Sections 323, 355 r/w 34 of the IPC. Therefore, there was crime and counter crime against each other. But, the issue is, whether ingredients of Section 375 of the IPC are met for the acts of the petitioner to become punishable under Section 376 of the IPC.

10. The complaint is quoted hereinabove. The complainant herself states that for about six years they have had physical relationship. It is projected that it was on the ground that the petitioner would marry the complainant. When the petitioner himself divulges the news that he has engaged with someone else, the complaint comes to be registered. Therefore, it is an admitted fact that the petitioner and the complainant have had physical

relationship for six years. In the considered view of this Court, such relationship would not amount to a rape as defined under Section 375 of the IPC, as it is the case of the complainant herself that they were in love and if they were in love, every act in the six years period cannot but be termed to be consensual.

11. Now it becomes germane to notice the line of law laid down by the Apex Court in the interplay between rape and consensual sex. The Apex Court in the case of **DR. DHARUVARAM MURLIDHAR SONAR v. STATE OF MAHARASHTRA**¹ has held as follows:

".... .."

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.

¹ (2019) 18 SCC 191

But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to 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 appellant."

21. *In Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any*

complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

22. *Recently, this Court, in Shivashankar v. State of Karnataka [Shivashankar v. State of Karnataka, (2019) 18 SCC 204] , disposed of on 6-4-2018, has observed that it is difficult to hold that sexual intercourse in the course of a relationship which has continued for eight years is "rape", especially in the face of the complainant's own allegation that they lived together as man and wife. It was held as under: (Shivashankar case [Shivashankar v. State of Karnataka, (2019) 18 SCC 204] , SCC p. 205, para 4)*

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

23. *Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated*

differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the

complaint registered under Section 376(2)(b) cannot be sustained.

25. Further, the FIR nowhere spells out any wrong committed by the appellant under Section 420 IPC or under Section 3(1)(x) of the SC/ST Act. Therefore, the High Court was not justified in rejecting the petition filed by the appellant under Section 482 CrPC."

(Emphasis supplied)

Following the said judgment, the Apex Court in the case of **SHAMBHU KHARWAR v. STATE OF UTTAR PRADESH²** has held as follows:

" "

8. *In Bhajan Lal (supra) this Court formulated the parameters in terms of which the powers in Section 482 of CrPC may be exercised. While it is not necessary to revisit all these parameters again, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:*

"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).

[...]

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

² 2022 SCC OnLine SC 1032

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."

9. *In Dhruvaram Murlidhar Sonar v. State of Maharashtra, a two Judge Bench of this Court while dealing with similar facts as the present case reiterated the parameters laid down in Bhajan Lal (supra) held that:*

*"13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. **If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."***
(emphasis supplied)

10. *An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.*

"375. Rape - A man is said to commit "rape" if he -
 [...]

under the circumstances falling under any of the following seven descriptions

Firstly ...

Secondly. - Without her consent.

[...]

Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or..."

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*,⁷ a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in *Sonu @ Subhash Kumar v. State of Uttar Pradesh*,⁸ observed that:

"12. This Court has repeatedly held that consent with respect to Section 375 of the 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 alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...

[...]

14. [...] 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...

[...]

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...

[...]

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)

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent.

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are

absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under Section 482 of CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under Section 376 IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482 of CrPC on a completely misconceived basis.

15. We, accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 5 October 2018 in application u/s 482 No 33999 of 2018. The application under Section 482 of CrPC shall accordingly stand allowed. The Case Crime No 11 of 2018 registered at Police Station Rasra, District Ballia, charge-sheet dated 23 April 2018 in the aforementioned case and the order dated 24 May 2018 in Criminal Case No 785 of 2018 in the Court of the Addl. Chief Judicial Magistrate (First), Ballia taking cognizance of the charge-sheet shall accordingly stand quashed."

(Emphasis supplied)

The aforesaid judgments of the Apex Court clearly delineate the interplay between consensual sex and rape and hold that consensual sex between the accused and the prosecutrix would not amount to an offence of rape and permitting trial for the offence of rape would become an abuse of the process of law. The Apex Court

also considers acts of physical relationship on the pretext of marriage in the case of **NAIM AHAMED v. STATE (NCT OF DELHI)**³ and holds as follows:

" "

10. *It would be germane to note that the basic principles of criminal jurisprudence warrant that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence, however, considering the ethos and culture of the Indian Society, and considering the rising graph of the commission of the social crime - 'Rape', the courts have been permitted to raise a legal presumption as contained in Section 114A of the Indian Evidence Act. As per Section 114A, a presumption could be raised as to the absence of consent in certain cases pertaining to Rape. As per the said provision, if sexual intercourse by the accused is proved and the question arises as to whether it was without the consent of the woman alleged to have been raped, and if she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.*

11. *It cannot be gainsaid that a consent given by a person would not be a consent as intended by any Section of the Penal Code, 1860, if such consent was given by the person under the fear of injury, or under a misconception of fact as contemplated in Section 90 IPC. Further, Section 375 also describes certain acts which if committed by the accused under the circumstances mentioned therein, as the commission of 'Rape', even though committed with the consent of the prosecutrix. In our opinion, the expression "misconception of fact" contained in Section 90 IPC is also required to be appreciated in the light of the Clauses - contained in Section 375 IPC, more particularly the Clauses - Thirdly, Fourthly and Fifthly thereof, when the accused is charged for the offence of 'rape'. The circumstances described in the said three Clauses are wider than the expression*

³ 2023 SCC OnLine SC 89

"misconception of fact", as contemplated in Section 90 of IPC. Section 375 describes seven circumstances under which the 'rape' could be said to have been committed. As per the Clause - Thirdly, a rape could be said to have been committed, even with her consent, when the consent of the prosecutrix is obtained by putting her or any person in whom she is interested in fear of death or of hurt. As per the Clause - Fourthly, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; and as per the Clause - Fifthly, with her consent when at the time of giving the consent, the prosecutrix by reason of unsoundness of mind or intoxication or the administration of stupefying or unwholesome substance by the accused or through another, she is unable to understand the nature and consequences of that to which she gives consent. Thus, apart from the prosecutrix being under the misconception of fact as contemplated in Section 90, her consent would be treated as 'no consent' if she had given her consent under any of the circumstances mentioned in Section 375 of IPC.

12. *The exposition of law in this regard is discernible in various decisions of this Court, however the application of such law or of such decisions would depend upon the proved facts in each case, known as legal evidence. The ratio laid down in the judgments or the law declared by this Court do provide the guidelines to the judicial mind of the courts to decide the cases on hand, but the courts while applying the law also have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused.*

13. *A reference of some of the decisions of this Court dealing with the different dimensions and angles of the word 'consent' in the context of Section 90 and Section 375 would be beneficial for deciding this appeal.*

14. *In Uday v. State of Karnataka⁴, the prosecutrix aged about 19 years had given her consent for having a sexual intercourse with the accused with whom she was deeply in love,*

and it was alleged by the prosecution that the prosecutrix continued to meet the accused as the accused had given her a promise to marry her on a later date. The prosecutrix became pregnant and the complaint was lodged on failure of the accused to marry her. This Court while holding that under the circumstances, the consent could not be said to have been given under a misconception of fact under section 90 of IPC, held in para 21 and 23 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 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.

22. -xxx- xx -

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."

15. *In Deelip Singh alias Dilip Kumar v. State of Bihar (supra), this Court after discussing various earlier decisions of this Court and other High Courts, further explained the observations made in Uday case (supra) and observed as under:—*

"28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of Jayanti Rani Panda [1984 Cri LJ 1535 : (1983) 2 CHN 290 (Cal)] which was approvingly referred to in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329]. The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) — "unless the court can be assured that from the very inception the accused never really intended to marry her". (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken

by the Division Bench of the Madras High Court in Jaladu case [ILR (1913) 36 Mad 453 : 15 Cri LJ 24] (vide passage quoted supra). By making the solitary observation that "a false promise is not a fact within the meaning of the Code", it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."

16. In *Deepak Gulati v. State of Haryana*⁵, this Court gave one more dimension of the word 'consent' by distinguishing 'Rape' and 'consensual sex' and 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.

22. xxxxx

23. xxxxx

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".

17. Again in *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra (supra)*, this Court interpreting the Section 90 and the Clause - Secondly in Section 375 of IPC, observed as under:—

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

18. Now, in the instant case, having regard to the statutory provisions and their interpretations by this Court in various judgments, one may be tempted to hold the appellant-accused guilty of the offence under Section 376 IPC as has been done by the Sessions Court and the High Court, however, on the closer scrutiny of the evidence on record, we find that it was fallacy on the part of the courts below to hold the appellant guilty under Section 376 IPC.

19. After duly examining the record in the light of the submissions made by the learned counsels for the parties, following facts have emerged:—

- (i) Prosecutrix was a married woman having three children.*
- (ii) Accused was staying in a tenanted premises situated in front of the house of the prosecutrix.*
- (iii) Though initially hesitant, the prosecutrix developed liking for the accused, and both started having sexual relationship with each other.*
- (iv) The prosecutrix delivered a male child on 28/10/2011 from the loin of the accused.*
- (v) The prosecutrix went to the native place of the accused in 2012 and came to know that he was a married man having children.*
- (vi) The prosecutrix still continued to live with the accused in separate premises.*

- (vii) *The prosecutrix and her husband took divorce by mutual consent in 2014 and thereafter prosecutrix permanently left her three children with her husband.*
- (viii) *The prosecutrix lodged the complaint on 21st March, 2015 alleging that she had consented for sexual relationship with the accused as the accused had promised her to marry and subsequently did not marry.*

20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court."

(Emphasis supplied)

12. On a coalesce of the judgments rendered by the Apex Court what would unmistakably emerge is, all acts of consensual sex, between the complainant and the petitioner would not amount

to rape. The duration of relationship between the two which was founded on love was for a period of six years, merely because love wanes away by efflux of time, either at the hands of the complainant or the accused, it would not mean that all consensual acts done between the two could be dubbed as rape. Therefore, whether it is on pretext of marriage or otherwise, the acts between the petitioner and the respondent were purely consensual. In the considered view of this Court, the offence under Section 376 of the IPC is loosely laid against the petitioner, which cannot be permitted to be tried.

13. The respective learned counsel have made several submissions with regard to the earlier complaint being registered where there was no indication of sexual relationship on the pretext of marriage. That do not call for consideration as what is being considered is the impugned complaint and its aftermath.

14. The other offences against the petitioner are the ones punishable under Sections 417, 493 and 506 of the IPC. Section 417 deals with cheating. There is no foundation laid for cheating

other than what is alleged in the complaint that the sexual relationship with the complainant was on the pretext of marriage. Even otherwise the said act would not amount to cheating is by now well settled law by plethora of judgments rendered by the Apex Court and coordinate Benches of this Court. Therefore, the reasons rendered to find that the offence under Section 376 is loosely laid, the offence under Section 417 would also become contrary to law on the very same reasons. The reasons are intertwined. Therefore, the offence under Section 417 also cannot be laid against the petitioner.

15. The remainders are Sections 493 and 506 of the IPC.

Section 493 of the IPC reads as follows:

"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 493 deals with cohabitation caused by a man deceitfully inducing a belief of lawful marriage. Every man who by deceit

causes a woman to believe that she would be lawfully married to him and to cohabit on that belief would become open for punishment. This would also get subsumed in the reasons so rendered to hold the offence of rape being loosely laid, as there was no deceit in the case at hand. They were all consensual acts. Therefore, Section 493 of the IPC also cannot be laid against the petitioner.

16. What remains is Section 506 of the IPC which deals with criminal intimidation. For criminal intimidation the ingredients as found under Section 503 are necessarily to be present. Section 503 of the IPC reads as follows:

"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

Nowhere in the complaint or even in the summary of charge sheet there is any foundation laid with regard to criminal intimidation as is necessary under Section 503. Bald allegations are made to invoke Section 506 of the IPC. Moreover, the petitioner himself alleged that he was beaten and assaulted by the complainant and her cohorts in relation to which the Police have already filed a charge sheet for offences punishable under Sections 323 and 355 of the IPC. Therefore, the offence under Section 506 of the IPC is also untenable to be permitted trial against the petitioner. Finding no offences being driven home by the prosecution, permitting further trial against the petitioner would become an abuse of the process of law and result in miscarriage of justice.

17. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) The proceedings in S.C.No.1383 of 2021 pending before the LIII Additional City Civil and Sessions Judge, Bengaluru stand quashed.

- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner in S.C. No.1383 of 2021 and the same would not influence or bind any other proceeding before any *fora* pending between the parties.

Consequently, I.A.No.2 of 2022 also stands disposed.

**Sd/-
JUDGE**

Bkp
CT:SS