

**Manoj Khare Vs. Station House Officer of Police**  
**Station Kotwali District Ashoknagar and Another.**  
**02/05/2017**

Shri Deependra Singh Kushwah, counsel for the applicant.

Shri Girdhari Singh Chauhan Public Prosecutor for the respondent no.1/State.

Shri S.K.Tiwari, counsel for the complainant/respondent no.2.

This application under Section 482 of Cr.P.C has been filed for quashing the First Information Report in Crime No.333 of 2015 registered by PS Kotwali District Ashoknagar for offence under Sections 366 and 376 of IPC as well as all other consequential proceedings.

During pendency of this petition, it appears that the charges were also framed, therefore, by amendment application, the applicant has incorporated the relief for quashing the charges also.

The necessary facts for the disposal of the present application in short are that on 27.5.2015, complainant made a written complaint to the police alleging that in the morning of 3<sup>rd</sup> April, 2015, she had gone to Ashoknagar by Sabarmati Train from Piprai to her uncle's house. At Ashoknagar Railway Station, the applicant who is working with her on the post of Vice Principal in Saint Joseph Co-Education School Piprai met her and informed that he is going to Bhopal in connection with some urgent work of the school and would come back by the night, therefore, she may also accompany him. As the complainant was teaching in the same school, therefore, being obedient subordinate of the applicant, she went to

Bhopal along with the applicant. At Bhopal, the applicant took her to a house of one Annu Chaursiya and said that tomorrow morning, he would complete the work and will go back. The applicant also kept mobile of the complainant as well as her mark-sheets of Class 10<sup>th</sup> and 12<sup>th</sup> with him. On the next morning, tea and biscuits were given to her, thereafter, the complainant lost her consciousness. On 5.4.2015, she regained her consciousness and found that the applicant was with her and taking advantage of her unconsciousness, he had developed physical relations with her and had taken photographs also. He also informed that now, they have married and thereafter, he was forcibly committing rape on her and was extending threat that he would throw acid on her and would upload her photographs on WhatsApp. The applicant is continuously blackmailing the complainant and as the complainant was afraid of the applicant, therefore, she did not lodge FIR immediately at that time and now, she is making written complaint against the applicant and the applicant may also be directed to return her mark-sheets.

On this written complaint, police registered an FIR on 27.5.2015, recorded the statements of the witnesses and after completing all the formalities filed charge-sheet against the applicant for offence under Section 366 and 376 of IPC. It appears that during pendency of this application, the trial court also framed charges against the applicant for offence under Section 366 and 376 of IPC.

It is submitted by counsel for the applicant that the prosecutrix has not appeared before the trial court for

giving her evidence. He further submitted that in view of the judgment passed by the Supreme Court in the case of **Satish Mehra Vs. State of N.C.T of Delhi 2013 Cri.L.J. 411**, merely because, the case is fixed for recording of evidence, cannot be a ground to dismiss the petition under Section 482 of Cr.P.C. It is further submitted by counsel for the applicant that in fact, the allegations made in the FIR are false-ab-initio and a false FIR has been lodged by the prosecutrix because, after she was recovered by the police, she had given a statement to the police on 7.4.2015 and in that statement, she had specifically stated that she had gone voluntarily with the applicant. It is further submitted by counsel for the applicant that in fact, applicant and complainant were in love with each other and they have performed marriage. So far as the averment of taking mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup> of the complainant is concerned, the same is false because, the police during investigation had demanded mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup> from the prosecutrix and the brother of the prosecutrix namely Amit had given it in writing that the mark-sheet of class 10<sup>th</sup> of the complainant is available and the mark-sheet of 12<sup>th</sup> is missing and the complainant has got married and at present, she is in Indore and the mark-sheet of Class 10<sup>th</sup> of the complainant was handed over to the police. Counsel for the applicant further submitted that the statement of the prosecutrix which was recorded on 7.4.2015 by the police can be taken into consideration by this court in the light of the judgment passed by the Supreme Court in the case of **Rajeev Thapar Vs. Madanlal Kapoor (2013) 3**

**SCC 330 and Prashant Bharati Vs. State of (NCT of Delhi) 2013 Volume 9 SCC 293.**

Per contra, it is submitted by counsel for the complainant as well as by the State that in the FIR as well as in the case diary statement, the prosecutrix has specifically stated that she was induced by the applicant to accompany him to Bhopal where some poisonous substance was given to the complainant as a result of which, she became unconscious and lost her senses and she was subjected to rape by the applicant. It was further submitted that the factum of marriage of the applicant is false because, everything was done by the applicant with the complainant under the influence of intoxicant. It is further submitted that it is well established principle of law that at the time of framing of charges only document which has been relied upon by the prosecution is required to be seen and the statement of the complainant which was recorded on 7.4.2015 cannot be taken into consideration as the prosecution has not relied upon the said statement.

Heard, learned counsel for the parties.

This Court by order dated 8.11.2016 had stayed the further proceedings pending before the trial court. In the FIR it was alleged by the prosecutrix that she had gone to Ashoknagar to visit the house of her uncle where, she met with the applicant at Ashoknagar Railway Station. It was further alleged in the FIR that after reaching at Bhopal, the applicant kept the mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup> of the complainant with him. Thus, it was clear that when the complainant left Piprai for Ashoknagar, she had also taken her mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup>

with her. What was the need of taking the mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup> was not explained by the prosecution. Therefore, by the order dated 9.2.2017, this Court directed the prosecution to file detailed reply pointing out that whether any statement of the prosecutrix was recorded on 7.4.2015 or not. Thereafter, the prosecution filed its reply on 8.3.2017 admitting that the statement of the prosecutrix was recorded on 7.4.2015 and a copy of the said statement has also been annexed along with reply. The proceedings which were taken up by the police after recovery of the prosecutrix have also been annexed with the reply. Thus, it is clear that after the prosecutrix was recovered on 7.4.2015, she gave a statement to the police and the police after recording statement of the prosecutrix came to the conclusion that she had voluntarily gone to Bhopal along with the applicant, therefore, no offence was made out.

Before considering the facts and circumstances of the case, it would also be necessary to consider the Gum Insan Report lodged by Arvind Kumar Jain father of the prosecutrix. On 6.4.2015, father of the prosecutrix lodged a Gum Insan Report alleging that on 3.4.2015 at about 11 AM, the prosecutrix had left her house on the pretext of going to Ashoknagar but she has not returned back. The prosecutrix is a teacher in Saint Joseph School and he has a suspicion that the prosecutrix might have gone along with Manoj Khare, the applicant because, Manoj is also doing job in the said school. Gum Insan Report dated 6.4.2015 reads as under :

"फरियादी ने उपस्थित थाना आकर रिपोर्ट किया कि मैं पिपरई में पुराना बाजार में रहता हूँ दिनांक 03.04.15 को दिन में 11:00 बजे की बात होगी कि मेरी लड़की आशा जैन उम्र 23 साल घर से

अशोकनगर जाने की कहकर गई थी जो आज तक लौटकर नहीं आई है। आशा जैन पिपरई के प्राइवेट स्कूल संत जोसप्स स्कूल में पढ़ाने जाती थी। मुझे संदेह है कि मेरी लड़की मनोज खरे के साथ जा सकती है क्योंकि मनोज भी इसी स्कूल में पढ़ाने आता है कार्यवाही की जावे।”

Thus, it is clear that right from the day one, the parents of the prosecutrix had suspicion that the prosecutrix might have gone with the applicant. This suspicion expressed by the father of the prosecutrix in Gum Insan Report, prima facie shows that the applicant and the prosecutrix were in love with each other and the parents of the prosecutrix had some idea about the said intimacy. Otherwise, there was no reason for the father of the prosecutrix to mention in the Gum Insan Report that he has a suspicion that the prosecutrix might have gone along with the applicant. Thereafter, it appears that the prosecutrix was recovered on 7.4.2015 and she was handed over to her mother and her uncle. Before handing over the custody of the prosecutrix aged 23 years to her mother and uncle, the statement of the prosecutrix was recorded by the police, in which, she had specifically stated that she was in love with the applicant and she had gone along with the applicant out of her own will and no offence was committed by the applicant. Statement of the prosecutrix which was recorded by the police on 7.4.2015 is as under :

“क. आशी जैन पुत्र अरविन्द कुमार जैन आयु 22 साल निवासी पुराना बाजार पिपरई थाना पिपरई जिला अशोकनगर ने दरयाफत हाल पर बतया कि मैं दो बहन एक भाई है मैंने इकोनोमिक्स से एमए की डिग्री प्राप्त की है। मुझसे बड़ा भाई अर्पित है आयु करीबन 25 साल है उससे छोटी मे हूँ मुझसे छोटी बहन आरूषि जैन आयु 18 साल जो बीए मे जो नेहरू डिग्री कॉलेज अशोकनगर में पढती है। भाई अर्पित अशोकनगर में परचून का थोक व्यापार का धंधा करता है। मैं करीब डेढ साल से संत जोसप्स कोएड स्कूल पढाने जाती हूँ। मुझे प्रिंसिपल मैडम राधा कार्तिकेन 1700 रु. प्रतिमाह देती है और मैं अपने घर पर बच्चों को ट्यूशन पढाती हूँ ट्यूशन के 2000 रु. फीस लेती हूँ। उक्त पैसे अपने माता पिता को दे देती हूँ। आज से करीबन तीन दिन पूर्व दिनांक 08.04.15 को मैंने अपनी मम्मी आशा से कहा कि मम्मी तुम्हारे लिये में साडी लेने

अशोकनगर जा रही हूँ तब मम्मी बोली चली जाओ फिर मैं तैयार होकर 1500 रु. लेकर पिपरई रेल्वे स्टेशन से साबरमती ट्रेन में बैठकर अशोकनगर स्टेशन पहुँची ट्रेन से उतरकर मे बाजार में घूमती रही उसके बाद मैने मनोज को अपने मोबाईल न. 810996724 से मनोज जो मेरे साथ संत जोसप्स कोएड स्कूल में पढाता है। उसको मैने फोन लगाकर बुला लिया वो स्टेशन के पास आ गया मेरे व मनोज खरे जो अशोकनगर मे दुबे लोज के पास निजी मकान में रहता है उससे मेरे स्कूल में पढाते जाते थे तभी हम दोनों में बातचीत होती रहती थी तभी से हम दोनो एक दूसरे से प्रेम करते थे हम दोनो भोपाल घूमने मे अपनी मर्जी मनोज के साथ गई अशोकनगर में बस मै बैठकर पहुंचे दिन में 2 बजे वहां से 5 बजे भोपाल वाली बस में बैठकर रात्रि करीबन 11 बजे भोपाल बस स्टेण्ड पहुंचे वहां से मनोज बहन बैंक में सर्विस करती है उसके ए र रात्रि में रुके दो दिन उन्ही के घर पर रुके उनके घर में 4 साल का बेटा और पति पत्नी सदस्य थे मै मनोज की दीदी के साथ सोई धर्मेन्द्र अपने जीजाजी के साथ सोया था दिनांक 06.04.15 को उनके के लडके प्रतीश, प्रवीण मिले उन्होने हम से बोला तुम लोग घूम रहे हो तुम्हारे घूम होने की रिपोर्ट डली है तब हम दोनो को वे अपने साथ अपने दोस्त के मकान पहले गये और मेरे मम्मी पापा को फोन लगा दिया मेरा भाई अरपित और उसका दोस्त विक्की जैन भोपाल बोलेरो गाडी से पहुँच गये थे मुझे व मेरे दोस्त मनोज को साथ लेकर पिपरई घर ले आये थे मेरे साथ मनोज ने कोई गलत काम नहीं किया मै अपनी मर्जी से अपने दोस्त के साथ घूमने गई थी मै अपने भले बुरे के बारे मे सब कुछ समझती हूँ फिर मै अपनी माँ आशा जैन व चाचा राजू को साथ लेकर थाने आई हूँ अब मै अपनी मम्मी आशा जैन के साथ अपने घर जाना चाहती हूँ जो बोला वही लिखा पढकर देखा सही होने पर हस्ताक्षर किये। मै अपनी स्वेच्छा से मेडीकल परीक्षण नही कराना चाहती।”

Accordingly, an inquiry panchnama was prepared on 7.4.2015 which was signed by the mother and uncle of the prosecutrix. In the said panchnama, it was mentioned that the prosecutrix on interrogation has stated that she on her own sweet will had gone along with the applicant and since no offence was committed with her, therefore, she did not agree for medical examination. If the FIR which has been lodged is considered, it is mentioned in the FIR that the applicant had kept mark-sheets of class 10<sup>th</sup> and 12<sup>th</sup> of the prosecutrix with him. According to the case diary statement of the prosecutrix, she left for Ashoknagar in order to visit the house of her uncle. The prosecutrix is undoubtedly major and aged about 23 years and it is not the case of the prosecutrix that she had gone to Ashoknagar in connection with some interview or for securing any job. If the prosecutrix had gone to Ashoknagar in order to visit the house of her

uncle, then what was the need of the prosecutrix to take the mark-sheets of 10<sup>th</sup> and 12<sup>th</sup> with her, has not been explained either by the counsel for the complainant or by the State counsel. It is clearly shown that in fact, the prosecutrix had left Piprai and went to Ashoknagar along with her mark-sheets of 10<sup>th</sup> and 12<sup>th</sup> without any necessity. Under these circumstances, it can be inferred that the sole intention of the prosecutrix in taking her mark-sheets with her was to prove her date of birth i.e. age at the time of marriage. If the conduct of the prosecutrix is examined in the light of the statement given by her on 7.4.2015 is considered, then, it would be clear that she went to Bhopal along with the applicant according to her own sweet will. Thus, it is clear that the prosecutrix on her own sweet will went to Ashoknagar where, she met with the applicant at Ashoknagar Railway Station from where, they went to Bhopal and ultimately, the prosecutrix was recovered on 7.4.2015.

The Supreme Court in the case of **Rajeev Thapar (Supra)** has held as under :

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and



condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

(v) If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

In the case of **Prashant Bharati (Supra)** the Supreme Court has held as under :

"25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand - satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under [Section 482](#) of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under [Sections 328, 354 and 376](#) of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are

accordingly quashed.”

Thus, it is clear that where, investigation was done by the police and it was found that no offence has been committed, then, without there being any explanation for delay in lodging FIR and without any explanation to why the prosecutrix had given statement on 7.4.2015 and without any explanation as to why the prosecutrix took her mark-sheets of 10<sup>th</sup> and 12<sup>th</sup> on 3.4.2015 coupled with the fact that since mark-sheet of Class 10<sup>th</sup> was recovered from the possession of the brother of the prosecutrix clearly shows that the allegation of keeping mark-sheets of 10<sup>th</sup> and 12<sup>th</sup> by the applicant in the FIR is false, this court is of the considered view that since undisputedly the prosecutrix is aged about 23 years and was consenting party and if the entire case is taken into consideration, it would be clear that no offence has been committed by the applicant which may be said to be punishable under Section 366 and 376 of IPC. Under these circumstances, compelling the applicant to face the ordeal of trial would be nothing but a sheer abuse of process of law.

Before parting with this case, it would be appropriate to consider the reply filed by the State in this proceedings. From the record, it is clear that initially, the state had filed an application for vacating stay on 27.12.2016. From the application, it is clear that the State instead of making submissions on the merits of the case, has merely stated that so far as involvement of the applicant in the offence is concerned, the same can be proved only after evidence is recorded and since this court has granted interim stay, therefore, the proceedings of the trial court have come to

an halt and accordingly, the stay may be vacated. Along with the application for vacating stay, the State has also filed reply on 27.12.2016. In the reply, the State beautifully kept silent about the statement made by the prosecutrix at the time of her recovery. In the reply, merely by reproducing the Gum Insan report, as well as by mentioning the contents of the FIR, it was mentioned that the police has filed charge-sheet after conclusion of the investigation and the applicant if so desires can produce the evidence at the trial in his defence. It appears that only when this court directed the State Government to file detailed reply vide it's order dated 9.2.2017, the State came up with a case for the first time admitting that the statement of the prosecutrix was recorded on 7.4.2015 and at that time, it was found that as the prosecutrix had gone along with the applicant out of her own sweet will, therefore, no offence is made out. True it is that it is prerogative of the police to file only those documents along with the charge-sheet on which, they want to place reliance, but this court cannot loose sight of the fact that free, fair and impartial investigation is one of the fundamental right of the accused. Therefore, it is expected that the investigation must be conducted in free and fair manner. It may not be left to the whims and wishes of the investigating officer. If the investigating officer comes to a conclusion after conducting free, fair and impartial investigation that no offence is made out then he is well within his right to file closure report which shall be subject to scrutiny by the concerning Magistrate. It was also expected from the State that they would have placed all relevant facts before this court when the reply for the first time was filed on 26.12.2016. For the reasons best known

to the State, they deliberately suppressed the statement of the prosecutrix which was recorded on 7.4.2015. Merely by saying that the applicant has a right to prove his defence in trial, this court is of the opinion that the investigating officer cannot run away from his liability of conducting free, fair and impartial investigation. It is not a case where investigating officer has accepted the plea of *alibi*. It is a case where statement of the prosecutrix was recorded and in that initial statement, she had specifically stated that she was a consenting party and she had herself gone along with the applicant to Bhopal and no offence was committed with her and she had also refused to undergo the medical examination. This statement of the prosecutrix was considered by the police in the presence of her mother and uncle. Further, it is not the case of anybody that the statement given by the prosecutrix on 7.4.2015 was not voluntary. Here the matter would be of interpretation by the courts that whether, the statement of the prosecutrix which was recorded on 7.4.2015 is liable to be accepted or not and if it is accepted, then what would be the consequences thereof. But once, the investigating agency had conducted certain investigation and had recorded statement of the prosecutrix, then, at least at the time of filing reply, the investigating officer should have come forward with clean hands. It is also clear from the petition which was filed under Section 482 of Cr.P.C that the applicant had filed a copy of the said statement dated 7.4.2015 along with the petition and it was one of the stand taken by the applicant that the prosecutrix has specifically stated that no offence was committed with her and she had gone on her own sweet will along with the applicant. It is expected from the State that by filing reply,

at the first instance, they should have tried to meet out the said ground but without referring the grounds raised by the applicant, it cannot be said by the State that whatever stand which the applicant has taken in the application, cannot be adjudicated upon by this court and it should be left for the adjudication by the trial Court. It is for this court to consider whether a particular defence taken by the applicant can be considered while exercising power under Section 482 of Cr.P.C or not. The basic purpose of filing reply is to meet out the allegations made in the application. It is expected that the prosecution while filing reply will take note of the defence which has been taken by the applicant in the petition but would also try to ensure that free, fair and impartial investigation is done and thereafter, the same should be left to the court to infer or interpret and to come to a just and proper decision.

Consequently, the First Information Report in Crime No.333 of 2015 registered by Police Station Kotwali District Ashoknagar, the charge-sheet filed by the police as well as the charges framed against the applicant and all consequential criminal proceedings pending before the Court of Additional District Judge, Ashoknagar against the applicant in S.T.No.9 of 2015 are hereby quashed.

This application succeeds and is hereby **allowed**.

**(G.S.Ahluwalia)**  
**Judge.**