

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 21st OF JULY, 2022

MISC. CRIMINAL CASE No. 33338 of 2021

Between:-

**SACHIN JAIN S/O LATE SHRI RAJKAMAR
JAIN, AGED ABOUT 40 YEARS, OCCUPATION:
BUNIESS 20 ARIHANT VIHR COLONY, MOTI
NAGAR (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI VINAY SARAF, SENIOR COUNSEL WITH SHRI RIZWAN
KHAN, ADVOCATE)***

AND

**1. THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH P.S. MAHILA
THANA (MADHYA PRADESH)**

**2. PROSECUTRIX X NOT MENTION (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI AKASH SHARMA, G.A.)

(NONE FOR RESPONDENT NO.2/PROSECUTRIX)

*This petition coming on for orders this day, the court passed
the following:*

ORDER

They are heard. Perused the case-diary.

2. This petition has been filed under Section 482 of Cr.P.C. for quashing the First Information Report (FIR) registered at Crime No.47 of 2020, under Sections 376, 294 and 506 of IPC at Police Station Mahila Thana, Palasia, Indore on 21.07.2020, as also the subsequent charge-sheet filed in the case, which is pending before the VIII Additional Sessions Judge, Indore as S.T. No.95 of 2021.

3. In brief, the facts giving rise to the present petition are that on 21.07.2020, an FIR has been lodged by the prosecutrix against the present petitioner under Sections 376, 294 and 506 of IPC, stating that she is a resident of Indore and is a divorcee having a four years' old son, residing with her mother, brother and sister-in-law. Further, her case is that she wanted to settle in life once again, and with this purpose to remarry, she uploaded her bio data on a matrimonial site for marriage and subsequently the present petitioner Sachin Jain showed his interest in her, and spoke to her on telephone and after satisfying that she is a divorcee started talking to her from 30.08.2019. Thereafter, the petitioner left for China and came back in the month of January, 2020, however, he spoke to her from his Chinese number and they also Chatted on his web Chat I.D. sachin32jain. Soon he proposed her and also told her that he would adopt her son and as he wanted to meet her, they met for the first time on 21.02.2020 where he took her to a Hotel and reiterated that he wants to marry her and also wants to adopt her son. Thereafter on 22.02.2020, he went to Dubai and after coming from Dubai on 29.02.2020, he met her in Indore and took her to some Hotel at Tukoganj, Indore, there he tried to get

intimate with her, but as she protested, he consoled her that he would marry her, however, he did not do anything on that day and left her back to Tower Chauraha(Square). He also introduced her to his sister, brother-in-law and mother and when they also consented to their marriage, their relation became cordial and her son also started addressing the petitioner as his dad. On 26.06.2020, petitioner came to her house along with her mother, sister and brother-in-law to which the prosecutrix thought that he has come to fulfill his promise and take her to the upper floor to talk to her privately and took advantage of her. Thereafter, they left for Bhopal and from there the petitioner also called her to come to Bhopal where they would enjoy to which the prosecutrix refused as she said that as she has still not married to him, her family members would not allow her to go on her own, to which the petitioner got angry and started abusing her and also told her that he has already made contacts with many such women from the matrimonial site and threatened her with dire consequences and also blocked her and when she tried to call the petitioner's mother, sister and brother-in-law, they also blocked her phone number. Thus, the prosecutrix got scared and lodged the report alleging that the petitioner had sexually exploited her and she wants legal action against him.

4. Shri Vinay Saraf, learned senior Counsel for the petitioner has submitted that the petitioner has been falsely implicated by the prosecutrix as it is a absurd allegation that a person would rape a woman on the day when he would go to her house with a marriage

proposal and introduced her to his family members, who were also sitting downstairs. In support of his contention, Senior Counsel has relied upon a decision rendered by the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335** para 102 to submit that 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, the FIR deserves to be quashed.

5. Senior Counsel has further submitted that the prosecutrix, prior to the lodging of the FIR, had also made a complaint to the Indore Police on 08.07.2020, wherein she had also levelled the same allegation of forcefully physical relationship by the petitioner on the pretext of marriage in a Hotel at South Tukoganj, Indore. However, the aforesaid compliant was inquired into by the police and it was found to be without any substance. A copy of the report dated 16.09.2020 is also placed on record prepared by C.S.P., South Tukoganj, Indore in which the petitioner has been given clean chit. It is further submitted that the FIR itself has been lodged after inordinate delay and there is no explanation provided by the prosecutrix regarding the same. Shri Saraf has also relied upon a decision rendered by the Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another** reported as **(2019) 9 SCC 608** as also in the case of **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr.** passed in **Special Leave to**

Appeal (Crl.) No.11218 of 2019 (Criminal Appeal No.233 of 2021) dated **01.03.2021** wherein the FIR lodged against the petitioner/accused on the promise of marriage has been quashed.

6. Senior Counsel has also submitted that the proposed marriage of the petitioner and the prosecutrix could not take place on account of certain unacceptable conditions sought to be imposed by the prosecutrix that they would not have any issue after their marriage and her son would be their only son and that he would also make F.D.s in the name of her son to the tune of Rs.5 to 10 lakhs and as the petitioner was not ready to accept such conditions, he refused to marry the prosecutrix.

7. None has appeared for the respondent No.2/complainant, despite service of notice.

8. Counsel for the respondent No.1/State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as enough material has been seized during the course of investigation including WhatsApp Chats and other record. Thus, it is submitted that the application be dismissed.

9. Heard counsel for the parties and perused the record.

10. So far as the allegation of rape on the pretext of marriage is concerned, the Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar (supra)** has held as under:-

“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.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant’s failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant’s promise of marriage. Therefore, even if the facts set out in the complainant’s statements are accepted in totality, no offence under Section 375 of the IPC has occurred.”

(emphasis supplied)

11. Similarly, in the case of Sonu @ Subhash Kumar (supra), while relying upon the same preposition in the case of Pramod Surybhan Pawar (supra), it is held as under:-

“9. In **Pramod Suryabhan Pawar (supra)**, while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

“Where the promise to marry is false and the intention of the maker at the time of making the

promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it...”

10. Further, the Court has observed:

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to [Section 375](#) must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under [Section 482](#) of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under [Section 482](#) of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.

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

(emphasis supplied)

12. Thus, it is apparent that as held by the Supreme Court, a person would not fall under the definition of rape if it can be demonstrated that the promise to marry given to the prosecutrix was not false at the inception when they indulged in sexual act, but subsequently he failed to honour his promise to marry the prosecutrix. On the anvil of the aforesaid dictum when the case of the petitioner is considered, it is found that in the FIR the following allegations have been levelled by the prosecutrix:-

“यह कि मैं डिवॉर्सी मेट्रोमोनी साइट पर अपना बायोडाटा शादी के लिये अपलोड किया था उक्त बायोडाटा में मैंने अपनी पूरी विस्तृत जानकारी अंकित की थी कि मैं डिवॉर्सी महिला होकर एक पुत्र 04 का है कि माँ हूँ एवं मैं अपने माता एवं भाई भाभी के साथ निवास करती हूँ तथा मैं नौकारी कर अपना स्वयं का एवं अपने बच्चों का खर्च चलाती हूँ एवं मैंने अपनी पूरी जानकारी एवं फोटो भी अपलोड किया था। दिनांक 27.08.2019 एवं 28.08.2019 को मुझे प्रोफाईल शार्ट लिस्ट कर सचिन जैन मेट्रीमोनियल आईडी डी.बी.एम. 2188321 ने इस्ट्रेस्ट भेजा था एवं इन्ट्रेस्ट दिखाने के पश्चात 30.08.2019 को सचिन पिता स्व. राजकुमार जैन निवासी अरिहंत विहार सागर के द्वारा मुझसे टेलीफोनिक चर्चा की गई और एक दूसरे को समझने के लिये अपनी पूर्व शादी शुदा एवं तलाक के संबंध में सम्पूर्ण चर्चा होने के उपरांत तब से लेकर जुलाई 2020 तक मेरी सचिन जैन से लगातार बातचीत चलती रही मेरी शुरुआती चर्चा के दौरान दिनांक 08.09.2019 को सचिन जैन अपने व्यवसायिक कार्य हेतु चीन चला गया था वहां से पुनः जनवरी 2020 में भारत लौटने के दौरान भी सचिन जैन से चार्डना के नम्बर 8615067517901 पर बातचीत होती रही तथा वेब

चैट आईडी sachin32jain पर चर्चा होती रही। भारत लौटने के पश्चात मेरी सचिन जैन से व्हाट्सअप और टेलीफोन पर चर्चा होने लगी इसी दौरान सचिन ने मुझसे शादी की चर्चा की और मेरे द्वारा हाँ कहने पर मुझसे शादी का वादा किया और मेरे बेटे को भी अडोप्ट करने की बात करी और मुझसे मुलाकात करने की बात करी। मेरे हाँ कहने पर दिनांक 21.02.2020 को हम प्रथम बार मिले और वह मुझे अपनी होटल में लेकर गया जहां सचिन जैन से मुझसे कहा कि मैं आपसे शादी करने को तैयार हूँ और तुम्हारे बच्चे को भी गोद लेने को तैयार हूँ। और अगले दिन दिनांक 22.02.2020 को दुबई चला गया करीब एक हफ्ते अर्थात् दिनांक 29.02.2019 को दुबई से वापस लौटने पर सचिन ने मुझे फोन किया और मुझसे मिलने की इच्छा जाहिर की और इसके साथ ही इन्दौर में सचिन मुझे टॉवर चौराहे पर लेने आया और टॉवर चौराहे से मुझे तुकोगंज के किसी होटल में ले गया रात्रि होने के कारण मैं होटल का नाम नहीं देख पायी थी। उक्त होटल में जब सचिन से बातचीत कर रही थी कि सचिन ने मेरे साथ बातचीत के दौरान मेरे अंगों को स्पर्श कर मुझसे शारीरिक संबंध स्थापित करने का प्रयास किया मेरे द्वारा यह बताये जाने पर कि मेरी अभी तुमसे शादी नहीं हुयी है तो सचिन जैन कहने लगा कि अपनी शादी तो हो ही जायेगी अब तुम मेरी हो चुकी हो। इस प्रकार मेरे द्वारा विरोध किये जाने पर उस समय सचिन ने मेरी बात मान ली और मुझे वापस टॉवर चौराहे पर छोड़ दिया। उसके कुछ दिन पश्चात सचिन जैन ने मुझसे अपनी बहन, जीजाजी एवं माताजी से भी बातचीत करायी सभी लोगो ने मुझे पसंद किया और शादी के लिए हाँ कहा फिर सचिन से मेरी लॉकडाउन पर भी बातचीत होती रही एवं मेरे पुत्र के साथ भी सचिन जैन उसे अपना पापा बताकर पापा की हैसियत से बात करने लगा इसके पश्चात दिनांक 26.06.2020 को सचिन जैन अपनी माताजी, बहन व जीजाजी को साथ लेकर मेरे घर पर आया जिससे की मुझे पूर्ण विश्वास हो गया कि सचिन मुझसे शादी करने का वादा निभाने आया है उसी दिनांक को सचिन ने मौका पाकर मुझसे अकेले में बात करने का हवाला देते हुए मेरे घर में उपर मंजिल के कमरे में लेकर गया एवं वहां पर मेरे साथ शारीरिक संबंध स्थापित किये इसके बाद सचिन व उसके परिवारजन वाले शादी को रिश्ता पक्का बोलते हुए भोपाल चले गये भोपाल से सचिन ने फोन करके मुझे भोपाल बुलवाया और कहा कि तुम अकेले भोपाल आ जाओ अपन यहां इंजाय करेंगे। मैंने कहा कि मेरे घर वाले अकेले निकलने की परमीशन नहीं दे रहे हैं इसलिए मैं शादी किये बगैर आपके साथ शहर इन्दौर से बाहर नहीं जा सकती इस पर सचिन चिड़ गया तथा फोन पर मां बहन की नंगी नंगी गालीयां दी एवं कहने लगा कि मेट्रोमोनियल साईट पर मैंने तेरे जैसी कई लड़कियों से कान्टेक्ट करके संबंध बनाए या दुंढने की कोशिश की तो मैं तुझे व तेरे बेटे को जान से निपटा दूंगा इसके साथ ही उसने अपने नम्बर

पर मेरा नम्बर ब्लॉक कर दिया इसके बाद मैंने सचिन की माताजी, बहन एवं जीजा जी को फोन लगाया तो उन्होंने भी मेरा नम्बर ब्लॉक कर दिया जिससे मैं काफी भयभीत हो गयी हूँ और मेरे साथ में कभी भी किसी भी प्रकार की अनहोनी घटना इन लोगों द्वारा कारित की जा सकती है। श्रीमानजी चूंकि मैं तलाकशुदा महिला हूँ किन्तु सचिन द्वारा मुझे विवाह करने का विश्वास दिलाया जाता रहा है जिससे मैं उसको समझकर विवाह करना चाहती थी जिसका मैंने बहुत प्रयास किया मुझे अब समझ आ गया है कि उक्त व्यक्ति सचिन द्वारा मेरा शारिरीक शोषण किया गया है अतः मैं इसके विरुद्ध कार्यवाही चाहती हूँ। सचिन जैन के विरुद्ध उचित कानूनी कार्यवाही करने की कृपा करें। हस्ताक्षर (अंग्रेजी में अस्पष्ट हैं)”

13. Considering the aforesaid FIR on its face value, it is apparent that even according to the prosecutrix when the petitioner called her to some Hotel at Tukoganj area, he tried to take advantage of her, but when she said that she has not yet married to him, he has accepted this fact and again dropped her to Tower Chauraha and thereafter after some days, he allowed her to talk to his mother, sister and brother-in-law and thereafter on 26.06.2020, he came to her house along with his mother, sister and brother-in-law on which date it is alleged that he had sexual intercourse with her on the pretext of marriage on the upper floor. She has also stated that thereafter the petitioner and his family members also told her that marriage between them is acceptable to them. They went to Bhopal and thereafter the petitioner also called her to Bhopal and a dispute arose between them.

14. Thus, it is apparent that even assuming that the prosecutrix had physical relationship with the petitioner at her home, his immediate conduct as also the conduct of his family members clearly reveal that all of them had agreed that the prosecutrix should marry the petitioner. Thus, it cannot be said that what transpired on 26.06.2020 in the house

of the prosecutrix was a rape as it was not against her will, or not without her consent, and there was no false promise which can suggest that it was a rape.

15. Also, it is rather difficult to believe that a man who has gone to the house of a woman along with his mother, sister and brother-in-law with a marriage proposal, would commit rape on her on the upper floor. The story of the prosecutrix appears rather preposterous. In view of the same, this Court finds force with the contentions raised by the senior counsel for the petitioner that it is not a case of rape but of consensual relationship, if at all.

16. Resultantly, the petition stands **allowed** and the FIR registered at Crime No.47/2020 under Sections 376, 294 and 506 of IPC registered against the petitioner at Police Station—Mahila Thana, Palasia, Indore as also the subsequent charge-sheet are **hereby quashed**. The petitioner is discharged from the aforementioned charges. All the subsequent proceedings relating to aforementioned crime number registered against the petitioner are also quashed.

Petition stands **disposed of**.

Certified copy as per rules.

(SUBODH ABHYANKAR)
JUDGE

Pankaj