IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF JUNE, 2023

MISC. CRIMINAL CASE No. 32728 of 2021

BETWEEN:-

SHIVAM GUPTA S/O SHRI AYODHYA PRASAD GUPTA, AGED ABOUT 24 YEARS, OCCUPATION: STUDENT R/O VILL. POST BHADAURA CHOWKI MADWAS TAH. KUSMI PS. MAJHAULI DISTT. SIDHI MP. (MADHYA PRADESH)

.....APPLICANT

(BY SHRI AKASH SINGHAI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR PS. PS. MAHILA THANA DISTT. KATNI M.P. (MADHYA PRADESH)**

2. **ARCHANA GUPTA D/O LATE RAJRUOOP GUPTA OCCUPATION: POLICE CONSTABLE GRAM NIDHIPURI CHOWKI MADWAS, MAJHULI, DISTT. SIDHI (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI RITWIK PARASHAR - ADVOCATE)
(RESPONDENT NO.2 BY SHRI VINAY SINGH BAGHEL - ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

1. This petition under section 482 Cr.P.C. has been filed seeking the following reliefs :-

> "It is therefore, prayed that this Hon'ble court may kindly be pleased to exercise inherent powers under section 482 Cr.P.C. and quash the FIR dated 27.3.2021 (Annexure A/1) bearing Crime No.12/2021 registered by Police Station Mahila Thana, District Katni, M.P. and the entire criminal proceedings against the applicant in the interest of justice.

2. It is submitted by counsel for the applicant that the complainant/respondent no.2 has lodged a report against the applicant in Crime No.12/2021 at Police Station Mahila Thana District Katni for the offence under sections 376(2)(n), 294, 323, 506 of the I.P.C. It is submitted by counsel for the applicant that not only the complainant is major but she was posted as Lady Constable in the Police Department, therefore, she was well aware of the niceties of law and if she continued to remain in physical relationship with the applicant voluntarily without any objection then it cannot be said that her consent was obtained by misconception of fact.

3. It is further submitted that even otherwise if a person has failed to keep his promise would not mean that there was any misconception of fact inviting application of section 90 of I.P.C. It is further submitted that it is clear from the FIR that it was the respondent no.2/complainant who herself had broken the marriage and, therefore, it cannot be said that if any physical relationship was entered into between the applicant and the respondent no.2 then it was on account of false promise of marriage.

4. Per contra, it is submitted by counsel for the respondent no.2 that it is clear from the FIR that after the marriage was settled, the respondent no.2 agreed for physical relationship but thereafter he

started insisting the respondent no.2 should give her salary to her would be in-laws and when she refused to do so, then he started pressurizing her that she should leave her job and should start living with the applicant at Jabalpur. When she refused to do so, then the applicant used to beat her badly. In the meanwhile, the respondent no.2 got pregnant and abortion pills were also given by the applicant. Because of continuous misbehavior by the applicant, the respondent no.2 decided to call off the marriage. However, the applicant retaliated by threatening that he would defame her and would break her marriage in case if she decides to marry with somebody else. He started sending photographs to her relatives. The physical relationship took place for the first time on 5.4.2020 whereas it took place for the last time on 25.11.2020. It was further specifically claimed that not only the applicant is trying to defame her but also not permitting her to marry with somebody else. Thus, it is submitted that the entire conduct of the applicant clearly shows that his sole intention was to physically exploit the complainant. He used to beat her badly on account of non-transfer of her salary to her would be in-laws. Under these circumstances it is submitted that the basic intention of the applicant from the very beginning was to cheat the respondent no.2 and, therefore, the present case is squarely covered by section 90 of the I.P.C. To buttress their contentions, the counsel for the parties have relied upon the judgments passed by the Supreme Court in the case of **Deepak Gulati vs. State of Haryana** reported in **AIR 2013 SC 2071, Tilak Raj vs. State of Himachal Pradesh** reported in **AIR 2016 SC 406, Uday vs. State of Karnataka** reported in **(2003) 4**

SCC 46, Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr. reported in **(2019) 3 SCC (Cri.) 903, Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr.** reported in **AIR 2021 SC 1405** as well as the judgment passed by this Court in the case of **Senjeet Singh Vs. State of M.P. and another** reported in **2020 (1) MPLJ (Cri.) 260, Abid Ali Vs. State of MP & Anr. passed on 18/5/2017 in M.Cr.C. No.11363/2016** and a judgment passed by a coordinate Bench of this Court in the case of **Umesh Lilani Vs. The State of M.P. & Anr. passed on 18/7/2019 in M.Cr.C. No.16158/2019 (Indore Bench).**

5. Heard the learned counsel for the parties.

6. The FIR which is under challenge reads as under :-

''मैं थाना रीठी में महिला आरक्षक के पद पर पदस्थ हूॅ मेरे घर वालो के द्वारा मेरा विवाह मेरे गॉव के पास ग्राम भदौरा सीधी के शिवम गुप्ता पिता अयोध्या गुप्ता के साथ तय किया गया था। विवाह तय होने के पश्चात हम दोनो फोन में एक दूसरे से बाते करने लगे थे जिससे हमारा एक दूसरे से अच्छे संबंध बन गए थे इसके पश्चात शिवम गुप्ता मुझसे मिलने जुलने लगा और इसी दौरान शिवम गुप्ता ने मुझसे पहली बार 05.04.2020 के रात करीब दस से ग्यारह बजे के मध्य मेरे सरकारी रूम में आकर शारीरिक संबंध बनाया था और इसी तरह शिवम गुप्ता मुझसे बोला की हम दोनो जल्दी शादी करेंगे ऐसा बोलकर मुझसे कई बार संबंध बनाता रहा। इसी दौरान अपने परिवार वालो को रूपये देती थी तो शिवम गुप्ता मुझे घर वालो को रूपये देने से मना करने लगा और मेरे ऊपर नौकरी छोड़ने का दबाव बनाने लगा और कहने लगा की तुम जबलपुर में चलकर मेरे साथ रहो। तो यह बात मुझे मंजूर नहीं थी इसी बात को लेकर शिवम मेरे साथ मारपीट करता था और मॉ बहन की गंदी गंदी गालियॉ देता था मारपीट से मेरे पेट और पीठ में दर्द होता है शिवम मुझे जान से मारने की धमकी दिया था एक बार मैं प्रैग्नेंट भी हो गई तो शिवम गुप्ता ने मुझे टेबलेट खिलवा दिया जिससे मेरा गर्भ गिर गया। मैं किसी भी डाक्टर के पास नही गई थी। जिसके बाद शिवम गुप्ता मुझे कहता था कि तुम अपने परिवार वालो को छोड़ दो तो मैं बोली की मैं अपने

परिवार वालो को नहीं छोडूंगी। और तुम मेरे साथ ऐसा व्यवहार कर रहे हो तो मैं तुम्हारे साथ शादी नही करूॅगी तो शिवम मुझे धमकाने लगा कि जहॉ तुम शादी करोगी तो मैं शादी नही होने दूंगा और तुम्हे बदनाम कर दूंगा और मेरी फोटो रिस्तेदारो के मोबाईल व्हाट्सप एवं फेसबुक मे हम दोनो की साथ में घूमने फिरने की फोटो भेजने लगा । शिवम गुप्ता मेरे साथ शादी का झांसा देकर मेरे साथ कई बार गलत काम किया है अंतिम बार दिनांक 21.11.2020 को मुझे जबलपुर बुलाया था और हाथ काट लिया था मुझे डरा रहा था तो मैं उसे समझाने गई थी फिर उसी रात उसके घर में रूकी थी तो मेरे साथ गलत काम किया था घटना को यह पूरी बात अपनी मॉ रामवती गुप्ता, भाई संतोष गुप्ता एवं मेरे सहेली भावना तिवारी एवं परिवारजनो को बताई थी अभी भी मेरी फोटो फेसबुक में भेज रहा है और मुझे बदनाम करने की धमकी देता है मेरी शादी दूसरी जगह नही करने दे रहा है और मै उससे शादी नही करना चाहती हूॅ इसलिए परिवार में विचार विमर्श कर आज मैं अपनी मॉ के साथ रिपोर्ट करने आयी हूॅ रिपोर्ट करती हूॅ कार्यवाही चाहती हूॅ। पढ़कर देखा मेरे बताये अनुसार लिखा गया है।''

7. On plain reading of the FIR it is clear that for the first time the applicant and the respondent no.2 had physical relationship on 5.4.2020 and they had physical relationship for the last time on 21.11.2020 whereas the FIR was lodged on 27.3.2021. From the plain reading of the FIR it is clear that the marriage of the respondent no.2 was fixed by her family members with the applicant and only because of the said settlement of marriage, the respondent no.2 agreed for her physical relationship with the applicant. However, with the passage of time the applicant started pressurizing the respondent no.2 to transfer her salary to her would be in-laws or else she should leave her job and shift to Jabalpur. When the respondent no.2 refused to do so then he used to beat her badly. On one occasion when the respondent no.2 got pregnant, the abortion pills were given by the applicant. Only because of misbehavior by the applicant, the respondent no.2 decided to call off

the relationship. But, instead of accepting the decision of the respondent no.2, the applicant started pressurizing the respondent no.2 to go ahead with the relationship or else he would defame her in the society and with an intention to do so he also shared the photographs of the applicant and the respondent no.2 with the relatives of the respondent no.2. On 21.11.2020 the respondent no.2 was called by the applicant at Jabalpur and also cut his nerves. It was specifically mentioned by the complainant in her FIR that she had gone to Jabalpur in order to convince him and also stayed in his house where rape was committed by him. If the applicant was misbehaving with the respondent no.2 and, therefore, the respondent no.2 was not ready to marry the applicant as well as was intending to break up the marriage settlement, then the applicant should not have defamed her as well as should not have pressurized her by cutting his nerves and under the said pressure he also committed rape on her. The initial act of physical relationship may be with the consent of the respondent no.2 but with the passage of time the things started changing and the applicant started misbehaving with the respondent no.2 and also started demanding her salary. Thereafter, when the respondent no.2 decided to call off the relationship then he started pressurizing her.

8. At this stage, it is submitted by counsel for the applicant that the allegations made by the respondent no.2 in the FIR are false and, therefore, they should be disbelieved. Unfortunately, the submissions made by counsel for the applicant would not fall within the limited scope of jurisdiction under section 482 Cr.P.C.

9. It is well established principle of law that this Court while exercising the powers under Section 482 of CrPC cannot conduct a detailed and roving enquiry into the correctness of the allegations. The Supreme Court in the case of **Munshiram v. State of Rajasthan, reported in (2018) 5 SCC 678** has held as under :

> **10.** Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the police. Further, it is no more res integra that Section 482 CrPC has to be utilised cautiously while quashing the FIR. This Court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. .....

The Supreme Court in the case of **Teeja Devi v. State of Rajasthan** reported in **(2014) 15 SCC 221** has held as under :

> **5.** It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan,** reported in **(2012) 4 SCC 547** has held as under :

> **9.** In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
>
> > "*65. … An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large*. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. …*

> *66*. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."
>
> (emphasis supplied)

10. On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.*, while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

> "*20*. … The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according

> to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **XYZ v. State of Gujarat** reported in **(2019) 10 SCC 337** has held as under :

> **14.** Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was

> consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.
>
> (Underline supplied)

The Supreme Court in the case of **S.Martin (Supra)** has held as under :

> **7.** In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for.....

The Supreme Court in the case of **S. Khushboo v. Kanniammal** reported in **(2010) 5 SCC 600** has held as under :

> **17.** In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana* v. *Bhajan Lal* to take note of two such guidelines which are relevant for the present case: (SCC pp. 378-79, para 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.

* * *

(*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.* this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque* this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "*may examine the questions of fact*" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In *Shakson Belthissor* v. *State of Kerala* this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

"*25*. … '*16*. … One of the paramount duties of the superior courts is to see that a person

> who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.'[*]"

The Supreme Court in the case of **Sangeeta Agrawal v. State of U.P.,** reported in **(2019) 2 SCC 336** has held as under :

> **8.** In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

The Supreme Court in the case of **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460** has held as under :

> **27.** Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
>
> **27.1.** Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is

to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

> [Ref. *State of W.B.* v. *Swapan Kumar Guha Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*; *Janata Dal* v. *H.S. Chowdhary*; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*; *G. Sagar Suri* v. *State of U.P.*; *Ajay Mitra* v. *State of M.P.*; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate*; *State of U.P.* v. *O.P. Sharma*; *Ganesh Narayan Hegde* v. *S. Bangarappa*; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*; *Shakson Belthissor* v. *State of Kerala*; *V.V.S. Rama Sharma* v. *State of U.P.*; *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu*; *Sheonandan Paswan* v. *State of Bihar*; *State of Bihar* v. *P.P. Sharma*; *Lalmuni Devi* v. *State of Bihar*; *M. Krishnan* v.

Vijay Singh; *Savita* v. *State of Rajasthan* and *S.M. Datta* v. *State of Gujarat*.]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in *Madhavrao Jiwajirao Scindia* was reconsidered and explained in two subsequent judgments of this Court in *State of Bihar* v. *P.P. Sharma* and *M.N. Damani* v. *S.K. Sinha*. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

The Supreme Court in the case of **Ajay Kumar Das v. State of Jharkhand,** reported in **(2011) 12 SCC 319** has held as under :

12. The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court i.e. *State of Haryana* v. *Bhajan Lal*. In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an

> exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

The Supreme Court in the case of **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350** has held as under :

> **5.** Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung* v. *Essem Chemical Industries*; *State of Haryana* v. *Bhajan Lal* and *Harshendra Kumar D.* v. *Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

The Supreme Court in the case of **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226** has held as under :

> **18.** While exercising jurisdiction under Section 482 of the Code, the High Court would not

ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a

> legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy** reported in **(2012) 12 SCC 437** has held as under :

> **11.** Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.
>
> **12.** In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make

such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State* and *B.S. Joshi* v. *State of Haryana*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar*; *Ganesh Narayan Hegde* v. *S. Bangarappa* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of

the decisions of this Court vide *State of Haryana* v. *Bhajan Lal*, *Janata Dal* v. *H.S. Chowdhary*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* and *Indian Oil Corpn.* v. *NEPC India Ltd.*

16. In the landmark case of *State of Haryana* v. *Bhajan Lal* this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint: (SCC pp. 378-79, para 102)

> "(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (*2*) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (*4*) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as

contemplated under Section 155(2) of the Code.

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

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

(*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. In *Indian Oil Corpn.* v. *NEPC India Ltd.* a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles: (SCC p. 748, para 12)

1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of

> the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.
>
> *3*. It was held that a given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In *State of Orissa* v. *Saroj Kumar Sahoo* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

> "*11*. … It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* this Court held as under: (SCC p. 695, para 7)

> "*7*. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma* which reads as under: (SCC p. 271, para 70)

> "*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint

> was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

22. Thus, the judgment in *Madhavrao Jiwajirao Scindia* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may

> quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal.

The Supreme Court in the case of **M. Srikanth v. State of Telangana,** reported in **(2019) 10 SCC 373** has held as under :

> 17. It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

The Supreme Court in the case of **M.N. Ojha v. Alok Kumar Srivastav** reported in **(2009) 9 SCC 682** has held as under :

> **30.** Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of

> which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.
>
> **31.** It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose
>
> > "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. [If such power is not conceded, it may even lead to injustice.]"
> >
> > (See *State of Karnataka* v. *L. Muniswamy*, SCC p. 703, para 7.)
>
> **32.** We are conscious that
>
> > "inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases".
> >
> > (See *Kurukshetra University* v. *State of Haryana*, SCC p. 451, para 2.)

The Supreme Court in the case of **CBI v. Arvind Khanna** reported in **(2019) 10 SCC 686** has held as under :

> **17.** After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under

> Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.
>
> **18.** In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

Further, the Supreme Court in the case of **State of MP Vs. Kunwar Singh** by order dated **30.06.2021** passed in **Cr.A. No.709/2021** has held that a detailed and meticulous appreciation of evidence at the stage of 482 of CrPC is not permissible and should not be done. In the case of **Kunwar Singh (supra)**, the Supreme Court held as under:-

> "8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia…......"

Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the un-controverted allegations do not make out any offence, only then this Court can quash the F.I.R.

10. Before considering the allegations, this Court would like to consider the meaning of "misconception of fact".

11. The Supreme Court in the case of **Pramod Suryabhan Pawar (supra)** has held as under :-

> "9. The present proceedings concern an FIR registered against the appellant under Sections 376, 417, 504, and 506(2) of the IPC and Sections 3(1) (u), (w) and 3(2) (vii) of SC/ST Act. Section 376 of the IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. For the present purposes only the second such description, along with Section 90 of the IPC is relevant and 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."
> "**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…"

10 Where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eyes of the law.

11 The primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her "consent", being premised on a "misconception of fact" (the promise to marry), stands vitiated.

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. In **Dhruvaram Sonar** which was a case involving the invoking of the jurisdiction under Section 482, this Court observed:

> "15. … An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

This understanding was also emphasised in the decision of this Court in **Kaini Rajan** v **State of Kerala**, (2013)9 SCC 113 :

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

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above). Section 3(1) (w) of the SC/ST Act also incorporates this concept of consent:

> "**3(1) (w) -**
> (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;
> …
> Explanation.—For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:
> Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

> Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

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

> "37. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 of the IPC and can be convicted for the offence under Section 376 of the IPC."

Similar observations were made by this Court in **Deepak Gulati** v **State of Haryana, (2013)7 SCC 675** ("**Deepak Gulati**"):

> "21. … 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…"

15. In **Yedla Srinivasa Rao** v **State of Andhra Pradesh, (2006)11 SCC 615,** the accused forcibly established sexual relations with the complainant. When she asked the accused why he had spoiled her life, he promised to marry her. On this premise, the accused repeatedly had sexual intercourse with the complainant. When the complainant became pregnant, the accused refused to marry her. When the matter was brought to the panchayat, the accused admitted to having had sexual intercourse with the complainant but subsequently absconded. Given this factual background, the court observed:

> "10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent…."

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. In **Deepak Gulati** this Court observed:

> "21. … 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.
>
> …
>
> 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."
>
> (Emphasis supplied)

17. In **Uday** v **State of Karnataka, (2003)4 SCC 46** the complainant was a college going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors:

> "25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. **Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that**

> **the consent was given inconsequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant.** She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. **The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact.** On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. **They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love.** It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married…"
>
> (Emphasis supplied)

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.

12. If the allegations made in the FIR are considered in the light of the law laid down by the Supreme Court with regard to the scope of interference as well as the provisions of section 90 of the I.P.C. it is clear that although the initial act of the applicant may be with the consent of the respondent no.2 but with the passage of time the things started changing and the applicant started pressurizing and misbehaving with the respondent no.2 and not only he was in habit of demanding salary of the respondent no.2 but when she refused to do so then he used to beat her mercilessly. When the respondent no.2 decided to call off the relationship, then he not only threatened the respondent no.2 to defame her in the society but also started sending their joint photographs to the family members of the respondent no.2.
13. It is true that in order to find out as to whether there was any misconception of fact or not, this court is required to see as to whether the intention of the applicant right from the very beginning was to ditch the complainant or it is a case of breach of promise of marriage, but in the present peculiar facts and circumstances of the case it is clear that intention of the applicant became dishonest when he not only

started demanding salary of the respondent no.2 but also started pressurizing her to leave her job as well as he also started beating her mercilessly. When the respondent no.2 decided to discontinue with the relationship then he not only tried to defame her in the society by sending their joint photographs to the family members of the respondent no.2 but also threatened her that he would commit suicide.

14. Under these circumstances, this Court is of the considered opinion that prima facie the allegations made against the applicant would be covered by section 90 of the I.P.C. and the consent obtained by the applicant for having physical relationship with the respondent no.2 was obtained by misconception of fact because for every act of physical relationship an independent and separate consent is required.

15. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

HS