

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
JUSTICE SUJOY PAUL**

**ON THE 28<sup>th</sup> OF NOVEMBER, 2022**

**MISC. CRIMINAL CASE NO.11231 OF 2022**

**BETWEEN :-**

**KRUNAL HARISH WASNIK S/O  
HARISH WASNIK, AGED ABOUT 32  
YEARS, OCCUPATION : SERVICE,  
R/O WARD NO.26, FULFAIL,  
WARDHA DISTRICT WARDHA  
(MAHARASHTRA).**

**....PETITIONER**

***(BY SHRI DHEERAJ BHOYAR, ADVOCATE)***

**AND**

**1. THE STATE OF MADHYA  
PRADESH THROUGH THE  
STATION HEAD OFFICER, WOMEN  
POLICE STATION CHHINDWARA,  
DISTRICT CHHINDWARA (M.P.)**

**2. SMT. PRATIKSHA W/O BADAL  
KUMAR KAUL, AGED ABOUT 37  
YEARS, OCCUPATION : TEACHER,  
R/O WARD NO.47, NEAR MODERN  
PUBLIC SCHOOL, MAHUA TOLA  
CHHINDWARA, DISTRICT  
CHHINDWARA (M.P.)**

**....RESPONDENT**

***(BY SHRI AMIT BHURRAK, PANEL LAWYER FOR RESPONDENT NO.1/STATE AND SHRI R. C. SHARMA, ADVOCATE FOR RESPONDENT NO.2)***

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**ORDER**

This petition filed under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.') takes exception to the First Information Report dated 22/09/2021, whereby offence under Section 376(2)(n) of the IPC was registered against the applicant.

2. The case of the applicant is that respondent No.2 preferred a written complaint dated 21/09/2021 before the concerned Police Station at Chhindwara. The said complaint was reduced in writing in the shape of impugned FIR. If the averments/allegations of FIR are read and accepted as such, no offence under Section 376(2)(n) of the IPC is made out.

3. To elaborate, learned counsel for the applicant submits that as per the story narrated in the FIR/complaint, the applicant met with respondent No.2 in a marriage in Wardha in the year 2016. Thereafter, applicant and respondent No.2 remained in touch on Facebook. During their chatting in the Facebook, they exchanged their phone numbers and thereafter started conversation on phone as well. Respondent No.2 informed the applicant that his grandfather expired and thirteen day ritual is scheduled on 02/06/2021.

Respondent No.2 further informed the applicant that on the said date, her family members including her two children will go to Chandia District Umariya. Since, applicant could not get leave from her Department, she will remain at home. The applicant approached her on 31/05/2021 at 10:00 P.M. and she permitted him to remain with her and both of them developed physical relation. The applicant went back on 02/06/2021 to Mumbai.

4. As per the story, the applicant gave her an impression that he will marry her. Later on, when respondent No.2 insisted for marrying her, applicant informed that he is already a married person.

5. Learned counsel for the applicant submits that FIR itself shows that respondent no.2 is a married woman having two children. This can further be substantiated on plain reading of her statement recorded under Section 164 of the Cr.P.C., wherein she mentioned the name of her husband as Badal Kumar Kaul. In her another statement recorded under Section 161 of Cr.P.C. she not only mentioned the name of husband, she mentioned the names of both the sons as Ishan Kaul and Rehan Kaul.

6. The principal issue raised by learned counsel for the applicant is that if facts and story narrated in the FIR is accepted on its face value, it does not attract Section 376(2)(n) of IPC. In support of his submissions, he placed reliance on **(2003) 4 SCC 46 (Uday Vs. State of Karnatka)** and **(2013) 9 SCC 293 (Prashant Bharti Vs. State (NCT of Delhi))**.

7. *Per contra*, Shri Amit Bhurak, learned P.L. supported the FIR and submits that at this stage no interference is warranted. Shri Bhurak placed reliance on Gwalior Bench order passed in **M.Cr.C. No. 10486 of 2017 (Kishore Kumar Arya Vs. State of M.P. and Another)**. It's a common ground taken by Government counsel and counsel for respondent No.2 that applicant may be directed to face the trial and if he is innocent and has not committed any offence he will be exonerated. The trial Court is best suited to decide the matter after recording the evidence of the parties.

8. The parties confined their arguments to the extent indicated above.

9. I have heard the parties at length and perused the record.

10. The Apex Court way back in State of **Haryana Vs. Bhajan Lal 1992 suppl (1) 335**, gave certain illustrations in which interference can be made in exercise of power under Article 226 of the Constitution or under Section 482 of Cr.P.C. The First test reads as under-

“(1) Whether the allegations made in the first information report of 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.”

**(Emphasis supplied)**

11. As noticed above, the whole case of applicant is based on this first illustration. A plain reading of FIR makes it clear that-

(a). The applicant and respondent No. 2 both are major.

(b). Both are married.

(c). Applicant was entertained by respondent No. 2 on her own volition and they developed physical relation.

In this backdrop, it is to be seen whether applicant can be compelled to undergo rigmarole of the criminal proceedings.

12. In the case of **Uday (supra)**, the Apex Court opined as under :-

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

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 in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent."

**(Emphasis supplied)**

**13.** In **Prashant Bharti (supra)**, a FIR No. 47/2007 was subject matter of challenge. It is apt to quote relevant para, which reads as under:-

“17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23-9-2008 reveals that the complainant/prosecutrix was married to Lalji Porwal on 14-6-2003. It also reveals that the aforesaid marriage subsisted till 23-9-2008, when the two divorced one another by mutual consent under Section 13-B of the Hindu Marriage Act. In her supplementary statement dated 21-2-2007, the complainant/prosecutrix accused Prashant Bharti of having had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23-9-2008 produced before us by the

complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21-2-2007, it would clearly emerge that the complainant/prosecutrix was in a relationship of adultery on 23-12-2006, 25-12-2006 and 1-1-2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

**(Emphasis supplied)**

**14.** In my judgment, the case of present applicant is much better than the case of **Uday** (supra) and **Prashant Bharti** (supra). In **Uday (Supra)**, the impediment on marriage was relating two different caste of persons whereas in **Prashant Bharti (supra)**, the inducement for marriage was held to be ununderstandable because accused person was a married person. In the instant case, the applicant and complainant both are admittedly married persons.

**15.** So far judgment of Gwalior Bench in **Kishore Kumar Arya (supra)** is concerned, suffice it to say that a simple reading of the order shows that in that case the applicant therein intended to rely on certain documents which were filed by him in his defence.

**16.** In the instant case, the applicant is not placing reliance on any defence document. Indeed, he is relying on the story of the prosecution as



such reduced in writing as FIR. Thus, judgment of **Kishore Kumar Arya, (supra)** is of no assistance to the respondents.

17. In the instant case, the question of misconception or misrepresentation does not arise. The applicant was fully aware that she is a married woman. Thus, by no stretch of imagination it can be assumed that she was given to understand by the applicant that he will marry her and because of that promise she developed physical relations with the applicant.

18. I find substance in the argument of learned counsel for the applicant that necessary ingredients for attracting Section 376 (2)(n) of IPC are missing in the instant case even if the allegations made in the FIR are accepted in toto. Resultantly, impugned FIR cannot sustain judicial scrutiny.

19. As a consequence, impugned FIR dated 22.09.2021 and criminal proceedings based thereupon are set aside.

20. The M.Cr.C. is **allowed**.

**(SUJOY PAUL)**  
**JUDGE**

