REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURSIDICTON

CRIMINAL APPEAL NO. 1443 OF 2018
(Arising out of S.L.P. (Criminal) No.6532 of 2018)

DR. DHRUVARAM MURLIDHAR SONAR ...APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ORS. ...RESPONDENTS

J U D G M E N T

S.ABDUL NAZEER, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 02.07.2018 in Criminal Application No.3590 of 2012, whereby the High Court of Judicature at Bombay (Bench at Aurangabad) dismissed the application filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for quashing the First Information Report No.59 of 2000 registered with Mhasawad Police Station, District Nandurbar, for the offences punishable under Sections 376 (2)(b), 420 read with Section 34 of the Indian Penal Code,

1860 (for short 'IPC') and under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC/ST Act') and the chargesheet filed in the court of judicial magistrate, F.C. Shahada, Nandurbar District.

3. The appellant is the accused No.1 in the aforesaid FIR, registered at the instance of the complainant/respondent No.4. At the relevant point of time, the appellant was serving as a medical officer, Primary Health Centre at Toranmal, Dhadgaon Taluq, Nandurbar District, whereas the complainant was working as an Assistant Nurse at the same establishment. The allegations made by the complainant in the FIR in brief are that her husband died on 05.11.1997, leaving behind her and her two children. During this time, the appellant informed her that there have been differences between him and his wife, and therefore, he is planning to divorce his wife. Further, the appellant informed the complainant that since they belong to different communities, a month is needed for the registration of their marriage. Therefore, she started living with the appellant at his Government quarters. The FIR further states that she had fallen in love with the appellant and that she needed a companion as she is a widow. Therefore, they started living together, as if they were husband and wife. They resided some time at her house and some time at the house of the appellant. The appellant acted as if he has married her

and has maintained a physical relationship with her. However, he has failed to marry her as promised. When things stood thus, his brother, i.e accused No. 2, claims to have married her. Thereafter, in the year 2000, complainant received the information from the co-accused about the marriage of the appellant with some other woman. Therefore, she filed the aforesaid complaint and FIR dated 06.12.2000 came to be registered against the appellant and the co-accused.

4. After the completion of the investigation, the investigating agency filed a final report on 14.06.2001. The appellant filed the criminal application under Section 482 before the High Court for quashing the FIR and the chargesheet. As noticed above, the High Court has dismissed the criminal petition by its order dated 02.07.2018.

5. Learned counsel for the appellant contends that in the instant case the process of the court is sought to be abused by the complainant with oblique motive. The criminal proceeding is manifestly intended with *mala fides* and the proceeding is maliciously instituted with an ulterior motive. It is submitted that the complainant was involved in relationship with the brother of the appellant and the appellant was not in relationship with her at any point of time. As a matter of fact, marriage was solemnized between the brother of the appellant and complainant. The complainant was

constantly blackmailing the appellant for some reason or the other. It is submitted that even if the entire allegations made in the complaint are taken at their face value and accepted in its entirety, such allegations do not constitute any offence.

6. On the other hand, learned advocate appearing for respondent Nos.1 to 3 has sought to justify the impugned order.

7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record.

8. It is well settled that exercise of powers under Section 482 of the Cr.P.C. is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions "abuse of process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.

9. This Court in **State of Haryana and Ors.** v. **Bhajan Lal and Ors.** 1992 Supp (1) SCC 335, has elaborately considered the scope and ambit of Section 482 Cr.P.C. Seven categories of cases have been

enumerated where power can be exercised under Section 482 of Cr.P.C. Para 102 thus reads:

> "*102*. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (*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.
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> (*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.
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> (*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.
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> (*6*) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, 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."

10. In **Rajesh Bajaj** v. **State NCT of Delhi & Ors**., (1999) 3 SCC 259, this Court has held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. If the factual foundation for the offence has been laid in the complaint, the court should not hasten to quash criminal proceedings during the investigation stage merely on the premise that one or two ingredients have not been stated with details.

11. In **State of Karnataka** v. **M. Devendrappa and Anr**., (2002) 3 SCC 89, it was held that while exercising powers under Section 482 Cr.P.C., the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It was further held as under:-

> "It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto".

12. Recently, in **Vineet Kumar and Ors.** v. **State of Uttar Pradesh and Anr.** (2017) 13 SCC 369, this Court has observed as under:

> "Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. Judicial process is a solemn proceeding which cannot be allowed to

> be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding. The present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

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

13. In the instant case, FIR was registered against the appellant and the co-accused under Sections 376(2)(b), 420 read with Section 34 of the IPC and under Section 3(1)(x) of the SC/ST Act. Section 376(2)(b) prescribes punishment for the offence of rape committed by a public servant taking advantage of his official position on a woman in his custody as such public servant or in the custody of a public servant subordinate to him. The said provision during the relevant point of time was as under:-

"**376. Punishment for rape.-**
(1) .....
2. Whoever,—
(a) .....
(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
(c) to (g) .....

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine."

14. Section 375 defines the offence of rape and enumerates six descriptions of the offence. The first clause operates where the women is in possession of her senses and, therefore, capable of consenting but the act is done against her will and the second where it is done without her consent; the third, fourth and fifth when there is consent but it is not such a consent as excuses the offender, because it is obtained by putting her, or any person in whom she is interested, in fear of death or of hurt. The expression "against her 'will'" means that the act must have been done in spite of the opposition of the woman. 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.

15. Section 90 of the IPC defines "consent" known to be given under fear or misconception:-

> "**Section 90:**
> **Consent known to be given under fear or misconception**.—A consent is not such a consent as it 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"

Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

16. In **Uday** v. **State of Karnataka** (2003) 4 SCC 46, this Court was considering a case where the prosecutrix, aged about 19 years, had

given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus:-

> "**21.** It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.
>
> **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."

17. In **Deelip Singh alias Dilip Kumar** v. **State of Bihar**, (2005) 1 SCC 88, the Court framed the following two questions relating to consent:-

> (1) "Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?
>
> (2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her"?

In this case, the girl lodged a complaint with the police stating

that she and the accused were neighbours and they fell in love with each other. One day in February, 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time. With this factual back-ground, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus:-

> "The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt

> that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in *Uday case* at para 24 come to the aid of the appellant".

18. In **Deepak Gulati** v. **State of Haryana**, (2013) 7 SCC 675, the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she

went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be leveled against the accused.

19. Recently, this Court, in **Shivashankar @ Shiva** v. **State of Karnataka & Anr**., in Criminal Appeal No.504 of 2018, disposed of on 6th April, 2018, has observed that it is difficult to hold that sexual intercourse in the course of a relationship which has continued for eight

years is 'rape', especially in the face of the complainant's own allegation that they lived together as man and wife. It was held as under:-

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

20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had

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

21. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that the is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant

had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained.

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

23. In the result, the appeal succeeds and is accordingly allowed. The impugned order of the High Court dated 02.07.2018 in Criminal Application No.3590 of 2012, is hereby set aside. The First Information Report dated 6.12.2000 filed by the complainant in the Police Station at Mhasawad, District Nandurbar, on the basis of which Crime No.59 of 2000 is registered against the appellant, is hereby quashed.

The chargesheet dated 14.06.2001 filed by Mhasawad Police Station against the appellant for the offences under Sections 376 (2)(b), 420 read with Section 34 of the IPC and Section 3(1)(x) of the SC/ST Act is also quashed.

.....J.
(A.K. SIKRI)

.....J.
(S. ABDUL NAZEER)

New Delhi;
November 22, 2018.