

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Revision No. 524 of 2024****Reserved on: 21.03.2025****Date of Decision: 07.05.2025.**

Raj Kumar Sharma**...Petitioner****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ Yes.*****For the Petitioner : Mr. B.L. Soni, Advocate.****For the Respondent : Mr. Ajit Sharma, Additional
Advocate General.**

Rakesh Kainthla, Judge

The petitioner (accused before the learned Trial Court) has filed the present revision against the order dated 28.6.2024, passed by learned Additional Sessions Judge, Fast Track Court (Rape/POCSO), Sirmour District at Nahan, H.P. (learned Trial Court), vide which the charges were ordered to be framed against the petitioner for the commission of offences punishable under Sections 376(2) (n) and 417 read with Section 34 of the Indian

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Penal Code (IPC) and Section 4 of Dowry Prohibition Act, 1961. *(The parties shall hereinafter be referred to in the same manner as they are arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present case are that the informant (name being withheld to protect her identity) was studying with the accused. The accused visited the informant's house. He and his mother settled the marriage between the accused and the informant in the year 2014. It was agreed that the marriage would be solemnised after 2-3 years because the petitioner's family was constructing a house. The petitioner and the informant remained in touch. The informant was to take an examination in 2015 at Shimla. The accused offered to accompany her to Shimla. Both of them stayed in the hotel. The accused forced the informant to maintain sexual relations with him. The betrothal ceremony was solemnised between the accused and the informant. The informant went to the house of the accused, where his parents asked her to appear in a competitive examination to get a good job. She went to Chandigarh for coaching. The accused used to visit her at Chandigarh. He took her to a hotel and maintained physical relations with her. The mother of the accused called the

informant after one and a half months to select the ornaments. She left the home. The accused and the informant were alone in the home. The accused asked her to establish physical relations with her. When she refused, the accused gave her beatings. The marriage was to be solemnised on 28.2.2017, but could not be solemnised due to some mishap in the family of the petitioner. The accused was transferred to Gwalior, and this fact was not revealed to the informant. The informant revealed her physical relationship with the accused to his family members. They abused her. The accused admitted physical relationship with the informant. The parents of the accused assured to get them married in 2019. The date of marriage was postponed to 2020-21. The informant's mother and Up-Pradhan went to the house of the accused. The family members of the accused demanded ₹5.00 lacs and a vehicle. The victim's father sold his land located at Kala Amb to meet the demand of the accused. The matter was reported to the police. The police registered the FIR and conducted the investigation. It was found after the investigation that the accused had constructed their house after taking a loan of ₹27,90,000/-. The result of the analysis did not show any blood or semen on the material objects collected by the police; however,

human blood was detected on the informant's blood sample, and human semen was detected on the smegma slide of the accused. It was found after the investigation that the accused was not serious about the marriage. He made a false promise to marry the informant and maintained sexual relations with her. The parents of the accused demanded dowry of ₹5.00 lacs and a vehicle; therefore, the charge sheet was filed before the Court.

3. Learned Trial Court framed a charge against the accused Raj Kumar for the commission of offences punishable under Sections 376(2)(n) and 417 read with Section 34 of IPC and Section 4 of the Dowry Prohibition Act.

4. Being aggrieved from the order framing the charges, the petitioner has filed the present petition asserting that the learned Trial Court erred in framing the charges. There was no material in the charge sheet justifying the framing of charges. The victim was 30 years old, well-read, mature, and a rational person. She voluntarily indulged in the sexual act with the accused. The marriage was settled in 2014. The betrothal ceremony took place in 2015, and the marriage was to be performed in 2019. The relationship was consensual for more

than 5 years. There is no material on record to show that the victim was misled by the petitioner. Dinesh Thakur, Up-Pradhan, did not state that the accused, Raj Kumar, demanded ₹5.00 lacs or a car. The accused was not present in the home at that time. There is no material which can be converted into legally admissible evidence. Therefore, it was prayed that the present petition be allowed and the order framing charges be set aside.

5. A status report reproducing the contents of the FIR and outlining the various steps taken by the prosecution was filed.

6. I have heard Mr. B.L. Soni, learned counsel for the petitioner and Mr. Ajit Sharma, learned Deputy Advocate General for the respondent/State.

7. Mr. B.L. Soni, learned counsel for the petitioner, submitted that the relationship between the parties was consensual. There is no material on record to show that the intention of the petitioner was dishonest from the beginning. Learned Trial Court erred in framing the charge. He relied upon the judgments titled *Mauvin Godinho Vs. State of Goa AIR 2018 SC 749*, *Sonu @ Subhash Kumar Vs. State of U.P. AIR 2021 SC 1405*, *Sheikh Arif Vs. State of Maharashtra and another, AIR 2024 SC 710*,

Shiv Pratap Singh Rana Vs. State of Madhya Pradesh, Crl. Appeal No. 1552 of 2023, Shailendra Kumar Yadav Vs. State, Cr. Revision Petition No. 175 of 2021 and Crl. MA No. 6024 of 2021, decided on 5.4.2022, Dipak Bhai Jagdish Chandra Patel Vs. State of Gujarat 2019 (16) SCC 547 and Suresh Budharmal Kalani alias Pappu Kalani Vs. State of H.P. Maharashtra 1998 (7) SCC 337 in support of his submission.

8. Mr. Ajit Sharma, learned Deputy Advocate General, for the respondent-State, submitted that the petitioner had made a false promise to marry the victim. He entered into a physical relationship with her. A *prima facie* case is sufficient to frame charges against the accused. The material on record was sufficient to show the existence of a *prima facie* case. Hence, he prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It was laid down by the Hon'ble Supreme Court in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294 that at the time of framing of the charge the Court has to see the material collected by the prosecution to determine whether a case has been made out for proceeding with the trial or

not. It is not necessary to examine the defence of the accused. It was observed: –

7. It is trite law that the application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of the charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge, would suffice, and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that the accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing the charge and taking cognisance, the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of the charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge, which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be

considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court in determining whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing to oral hearing and oral arguments only, and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in *State of Tamil Nadu v. N. Suresh Rajan*, (2014) 11 SCC 709, advertent to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, the probative value of the materials has to be gone into, and the court is not expected to go deep into the matter and hold that the materials would not

warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini-trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and the *State of MP v. Mohan Lal Soni*, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

11. As per the complaint, the accused demanded ₹5.00 lacs and a big vehicle. The police recorded the statement of the victim's mother, who stated that she and Up-Pradhan Dinesh Thakur went to the house of the accused, where Roop Chand stated that he required money and the money was not paid to him. The mother of Raj Kumar demanded ₹5.00 lacs and a vehicle. She narrated this incident to her husband. Dinesh Thakur stated that the father of the accused, Raj Kumar, stated that he needed money and no money was given to him. The mother of the accused, Raj Kumar, said that they would require 5.00 lacs and one vehicle, which would improve their financial condition. Thus, it is apparent that as per the statements of eyewitnesses, the demand was not made by Raj Kumar, and there was no material before the learned Trial Court to frame charges against the petitioner/accused Raj Kumar for the commission of an offence punishable under Section 4 of the Dowry Prohibition Act.

12. The victim asserted that she entered into a relationship with the accused because he had promised to marry her. The law related to the promise to marry and rape was considered by Hon'ble Supreme Court in *Mahesh Damu Khare Vs. State of Maharashtra* 2024 SCC OnLine SC 3471 and it was held that

where a person acts after knowing about its consequences, it indicates her consent. When the prosecution alleges that a sexual relationship was maintained by making a false promise, such a physical relationship must be traceable directly to the false promise made and not qualified by other circumstances. When the relationship continued for a prolonged period, it cannot be said that the same was a result of a promise to marry; it was observed: -

“22. In our view, if a man is accused of having a sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have a physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where the physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was a vitiation of consent under the misconception of fact.”

13. It was also held that when the promise to marry was made initially, but a person was not able to fulfil the promise, it

would not fall within the definition of a false promise, attracting the penal provision of Section 375 of the IPC. It was observed: -

“24. It may also be noted that there may be occasions where a promise to marry was made initially, but for various reasons, a person may not be able to keep the promise to marry. If such a promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

25. In the present case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant. Making an allegation of non-fulfilment of a promise to marry without undue delay by the promisee would, on the other hand, be an indicator of a false promise being made from the initial stage. In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false promises to marry her on the basis of which she also continued to have physical relationship with him.”

14. It was ultimately held that the continuation of the relationship for nine long years would make the plea that there was a promise to marry improbable. It was held: -

“28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been

brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such a false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect, takes out the sting of criminal culpability and neutralises it.”

15. In the present case, the victim stated that the marriage was settled in the year 2014. The physical relations were maintained in 2015. The date of marriage was fixed on 28.2.2017, but the marriage could not be performed due to a mishap. The marriage was fixed in the year 2019, and a demand was made in 2021. There is not even a single averment made in the complaint that the accused had refused to marry the victim or that the marriage between them has become impossible. The fact that the parties maintained a relationship for five long years would make it difficult to hold that the sexual relationship was based upon a promise to marry. Therefore, the learned Trial Court was not justified in framing the charges for the commission of an offence punishable under Section 376(2)(n) of IPC.

16. Learned Trial Court framed the charges for the commission of an offence punishable under Section 417 of IPC, stating that the accused obtained ₹5.00 lacs at the time of construction of the house by making a promise to marry the victim. There is no recital in the FIR or the charge sheet that ₹5.00 lacs were demanded at the time of construction of the house. It was only stated that a demand of ₹5.00 lacs was made by the accused. The statement of the victim's mother nowhere shows that ₹5.00 lacs were paid by her. Therefore, there was no material for framing charges in the commission of an offence punishable under Section 417 of the IPC.

17. Consequently, the learned Trial Court erred in framing the charges against the petitioner for the commission of offences punishable under Sections 376(2)(n) and 417 read with Section 34 of the IPC and Section 4 of the Dowry Prohibition Act, 1961 against the petitioner Raj Kumar.

18. Hence, the present revision is allowed, and the order dated 28.6.2024, passed by the learned Trial Court, is ordered to be set aside. The present petitioner/accused shall stand discharged.

19. The observation made hereinabove shall be confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

7th May, 2025
(Chander)