

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CRMC No. 512/2017, IA Nos. 01/2018, 02/2018, 01/2017

Date of order: 14.12.2018

Sunil Kumar

vs

State of J&K and anr.

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For Petitioner(s) : M/s Sanjay Sharma and G. S. Thakur Advocates.

For respondent (s) : Mr. Vishal Bharti, Dy.AG for respondent No.1.

Ms Monika Kohli, Advocate for respondent No.2.

- i) Whether to be reported in Digest/Journal : Yes/No.
- ii) Whether approved for reporting in Press/Media : Yes/No.
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1. Petitioner invokes the inherent jurisdiction of this Court under section 561-A Cr.P.C. to seek quashing of FIR No.50/2017 registered with the Police Station, Ghagwal for commission of offences under Sections 376/506 RPC on the complaint of respondent No.2 who got the FIR registered in terms of Section 156(3) Cr.P.C on the directions of Learned Chief Judicial Magistrate, Samba by alleging that she was subjected to sexual assault on the marriage promise which the petitioner deny though there was marriage proposal, but the petitioner after coming to know about the antecedent of the respondent No.2 refused the marriage proposal and there was no relation between the petitioner and respondent No. 2.
2. The case of the petitioner is that he who belongs to respectable family and is serving in the Indian Army recruited in the year 2012 in 5 JAKLI, after recruitment the petitioner underwent initial training for a period of two years without any break. Thus, in the year 2016, there was marriage proposal from the parents of the respondent No.2 which the parents of

the petitioner agreed and marriage was to be solemnized in the month of June, 2017. During this period, the petitioner came to know from the respondent No. 2 herself who while making telephonic conversation admitted to have a love affair with somebody else and narrated her physical relation with that person. On knowing this fact, the petitioner refused the marriage proposal upon which the respondent No.2 and her parents started insisting for marriage and threatened the petitioner to implicate him for the commission of offence. It is stated that petitioner is having the telephonic recording in order to substantiate this plea. Thus, there was no physical relationship between the petitioner and respondent No.2 as alleged in the complaint.

3. Learned counsel for the petitioner states that respondent No.2 filed a complaint before the Chief Judicial Magistrate, Samba. The learned Magistrate on the basis of the said complaint directed SHO Police Station, Ghagwal to register an FIR for commission of offence under Sections 376/506 RPC. The petitioner challenges the said FIR No.50/2017 registered with the Police Station, Ghagwal for commission of offences under Sections 376/506 RPC on the following grounds:-

- i) ***That the FIR is misuse of process of law. The petitioner alleged in the complaint that she was subjected to sexual assault and was in love affair with the petitioner since 2010 having friendly relation and love affair constantly for seven years and have the physical relationship and subsequently agreed to solemnize the marriage. All the ceremonies were completed. However, subsequently the petitioner allegedly refused to marry with the respondent. It is submitted that respondent No.2 who is elder than the petitioner and is a mature lady developed the relationship with the petitioner and also alleged in the complaint that she used to stay with the petitioner and visited at various places of Himachal Pradesh, Katra and Patnitop. In such circumstances, no offence under Section 376 RPC is made out. Even if it is assumed without admitting this fact that there was friendly relationship between petitioner and respondent No.2 even***

then from the allegations leveled in the complaint be taken as it, no offence under Section 376 RPC is made out. The Hon'ble Supreme Court in case titled Tilak Raj Vs. State of Himachal Pradesh reported in 2016 (4) SCC 140 has held that the evidence as a whole including the FIR and testimony of the prosecutrix clearly indicates that the story of prosecutrix regarding sexual intercourse on false pretext of marrying her concocted and not believable. It is the admitted case that she was in relationship with the petitioner for the last seven years and the petitioner used to stay overnight at her residence, under these circumstances the offence cannot be said to have been made out because of the reason that from the bare perusal of the complaint it transpires that she was the consenting party, elder than the petitioner. Therefore, the FIR is liable to be quashed.

ii) *That the FIR is otherwise liable to be quashed on the ground that there is no allegations against the petitioner that there was forcible act on the part of the petitioner which constitute an offence within the meaning of Section 37/ 506 RPC. "It has been time and again held by the Hon'ble Supreme Court in number of cases that the allegations of sexual the accused persons and in fact discloses the commission of offence which prima facie discloses that a case under Section 376/506 RPC is being established" Therefore the proceeding are unwarranted and liable to be quashed.*

iii) *iii) That the FIR is otherwise liable to be quashed on the ground that the present complaint has been filed as a counter blast against the petitioner in order to pressurize to solemnize the marriage. As already submitted the respondent No.2 have the physical relation with somebody else which confessed during the telephonic conversation which made the petitioner to refuse the marriage even after Ring ceremony. The respondent in order to pressurize the petitioner to marry with her filed the complaint. Therefore, no offence can be said to have been committed by the petitioner. As such the impugned FIR is liable to be quashed.*

iv) *That the present FIR is otherwise liable to be quashed*

in view of the fact that it does not constitute an offence within the meaning of Section 376/506 RPC.

4. The respondent No. 2 has filed objections. In the objections, it is stated that in filing the instant petition, the petitioner has proceeded on false and baseless assumptions, both in law and on facts. It is further averred that the petitioner and respondent No. 2 came to know each other way back in the year 2010 and they were in courtship since then, which was subsequently followed by engagement (Shagun Ceremony), solemnized at Chichi Mata Mandir, Nandni Hils Samba on 10.02.2017 and date of marriage had also come to be fixed for 11.11.2017. It is further averred that during the course of such courtship, and even after the engagement, exploiting the vulnerability of weaker sex on assurance of marriage the petitioner acting fraudulently and dishonestly by way of inducement subjected the respondent No. 2 to sexual exploitation and intermittently took her to out stations like Mc Lodgunj, Dharamshala, Patnitop, Katra and to Jammu city also to satisfy his sexual lust. Respondent No.2 has also furnished cell Phone Numbers of the petitioner and of her to the Investigating Officer to ascertain the factum of their being in continuous touch and chatting with each other. The further stand in the objections is that the very fact of petitioner's disowning to know the respondent No.2 and instead propounding a story that it is going to be an arranged marriage, in the wake of all the aforesaid, falsifies the very edifice of the petition of the petitioner.
5. In support of his contention, learned counsel for the petitioner has relied upon **2013 AIR (SC) 2753, Prashant Bharti vs. State of NCT of Delhi; and 2017 (6) JKL HC 223, titled Roshan Sharma vs. State of J&K and ors.**

6. On the other hand, learned counsel for respondent no.2 has relied upon a decision of the Hon'ble Supreme Court reported in **2013 AIR (SC) 384, State of U.P. vs. Naushad**, wherein it is held that sexual intercourse committed by accused with victim and if consent given by her on false assurance of marriage and after that she became pregnant- it will amount to rape.
7. I have considered the rival contentions and law on the subject.
8. Before dealing with the facts of the present case, it would be appropriate to note the law laid down by the Supreme Court in the decision reported as **(2013) 3 SCC 330 Rajiv Thapar & Ors. Vs. Madan Lal Kapoor** wherein while laying down the guidelines for quashing of a FIR and the proceedings pursuant thereto in exercise of its power under Section 482 Cr.P.C. by the High Court, the Supreme Court delineated the steps to be taken to determine the veracity of prayer as under:

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably

refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. 30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC: 30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality? 30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false? 30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant? 30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? 30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

9. Following the decision in **Rajiv Thapar's** case (supra), Supreme Court in the decision reported as **(2013) 9 SCC 293 Prashant Bharti Vs. State (NCT of Delhi)** dealing with a similar fact situation noting the facts of the complaint therein, material collected in investigation and placed by the accused therein, quashed the FIR, held as under:

"23. The details in respect of each aspect of the matter, arising out of the complaints made by Priya on 16-2-2007 and 21-2-2007 have been examined in extensive detail in the foregoing paragraphs. We shall now determine whether the steps noticed by this Court in the judgment extracted hereinabove can be stated to have been satisfied. Insofar as the instant aspect of the matter is concerned, the factual details referred to in the foregoing paragraphs are being summarized hereafter: 23.1. Firstly, the appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15-2-2007.

He was at Noida before 7.55 p.m. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh, etc. From 9.15 p.m. to 11.30 p.m. on 15-2-2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the appellant-accused was found to be correct by the investigating officer on the basis of his mobile phone call details. The accused was therefore not at the place of occurrence, as alleged in the complaint dated 16-2-2007.

23.2. Secondly, verification of the mobile phone call details of the complainant/prosecutrix Priya revealed, that on 15-2-2007, no calls were made by the appellant-accused to the complainant/prosecutrix, and that, it was the complainant/prosecutrix who had made calls to him.

23.3. Thirdly, the complainant/prosecutrix, on and around the time referred to in the complaint dated 16-2-2007, was at different places of New Delhi i.e. in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlaqabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. The complainant was also not at the place of occurrence, as she herself alleged in the complaint dated 16-2-2007.

23.4. Fourthly, at the time when the complainant/prosecutrix alleged that the appellant-accused had misbehaved with her and had outraged her modesty on 15-2-2007 (as per her complaint dated 16-2-2007), she was actually in conversation with her friends (as per the verification made by the investigating officer on the basis of her mobile phone call details).

23.5. Fifthly, even though the complainant/prosecutrix had merely alleged in her complaint dated 16-2-2007 that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (made on 21-2-2007), levelled allegations against the accused for the offence of rape.

23.6. Sixthly, even though the complainant/prosecutrix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi Police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16-2-2007 and 21-2-2007), she had suggested that she was unmarried.

23.7. Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23-9-2008, the complainant was married to Lalji Porwal on 14-6-2003. The aforesaid marriage subsisted till 23-9-2008. The allegations made by the complainant dated 16-2-2007 and 21-2-2007 pertain to occurrences of 23-12-2006, 25-12-2006, 1-1-2007 and 15-2-2007 i.e. positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30-9-2008. This is evidenced by a "certificate of marriage" dated 30-9-2008. In view of the 561-A Cr.P.C. No.41 of 2015 Page 8 of 15 aforesaid, it is apparent that the complainant could not have been induced into a physical relationship based on an assurance of marriage.

23.8. Eighthly, the physical relationship between the complainant and the accused was admittedly

consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated 30-9- 2008, indicating her date of birth as 17- 7-1986. 23.9. Ninthly, as per the medical report recorded by AIIMS dated 16-2-2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16-2-2007 it was observed that blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations levelled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence. 23.10. Tenthly, the factual position indicated in the charge sheet dated 28-6-2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the complainant had consumed the same. The allegations made by the complainant could not be verified even by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28-6-2007. 23.11. Eleventhly, as per the medical report recorded by AIIMS dated 21-2-2007 the assertions made by the complainant that the accused had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007, cannot likewise be verified as opined in the medical report, on account of delay between the dates of occurrences and her eventual medical 561-A Cr.P.C. No.41 of 2015 Page 9 of 15 examination on 21-2-2007. It was for this reason, that neither the vaginal smear was taken, nor her clothes were sent for forensic examination. 24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge-sheet dated 28-6- 2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC. 25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar case [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High

Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied that the first information report registered under Sections 328, 354 and 376 of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1-12-2008, deserves to be quashed. The same are accordingly quashed."

10. In present case, complainant/prosecutrix, who is major as her date of birth is 25.3.1991, filed a criminal complaint before CJM Samba against petitioner herein for commission of offences 376/506 RPC. The relevant contents of complaint reads as under:-

“2. *That the accused person came to know way back in 2010 and developed friendship in the same year which further leads to love affairs. Accused then used to meet the applicant/complainant as and when the applicant went to her School. The applicant then left her studies after completing the 12 Class, owing to her financial condition but despite this the accused used to meet talk and chat with the applicant/complainant.*

3. *That the accused person in 2012, selected as Constable in Indian Army and then insisted the applicant for marriage but she declined owing to her age. The accused then insisted the applicant for the further studies as he wants to marry her at any cost. The applicant/complainant started her studies at the instance of accused person and presently doing her graduation 3rd year at Degree College, Samba. The accused has shown all his loyalty, love and affection towards the applicant/complainant during all this period.*

4. *That in 2013 when the mother of applicant/complainant expired the parent of the accused person agreed to marriage despite the applicant/complainant having a different caste. The applicant/complainant then fully assured that he will enter into marital tie with the accused person. The accused person in 2014 took the applicant/complainant to Mc. Lodganj (HP), again assured for marriage and on account of this developed physical relations with her. The accused person had again fully assured the applicant/complainant that he will marry her. The applicant/complainant then gets pregnant and was duly treated by the accused. The applicant/complainant then person again in 2015-16 took the applicant/complainant to Dharamshalla and Mc. Lodganj, where they again developed physical relations. She was again taken to Patnitop and Katra by the accused person and developed the physical relations. The accused persons even took the applicant/complainant to his house on occasion when his family was out of station. It is*

pertinent to mention here that as and when accused person came on leave he used to meet the applicant/complainant here and there and developed physical relations on assurance that he will marry her.

5. *That in September 2016 the applicant/ complainant see a change in the behavior of the accused when he told the complainant that he is delaying his marriage owing to his posting but the applicant/complainant did not accede and demanded marriage without any unnecessary delay. The accused despite this shows reluctance for the same however she is able to convince him and thereafter the accused agreed and accordingly shagun ceremony was organized on 10.2.2017 at Chichi Mata Mandir nadni Hills samba and marriage was fixed for 11.11.2017.*

6. *That a week after the shagun ceremony the applicant complainant again see change in the behavior of the accused person and started avoiding the applicant, the accused avoid chatting and calls of the applicant complainant and to utter surprise the applicant complainant stunned when father of the accused person decline to marry. The applicant in hurry again called the accused and the applicant was slapped with only decision of refusal. The applicant complainant made request and tried her level best to convince him and even reminds of his relation with applicant complainant. The accused person did not listen and paid any heed to request of the applicant-complainant and flatly refused to marry. The applicant complainant then reminds him of legal action and on this he threatens for dire consequences.*

7. *That, accused person enticed and elude the applicant-complainant for marriage and developed physical relations and physically exploited for more than seven years. The accused person had fraudulently taken consent of the applicant complainant and has time and again committed rape of the applicant-complainant. It is pertinent to mention here that applicant complainant has consented her physical relation with the accused person only on account that the accused will marry her. The accused has sexually abused applicant complainant.*

11. This complaint was sent to police of police station P/S Gagwal for investigation u/s 156(3) Cr.P.C. and accordingly FIR No.50/2017 u/s 376/506 RPC was registered on 02.05.2017.
12. From bare perusal of contents of complaint, it is apparent that there is no specific mention of date, time and place of alleged rape. General allegations have been leveled that accused has committed sexual intercourse with the complainant in 2014 when he took her to Mc. Lodganj (HP), where he assured for marriage and on account of this

developed physical relations with her; that complainant then got pregnant and was duly treated by the accused; that again in 2015-16 accused took her to Dharamshalla and Mc. Lodganj, where they again developed physical relations; that she was again taken to Patnitop and Katra by the accused person and developed the physical relations; that whenever accused person had come on leave he used to meet the applicant/complainant here and there and developed physical relations on assurance that he will marry her.

13. All allegations of sexual relationship have been leveled on the ground that accused promised to marry with the complainant. If one carefully examines the contents of complaint it is evident that complainant has admitted the fact of her relationship with accused since 2010 and there was a love affair between them; Complainant has admitted that she started her studies at the instance of accused person and presently doing her graduation 3rd year at Degree College, Samba. The accused has shown all his loyalty, love and affection towards the applicant/complainant during all this period. She has also admitted her shagun ceremony took place on 10.2.2017 at Chichi Mata Mandir nadni Hills Samba; she has also stated that marriage was fixed for 11.11.2017; as per complainant accused has refused to solemnize marriage now.
14. Under Ranbir Penal Code, Section 375(4) states that a man is said to have committed rape if he has sexual intercourse with a woman “with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Now-a-days there are cases where boy and girl having love affair, indulging into sexual relationship and ultimately ending into a breakup. Undoubtedly that amounts to consensual sexual relationship as they were in love with each other. In a case of rape, the act of sexual intercourse is forcible and without consent

of the woman. However, the consent obtained by fraud amounts to no consent and therefore, if there is sexual intercourse with consent but obtained by fraud, it amounts to rape. When a woman is major and educated, she is supposed to be fully aware of the consequences of having sexual intercourse with a man before marriage. In the event of consent obtained by fraud, inducement is a necessary ingredient. There should be some material on record to believe prima facie that the girl was induced by the accused to such an extent that she was ready to have sexual intercourse with him. Promise to marry cannot be said to be an inducement in all cases, it differ from facts of case. Thus, promise to marry in all cases cannot be a condition precedent to have sex. Had the petitioner fraudulent intention not to solemnize marriage right from the day he met victim in 2010, then he would have not asked the prosecutrix to study further and bore her education expense. Where there is mere breach of promise of marriage, and before breach they have sexual relationship, that sexual indulgent may amount to consensual one and not rape as defined in section 376 RPC.

15. So even if the allegations made in complaint are taken as it is , no case of rape is made out, as the prosecutrix is major and she has known the petitioner since 2010; she would be aware of the result of sexual relationship; she had herself gone with accused at various places as per complaint and indulged into sexual relationship. I am conscious that statement of prosecutrix cannot be brushed aside especially in rape case; but her statement has to be read along with other attending circumstances. Except bald version of prosecutrix, there is nothing on record from which it can prima facie be proved that intention of accused was fraudulent right from the beginning. The Complaint has been lodged after petitioner refused to solemnize marriage with her, petitioner has categorically stated that complainant is more in age than him; this fact is

incorrect, because as per certificate D.O.B of petitioner is 22.11.1992 and that of complainant is 25.03.1991.

16. In **AIR 2017SC 1884** in case titled **Vineet Kumar v State of UP**, Hon'ble Apex Court relying upon the judgment in **Prashant Bharti's** case (supra) and **Rajiv Thaper** (supra) has quashed a charge sheet under section 376 IPC holding as under: -

Apart from bald assertions by the complainant that all accused have raped, there was nothing which could have led the Courts to form an opinion that present case is fit a case of prosecution which ought to be launched. We are conscious that statement given by the prosecutrix/complainant under Section 164 Cr.P.C. is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above. Reference to the judgment of this Court in **Prashant Bharti vs. State(NCT of Delhi)**, 2013 (9) SCC 293, is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Section 328 and 354 IPC with regard to the incident dated 15.02.2007. She sent telephonic information on 16.02.2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21.02.2007 she gave a supplementary statement alleging rape by the appellant on 23.12.2006, 25.12.2006 and 01.01.2007. Statement under Section 164 Cr.P.C. of the prosecutrix was recorded. Police filed charge-sheet under Section 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Section 328/354 could be found. However, on the ground of statement made under Section 164 Cr.P.C. chargesheet was submitted. 37. The appeal was filed against the aforesaid judgment of the High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the Court. In paragraph 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that Investigating Officer has acknowledged that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 Cr.P.C. In paragraphs 24 and 25 of the judgment following was stated: "24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be

legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The chargesheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the Cr.P.C. 25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand - satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed." 38. Thus, above was the case where despite statement under Section 164 Cr.P.C. by prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal proceedings."

17. Further offence u/s 506 RPC has also been registered. Section 506 of RPC prescribes punishment for the offence of criminal intimidation as defined under Section 503 of R PC. Section 503 of IPC reads thus:

"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

18. From bare perusal of contents of complaint, it is evident that there is no iota of allegation in this regard.
19. In view of above, I am of considered opinion that the allegations made in the first information report on the basis of 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. The allegations made in the FIR 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. This FIR is manifestly attended with mala fide intention and has been 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. This petition is **allowed** and impugned FIR No.50/2017 registered with the Police Station, Ghagwal for commission of offences under Sections 376/506 RPC, is **quashed**.

(Sanjay Kumar Gupta)
Judge

Jammu
14.12.2018
Bir

