



2024:CGHC:28761

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CrMP No. 2430 of 2023**

Ishwar Prasad Lahre S/o Shri Tikaram Lahre Aged About 29 Years (wrongly mentioned as 33 years in Annexure A/1) R/o Village Amakoni, P.S. and Tahsil Jaijaipur, District : Sakti, Chhattisgarh.

... **Petitioner****versus**

1. State of Chhattisgarh Through The Police Station Janjgir, District : Janjgir-Champa, Chhattisgarh.

2. XYZ

... **Respondents**

For Petitioner	:	Mr. N. Naha Roy, Advocate
For Respondent No.1	:	Mr. Ajit Singh, Govt. Advocate
For Respondent No.2	:	Mr. Paras Mani Shriwas, Advocate

Hon'ble Shri Justice Arvind Kumar Verma**Order on Board****02/08/2024**

1. With the consent of the parties, matter is heard finally.
2. The present petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner for quashment of

charge-sheet as well as the entire criminal proceedings pending before the Court of Additional Sessions Judge (FTC)/Special Judge (POCSO Act), District Janjgir-Champa (C.G.) in Sessions Case No. 73/2023.

3. Brief facts of the case is that on 03.03.2023 at 06.10 pm, respondent No.2 filed a complaint at the Police Station Janjgir, District Janjgir-Champa (CG), alleging therein that she is an aspirant of P.S.C. examination. She met with the petitioner at Ratanpur and developed friendship with him, which led to a proposal of marriage by the petitioner to which she agreed. It was then stated that on her accepting the proposal, the petitioner stated to complete the education and marriage will be performed after getting job. It was alleged that thereafter the petitioner had performed regular sexual intercourse with her at the police line residential quarter. Subsequently, the petitioner backed out from the promise and threatened her for life. On complaint made by respondent No.2, FIR No. 182/2023 has been registered against the petitioner for offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, 1860.
4. After completion of investigation, police filed charge-sheet before the jurisdictional Court under Sections 376(2)(n) & 506 of the IPC, against the petitioner. Meanwhile, the petitioner was granted anticipatory bail by this Hon'ble Court in MCRC (A) No.434/2023 vide order dated 26.06.2023.
5. Learned counsel appearing for the petitioner contended that the present case being a case where from perusal of the final report/charge-sheet

under Section 173 of CrPC, 1973, on its face no offence as alleged is made out against the petitioner and therefore, the final report made by the police authorities is absolutely misconceived and unsustainable in law. He further submits that the story of the prosecution is highly doubtful and is an abuse of process of law on account of the failure to explain the long and unexplained delay in registering the FIR on 03.03.2023. He further submits that the complaint and the material collected in the charge- sheet even remaining un-controverted do not make out a case attracting ingredients of the offence alleged and therefore, the present case falls within the exceptional situations, more particularly as carved out in the judgment Hon'ble Supreme Court in the case of **State of Haryana & Others Vs. Bhajanlal & Others**, reported in **1992 Suppl. (1) SCC 335 {paragraphs 102 (1) and (3)}**.

“(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.

(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.”

6. He further submits that while dealing with a case of rape by obtaining consent of the girl under the false promise to marriage the Hon'ble

Supreme Court way back in the case of **Uday Vs. State of Karnataka**, reported in **(2003) 4 SCC 46**, has assessed the nuances of such cases and has cautioned for evaluation of certain aspects decisive in nature so far as veracity of the complaints are concerned while exercising the inherent jurisdiction by the High Courts. He further submits that in light of the above referred proposition of law, the allegation of the petitioner committing sexual intercourse under the false promise of marriage from 03.04.2017 to 28.11.2022, i.e., for almost six years in which the prosecutrix could not assess the alleged ill intention of the petitioner of making a false promise is to be assessed, which in fact turns out nothing short of 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 petitioner, as carved out in paragraphs 102 (3) and (5), respectively in **Bhajan Lal's** case (supra), Hon'ble Madhya Pradesh High Court in a similar case between **Amar Singh Rajput Vs. State of Madhya Pradesh**, reported in **2023 SCC Online MP 278** has held as under:

".....Near about more than one year time is sufficient time for a prudent woman to realize as to whether the promise of marriage made by the petitioner is false from its very inception or there is a possibility of breach of promise. When the petitioner was not acceding to her request for marriage, then why she continued with relationship with him till lodging of the FIR. Thus, it is clear that at the most, it can be said that it is a

case of breach of promise and, therefore, it cannot be said that the promise made by the petitioner was obtained under fear or misconception of fact.

7. He also submits that petitioner and the prosecutrix were in a consensual relationship for almost six years and the prosecutrix despite being an educated and adult lady permitting such relationship for such a long period clearly establishes that the relationship between them was consensual in nature hardly attracting the ingredients of the offence under Section 376 of IPC. On these grounds, it is prayed that this Court may kindly be pleased to exercise its inherent jurisdiction under Section 482 of the CrPC, 1973 and quash the charge-sheet and the entire criminal proceedings against the petitioner.
8. On the other hand, learned counsel for the State/respondent No.1 contended that after due investigation the petitioner has been charge-sheeted for the aforesaid offences and prima-facie material collected are sufficient to put the petitioner at trial and he is standing trial also and considering the material available on record, it cannot be held that no prima-facie case against the petitioner for standing trial is made out. He further contended that jurisdiction of this Court under Section 482 of the CrPC is extremely limited as FIR and charge-sheet cannot be quashed particularly when there is sufficient evidence available on record to put the accused person to trial.

9. Reliance has been placed in the matter of **State of Orissa & Ors. Vs. Ujjal Kumar Burdhan (2012) 4 SCC 547; 2012 2 SCC (Cri) 506**

Hon'ble Apex Court observed that :

“7. It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extra- ordinary power has to be exercised sparingly with circumspection and as far as possible, for extra- ordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those incharge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

13. The High Court has also adversely commented upon the progress of the preliminary inquiry and has recorded that no new material has been placed on record by the Vigilance Cell. This has been recorded without having regard to the fact that the

High Court by another order, dated 5th September 2005, had, by way of an interim order, directed the State Government not to take any coercive steps against the respondent, with the result that there was no occasion for the department concerned to bring to the fore any material to unravel the truth. It is also pertinent to note here that the High Court had itself, by order dated 18th July, 2005 directed the completion of inquiry within a set time-frame of twelve weeks, which was subsequently interjected by an interim order and finally the entire investigation/inquiry came to be quashed by the impugned judgment. It seems incongruous that in the first instance the court set into motion the process of law only to ultimately quash it on the specious plea that it would cause unnecessary embarrassment to the respondent.

14. For all these reasons, in our opinion, High Court's interference with the investigation was totally unwarranted and therefore, the impugned order cannot be sustained. We, accordingly, allow the appeal, quash and set aside the impugned judgment and restore the investigation initiated against the respondent and direct the Vigilance Cell

of the State to proceed with and complete the investigation expeditiously, in accordance with law.”

10. Further reliance has been placed in the matter of **Jeffrey J. Diermeier & Another Vs. State of West Bengal & Anr.** reported in **(2010) 6 SCC 243**, while exercising the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, has observed as follows :-

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

- 11.** He further contended that as the charge-sheet has already been filed in this matter and the criminal proceedings is pending before the trial Court, the petitioner can move application under Section 239 of Cr.P.C. for discharge and if the same application has not been allowed then the petitioner has an alternative remedy of filing revision against the same order and on this count also the petition deserves to be dismissed at this stage.
- 12.** Learned counsel for the respondent No.2 contended that after due investigation, the jurisdictional police has submitted charge-sheet against the petitioner in which there are serious allegations against the petitioner. He further contended that all submissions raised on behalf of the petitioner relate to question of fact, that can be considered during the course of trial and that cannot be considered at this stage and that too in proceeding under Section 482 of CrPC as all ingredients of the aforesaid offences are available to put the petitioner to trial, as such, it is the case where the petition deserves to be dismissed.
- 13.** I have heard learned counsel for the respective parties and considered their submissions made herein above and also went through the records with utmost circumspection.
- 14.** The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, where the allegations made in the FIR

or the complaint even if 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 FIR or the charge-sheet may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C.

15. In the well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others vs. Ch. Bhajan Lal**, the Apex Court held that those guidelines should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:

“(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 to do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 156(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission

of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the 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 malafide 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.”

16. In case of **Rupan Deol Bajaj v. K.P.S. Gill**, reported in **(1995) SCC (Cri) 1059**, **Rajesh Bajaj v. State of NCT of Delhi**, reported in **(1999) 3 SCC 259** and **Medchl Chemicals & Pharma (P) Ltd. v. Biological E Ltd. & Ors**, reported in **2000 SCC (Cri) 615**, the Apex Court clearly held that if a prima facie case is made out disclosing the ingredients of the offence, Court should not quash the complaint. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful. Thus, there is no controversy about the legal proposition that in case a prima facie case is made out, the FIR or the proceedings in consequence thereof cannot be quashed.
17. In **Neharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others**, reported in **(2021) SCC OnLine SC 315**, the Apex Court has observed that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. While examining an F.I.R./complaint, quashing of which is sought, the Court cannot inquire about the reliability, genuineness, or otherwise of the allegations made in the F.I.R./complaint. The power under Section 482 of the Cr.P.C. is very wide, but conferment of wide power requires the Court to be

cautious. The Apex Court has emphasized that though the Court has the power to quash the F.I.R. in suitable cases, the Court, when it exercises power under Section 482 Cr.P.C., only has to consider whether or not the allegations of F.I.R. disclose the commission of a cognizable offence and is not required to consider the case on merit.

18. Keeping in view the aforesaid law and considering the submissions advanced by the learned counsel for the parties, I am of the considered view that the submissions raised by learned counsel for petitioner relate to the questions of fact and thus, cannot be examined by this Court in proceedings under Section 482 of the Cr.P.C. The appreciation of evidence or the reliability of the allegations cannot be examined at this stage.

19. In **State of Orissa v. Saroj Kumar Sahoo**, reported in **(2005) 13 SCC 540**, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCCp. 550, para 11)

“11.....It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be

erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.”

- 20.** Reverting to the facts of this case, prima facie it is apparent that false promise has been made by the petitioner/accused to the complainant that after getting job he will marry with her and established physical relation with her. Prima facie, it is not a case of breach of promise.
- 21.** From the above stated case laws, it is apparent that the above stated contentions raised by the learned counsel for the petitioner cannot be examined by this Court. The adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 482 of the Cr.P.C. In view of the material on record, it cannot be held that the impugned criminal proceedings are manifestly attended with malafide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge. FIR or criminal proceedings can be quashed only in accordance with parameters laid down by Hon'ble Apex Court in catena of decisions.
- 22.** From the perusal of impugned FIR/charge-sheet, which discloses the cognizable offence and the only ground which has been argued by learned counsel for the petitioner that there is delay in lodging the FIR by the victim/complainant without any plausible explanation cannot be

a good ground for quashing of the impugned charge-sheet or criminal proceedings.

- 23.** In the instant case, from the perusal of the record, prima facie it cannot be said that no cognizable offence is made out and further, it appears to be a case of sexual exploitation. The present petition does not fall in any of such category, wherein, this Court can exercise jurisdiction under Section 482 of the Cr.P.C. to quash the impugned charge-sheet and criminal proceedings. Hence, no ground exists for quashing of the charge-sheet and criminal proceedings.
- 24.** In view of aforesaid, the petition lacks merit and thus, liable to be dismissed.
- 25.** Accordingly, the present CrMP is **dismissed**.

Sd/-

(Arvind Kumar Verma)
Judge