



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.296 of 2023

Pankaj Kumar @ Pankaj Chauhan Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Mr. Harshpal Sekhon, learned counsel for the applicant.

Mr. Siddhartha Bisht, learned AGA for the State.

Mr. Shariq Khurshid, learned counsel for respondent no.2.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the cognizance and summoning order dated 13.12.2022, the charge-sheet dated 28.11.2022, as well as the entire proceedings of Special Sessions Trial No. 15 of 2022, titled "State Versus Pankaj Kumar," under Sections 376, 504, and 506 of the I.P.C. and Section 3(2)(5)(a) of the SC/ST Act, 1989, Police Station Ramnagar, District Nainital, passed by the Court of the learned District & Sessions Judge/Special Judge (SC/ST Act), Nainital, arising out of F.I.R. No. 183 of 2022 dated 25.05.2022 under Sections 376, 504, and 506 of the



I.P.C. and Section 3(1)(X) of the SC/ST Act, 1989, Police Station Ramnagar, District Nainital.

2. Facts necessary for the adjudication of the present criminal miscellaneous application are as follows:

- i. F.I.R. dated 25.05.2022 was lodged as F.I.R. No. 183 of 2022 under Sections 376, 504, and 506 of the I.P.C. and Section 3(1)(x) of the SC/ST Act, 1989, at Police Station Ramnagar, District Nainital, by respondent No. 2, with the allegations that the applicant and respondent No. 2 became friends through Facebook in 2018, exchanged mobile numbers, and started talking on WhatsApp. In December 2018, the applicant called her to Kashipur to meet him. After having a conversation, both of them returned to their respective homes, and thereafter also met a number of times.
- ii. On the pretext of going out together, in December 2018, the applicant called her to Ramnagar, and after they became tired, the applicant took her to a hotel and took her photographs. When she tried to snatch the phone, the applicant threatened her that if she



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raised any hue and cry, he would make the photographs viral on social media. He further told her that if she consented to his wishes, he would marry her. Thereafter, she got afraid and did not disclose the incident to anyone. Again, in August 2019, the applicant took her to Garjia Mata Temple and thereafter to a hotel. After filling her *maang with sindoor*, he told her that from that day she is his wife and assured her that he would soon visit her home for marriage talks, but that he first wanted his sister to get married. The applicant's sister got married on 09.12.2020. When she requested him to marry her, he became angry, abused her with caste-related words, and also threatened her. After this incident, respondent No. 2 visited the applicant's mother on 08.02.2021, but the applicant's mother pushed her out of the house and also abused her.

- iii. It is further alleged in the F.I.R. that the applicant established physical relations with her on many occasions. At the end of the F.I.R., it is stated that she was mentally



tortured and that, on the false pretext of marriage, physical relations were established with her against her wishes. Therefore, she prayed for strict legal action.

3. Pursuant to the aforesaid F.I.R., an investigation was conducted, culminating in the filing of the charge-sheet on 28.11.2022. On the basis of the said charge-sheet, the court concerned took cognizance and passed the summoning order dated 13.12.2022 against the applicant.

4. Assailing the cognizance and summoning order dated 13.12.2022, the charge-sheet dated 28.11.2022, and the entire proceedings of Special Sessions Trial No. 15 of 2022, learned counsel for the applicant submits that, in the narration of the events, there is no allegation in the FIR of physical relations having been entered into under the false pretext of marriage. He submits that respondent No. 2/victim is a major and was a consenting adult. She admittedly visited hotels on a number of occasions of her own free will. The initial promise to marry does not appear to have been false, and the marriage could not be solemnized due to intervening circumstances. The consent given by the victim does not appear to have been obtained under a misconception of



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fact. Admittedly, she travelled to different places and visited hotels of her own free will. Though the FIR contains allegations that the applicant clicked her photographs and threatened to make them viral, during the investigation, the alleged photographs were neither found nor is there any mention thereof in the charge-sheet.

5. He further submits that, though there are allegations that she was forced to enter into physical relations, even thereafter she continued to visit the applicant from time to time and, in fact, also contacted the applicant's mother for the purpose of marriage. It is only at the fag end of the FIR that a passing reference has been made to physical relations having been established on the false pretext of marriage, apparently to bring the case within that category. He also refers to the statements of the victim/respondent No. 2 and submits that she has stated that the applicant forced himself upon her in December 2018 in a hotel at Ramnagar. In her statement under Section 161 Cr.P.C., she further stated that in February 2019, she again went to a hotel with the applicant, where he forced himself upon her. Thereafter, there was a third visit by both of them to a hotel after 15–20 days.



6. Learned counsel for the applicant submits that the averments made in the statements under Section 164 Cr.P.C. are at variance with the version contained in the FIR. He further submits that, although the friendship between the applicant and respondent No. 2 commenced in the year 2018, the FIR came to be lodged only in the year 2022. Hence, there appears to have been a long-standing relationship between the two of them.

7. Learned counsel for the applicant, in support of his contentions, has relied upon the judgment of the Hon'ble Supreme Court in the case of *Jothiragawan vs. State, Rep. By The Inspector of Police and another*, reported in 2025 SCC OnLine SC 628, and has placed reliance on paragraphs 11 and 12 thereof, which are extracted hereunder for ready reference:-

“11. We have already found that there is no promise of marriage to coerce consent from the victim for sexual intercourse; as forthcoming from the statements made by the victim. The promise if any was after the first physical intercourse and even later the allegation was forceful intercourse without any consent. In all the three instances it was the allegation that, the intercourse was on threat and coercion and there is no consent spoken of by the victim, in which case there cannot be any inducement found, on a promise held out. The allegation of forceful intercourse on threat and



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coercion is also not believable, given the relationship admitted between the parties and the willing and repeated excursions to hotel rooms.

12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the sexual relationship admitted by both the parties was without the consent of the victim. That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms."

8. The learned counsel for the applicant would draw parallels between the facts of the aforesaid judgment in the case of Jothiragawan and would submit that there were three instances of intercourse under threat and coercion. The Hon'ble Supreme Court has held that it was a case in which no inducement could be found on the basis of a promise held out. The allegation of forceful intercourse under threat and coercion is also not believable, given the relationship admitted between



the parties and the willing and repeated excursions to hotel rooms.

9. The learned counsel for the applicant would submit that even if the statements of the applicant are taken as they stand, the said allegations do not tantamount to making physical relations on the false pretext of marriage, and the case of the applicant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Jothiragawan (supra).

10. Placing further reliance on the judgment of this Court in the case of *Sachin Kumar Singh Chauhan vs. State of Uttarakhand and Another*, Criminal Miscellaneous Application No. 274 of 2020, he would particularly rely upon paragraphs 22 and 23 thereof, which are extracted hereunder for ready reference:-

“22. In this background, reference may be made to the judgments of the Hon'ble Supreme Court in the cases of Sonu @ Subhash Kumar v. State of Uttar Pradesh and Another, Nitin B. Nikhare v. The State of Maharashtra & Anr., Ravish Singh Rana v. State of Uttarakhand and Another, and Jothiragwan v. State Rep. by the Inspector of Police and Another & the judgment of the High Court of Delhi in Dr. Avdesh Kumar vs. State of NCT of Delhi and Another as well as the judgment of the Coordinate Bench of this Court in Shubham Kumar v. State of



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Uttarakhand & Anr., and the judgment of this Court in Lalit Mohan Joshi v. State of Uttarakhand & Anr.. It is evident from the aforesaid judgments that the Hon'ble Supreme Court has held that, in cases involving a consensual relationship between the accused and the prosecutrix, where the initial promise to marry does not appear to have been false and the promise could not be fulfilled due to intervening circumstances, and the relationship subsequently ended, resulting in the registration of an FIR, compelling the accused to face trial would amount to an abuse of the process of law. In the aforesaid cases, either the FIRs or the criminal proceedings were quashed by the Hon'ble Supreme Court.

23. On the other hand, insofar as the judgment of the Hon'ble Supreme Court in Anurag Soni (*supra*), relied upon by learned counsel for respondent no. 2, is concerned, the same is not attracted to the factual matrix of the present case, inasmuch as the consent given by the victim does not appear to have been obtained under a misconception of fact. From the record, it is clear that respondent no. 2 is a mature lady, is in service, and was fully aware of the consequences of entering into a physical relationship with a man. Moreover, the relationship continued for a considerable period of about six years, and it was only when the applicant refused to marry respondent no. 2 that the FIR came to be lodged at her behest.”

11. Relying upon the aforesaid judgments, he would submit that it was a case involving a consensual



relationship between the applicant and the respondent No. 2, where the initial promise to marry does not appear to have been a false promise. It would be a case involving a consensual relationship between the applicant and the respondent No. 2. He would further submit that the consent given by the victim does not appear to have been obtained under a misconception of fact. Hence, he submitted that his case is also covered by the judgment of this Court rendered in the case of *Sachin Kumar Singh Chauhan* (supra). He would, thus, submit that, having regard to the facts and circumstances of the case, and in view of the settled law on the subject, the summoning/cognizance order, the charge-sheet, and the entire proceedings emanating therefrom are not sustainable, and this Court needs to invoke its powers under Section 482 of the Cr.P.C. for quashing the said proceedings, as they are an utter abuse of the process of law.

12. Per contra, the learned counsel for the respondent No. 2, Mr. Shariq Khurshid, would not dispute the factual narration as made by the learned counsel for the applicant. However, he would submit that, with regard to the Facebook chats between the applicant and the respondent No. 2, the I.O. has obtained



a certificate under Section 65B of the Evidence Act. He very fairly admits that, in the charge-sheet, there is no mention of the collection of any obscene photographs or any other incriminating material. He would further submit that there are three instances of physical relationship between the applicant and the respondent No. 2, and in all three instances, the year and month have been specified.

13. He would further submit that it is proved that the incidents did occur; during that period, the applicant had come on leave from the NDRF, where he was serving as a Sub-Inspector. However, he very fairly submitted that, when the relationship was initially entered into, it was not on the pretext of marriage. He would submit that the applicant had physical relations with the respondent No. 2 on the false pretext of marriage. Based on the above submissions, he would submit that there is no scope for interference by this Court in exercise of its powers under Section 482 of the Cr.P.C.

14. Opposing the Criminal Miscellaneous Application, the learned AGA, Mr. Siddhartha Bisht, would submit that the victim is consistent in her statements under Sections 161 and 164 of the Cr.P.C.



regarding the offence committed by the applicant. Even in the FIR, her version is clear and consistent. Referring to her statement under Section 164 of the Cr.P.C., he would submit that the very first instance of entering into a physical relationship was on the false pretext of marriage. The marriage was refused because the victim/respondent No. 2 belonged to a lower caste. However, he very fairly submitted that the place where the caste-related words were uttered is not very specific, though he would submit that it was on a road and would be deemed to be a public place. He would submit that, in the facts and circumstances of the case, the offence under the SC/ST Act would be attracted. However, he has been very fair in submitting that before whom the caste-related words were uttered in public, and whether the applicant belongs to an upper caste is not specifically mentioned anywhere. Making these submissions, the learned AGA would submit that it is not a case where interference can be made under Section 482 of the Cr.P.C.

15. As a rejoinder to the submissions made on behalf of the respondents, Mr. Harshpal Sekhon, the learned counsel for the applicant, would submit that, from the record, it is clear that the applicant had not



made any promise of marriage. In fact, the victim has alleged that the applicant forced himself upon her and, in all three instances, the intercourse was under threat and coercion, and there is no consent spoken of by the victim. He would submit that the case of the applicant is fully covered by the judgment in the case of *Jothiragawan* (supra).

16. Regarding the offence under the SC/ST Act, he would submit that the offence under the SC/ST Act would be attracted only if the offence under Section 376 of the IPC is established. If the offence under Section 376 of the IPC fails, then the offence under the SC/ST Act would also fail.

17. Having heard the learned counsel for the parties and having gone through the record, the question that arises for determination in this case is whether the physical relations entered into between the applicant and the victim/respondent No. 2 were on the false pretext of marriage or not.

18. A perusal of the FIR reveals that, in the main factual narration, there is absolutely no mention of any physical relationship having been entered into. Only at the fag end of the FIR is there a mention that she was



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physically and mentally exploited for a physical relationship on the false pretext of marriage. The respondent No. 2 apparently improves her case in her statement under Section 164 of the Cr.P.C., where she narrates the incidents with reference to time and, in one instance, even mentions the name of the hotel. On a closer scrutiny of the statements of the respondent No. 2, it would reveal that, even if these statements are taken at their face value, it is not a case where the applicant had physical relations with the respondent No. 2 on the false pretext of marriage, because the respondent No. 2 has been categorical that whenever he had physical relations with her, he forced himself upon her.

19. This allegation of making physical relations on false pretext of marriage is totally unacceptable, inasmuch as she had been in a relationship with the applicant for quite a long time, admittedly since 2018, when they became friends through the medium of Facebook. Thereafter, she had been visiting hotels, and admittedly visited hotels with the applicant on three occasions, though her version has been at variance with the FIR regarding the physical relations entered into with the applicant in those hotels.



20. It is also clear from the chronology of events and the facts of the case that, though the respondent No. 2 alleges that the physical relationship was entered into on the false pretext of marriage, there was no prior FIR or any complaint, and it was only when the applicant refused to marry her that the FIR came to be registered.

21. In this regard, it is apt to refer to the judgment of the Hon'ble Supreme Court in the case of *Nitin B. Nikhare vs. State of Maharashtra and another*, and reference needs to be made to paragraph 7 thereof, which is extracted hereunder for ready reference:

“7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted.”

22. In the said judgment, the Hon'ble Supreme Court, while quashing the criminal proceedings arising out of an FIR for the offences punishable under Sections



376(2)(n) and 417 of the IPC and Sections 3(1)(r), (w)(i) (ii), 3(2)(v), and 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, held that it was clear that the case involved a consensual relationship from the very beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was made in bad faith. It was only the subsequent circumstances that prevented the fulfilment of the alleged promise to marry. The relationship, which later turned sour, gave rise to the FIR, which would not attract the provisions of the SC/ST Act.

23. Thus, after considering the entirety of the facts and the position of law on the subject, it is clear that the physical relationship between the respondent No. 2 and the applicant was not entered into on the false promise of marriage. In fact, she was a consenting party throughout, and she had travelled to hotels with the applicant on three occasions. Thus, the case of the applicant is fully covered by the judgments in *Jothiragawan* (supra) and *Nitin B. Nikhare* (supra).

24. In the facts and circumstances of the case, it would be a travesty of justice if the matter is permitted to go to trial. Since the offence under Section 376 of the IPC



would not be made out against the applicant in the given facts and circumstances of the case, the other offences would also not made out, the summoning order, the charge-sheet and the entire proceedings of the criminal case deserve to be quashed.

25. The Criminal Miscellaneous Application under Section 482 of the Cr.P.C. is allowed. The cognizance and summoning order dated 13.12.2022, the charge-sheet dated 28.11.2022, as well as the entire proceedings of Special Sessions Trial No. 15 of 2022, titled *State Versus Pankaj Kumar*, under Sections 376, 504, and 506 of the IPC and Section 3(2)(5)(a) of the SC/ST Act, 1989, Police Station Ramnagar, District Nainital, pending before the Court of the learned District & Sessions Judge/Special Judge (SC/ST Act), Nainital, arising out of FIR No. 183 of 2022 dated 25.05.2022, registered under Sections 376, 504, and 506 of the IPC and Section 3(1)(X) of the SC/ST Act, 1989, at Police Station Ramnagar, District Nainital, are hereby quashed.

(Siddhartha Sah, J.)
31.07.2026

BS