



2024:DHC:9470



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.12.2024

+ **CRL.REV.P. 539/2022, CRL.M.A. 16421/2022 & CRL.M.A. 24828/2022**

**PRASHANT LUTHRA**

..... Petitioner

versus

**STATE & ANR.**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr Mukul Rohatgi, Sr. Adv, Ms. Neeha Nagpal, Mr. Arshdeep Singh Khurana, Mr Malak M Bhatt, Mr. Sanjay Abbot, Mr. Vishvendra Tomar & Mr. Sulakshan V, Adv.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State  
SI Amit Kumar, PS-Hazrat Nizammuddin  
Mr. Jatin Kumar, Ms. Munisha Anand, Mr. Manish Kumar, Mr. Anukool Verma & Mr. Himanshu, Adv. for R2 with R2 in person

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**



1. By way of the present petition, the petitioner impugns the orders dated 31.01.2022 (order on charge) and 04.07.2022 (order framing charges) passed by the learned Additional Sessions Judge ('**ASJ**'), South East District, Saket Courts, New Delhi in SC No. 326/2018 arising out of FIR No. 2/2018 registered at Police Station Hazrat Nizamuddin.
2. By the said orders, the learned ASJ framed charges against the petitioner under Sections 328/376/323/377/493/509/506(Part I) of the Indian Penal Code, 1860 ('**IPC**').
3. Succinctly stated, the present case arises from a complaint filed by the complainant, alleging that she had been residing with the accused/petitioner, at E-269, 3rd Floor, Greater Kailash-II, New Delhi, since August 2016. Prior to this, the complainant had lived as a tenant in various localities, including Lajpat Nagar and Jangpura, from 2015 to 2016. According to the complainant, her first interaction with the accused occurred in October 2015 at a social gathering in a hotel, where she was accompanied by her friend, Sakshi. During this meeting, the accused allegedly informed her that he had misplaced his mobile phone and requested to use hers to contact his number.
4. Subsequently, the accused called the complainant the following morning and insisted on meeting her again. During their meeting at Select City Walk Mall in Saket, the accused introduced himself and claimed to be unmarried, attributing his bachelorhood to professional commitments. Over time, their acquaintance developed into a close relationship. The complainant alleged that the accused made repeated



promises of marriage to gain her trust and induce her into a physical relationship.

5. The complainant alleged that the petitioner deceitfully married her twice to validate his promises. According to her, the first marriage ceremony was conducted in a private setting at her home in December 2016, in the presence of her domestic help and driver. The second alleged marriage occurred in December 2017 at their rented accommodation in Greater Kailash-II. The complainant further alleged that she later discovered that the accused was already married. Upon confronting him, the accused allegedly reassured her by promising to divorce his wife and marry her. The complainant also accused the petitioner of coercing her into unnatural sexual acts and administering an intoxicating substance to her. Additionally, the accused is alleged to have verbally abused and threatened the complainant, causing her severe emotional distress. These incidents, according to the complainant, spanned a prolonged period during which the accused allegedly acted with deceit and malintent.

6. Consequently, the subject FIR No. 2/2018 was registered on 02.01.2018 under Section 376 of the IPC against the petitioner who then moved the Session Court seeking pre-arrest bail and by order dated 19.02.2018, the learned ASJ granted pre-arrest bail to the petitioner observing, *inter alia*, that the complainant was a mature and educated woman who had entered into the relationship voluntarily and that there was no requirement for custodial interrogation of the petitioner at that stage.



7. Following the investigation, the police filed a charge sheet dated 14.05.2018 before the learned Trial Court under Sections 376/506 of the IPC. Thereafter, a supplementary charge sheet dated 08.03.2021 was filed under Section 376/506 of the IPC and charges were framed by orders dated 31.01.2022 and 04.07.2022 against the petitioner for offences under Sections 328/376/323/377/493/509/506(part I) of the IPC. The concluding portion of the said order, which is impugned before this Court, reads as under:

*“40. The complainant has inter alia alleged that in January 2016, their marriage got consummated after accused returned from Jammu. In his reply dated 20.03.2018, submitted by the accused to the IO during investigation, he had inter alia admitted that he had been financially helping the complainant. In his statement u/s-161 Cr.P.C., the landlord Sh. Ramesh Kumar had inter alia stated that rent was sometimes being paid by the complainant and sometimes being paid by the accused.*

*41. A perusal of page 97 of the charge-sheet i.e. a WhatsApp chat between the accused and Mr. Vishal, landlord of Lajpat Nagar rented accommodation of complainant reflects that the accused claimed to have deposited Rs. 20,000/- in the bank account of Mr. Vishal towards payment of rent. Further, a perusal of page 98 of the charge-sheet i.e. a WhatsApp chat between the accused and a furniture vendor shows that the accused had told the furniture vendor that complainant will come on Sunday or Monday and he should treat the order to be almost final. A perusal of page 106 of the charge-sheet i.e. a Facebook post by Sh. ‘PT’ shows that Sh. ‘PT’ had complimented ‘the couple’. In several photographs annexed with the charge-sheet, the complainant is seen wearing a mangalsutra with a bindi on the forehead and vermilion in her parting. In para no. 7 of his reply dated 20.03.2018, the accused admitted permitting the complainant to use his credit card. Further, a perusal of interrogation report of the accused shows that in response to question no. 15, the accused had replied that the complainant used to make purchases from his various cards. Therefore, prima facie offence under Section 493 IPC is made out against the accused.*



42. In para no. 24 of the complaint / FIR, the complainant had alleged that the accused used to force her to perform unnatural sex. In para no. 12 of the complaint, the complainant had alleged that the accused used to abuse and beat her. He had abused her saying “saali haramzadi, tujhe main gandagi se nikal kar laya hoon”. In paras no. 30, 34 and 35 of the complaint, the complainant has alleged that the accused threatened her with dire consequences. A perusal of pages 155, 156 and 158 of the charge-sheet shows that during pendency of the investigation, the complainant had lodged a complaint dated 18.02.2018 with PS H.N. Din regarding threats being extended by the accused. She also annexed a CD containing an alleged conversation between her and the accused which was seized vide seizure memo dated 18.02.2018. Therefore, prima facie offences under Sections 377/506(Part-I)/509 IPC are made out against the accused.

43. In view of the foregoing reasons, the court holds that a prima facie case for offences U/s-323/328/376/377/493/506(Part- I)/509 IPC is made out against the accused.”

8. In such circumstances, the petitioner has approached this Court, assailing the aforesaid impugned order.

### **Submissions by the learned senior counsel for the petitioner**

9. Mr. Rohatgi, learned senior counsel for the petitioner submitted that the impugned orders were passed without proper appreciation of facts and law, by ignoring the glaring contradictions in the complaint. He submitted that the factual narrative and allegations demonstrate that the charges lack substance and cannot be sustained.

10. He argued that at the stage of framing of charge, the Court has the power to sift through the evidence for determining whether a prima facie case is made out against the accused. He argued that the learned Trial Court, despite acknowledging several critical deficiencies in the prosecution’s case, proceeded to frame charges against the petitioner. These deficiencies included the lack of any



obscene video or photograph allegedly deleted by the petitioner from the complainant's Facebook account; the failure to secure the presence of the complainant's friend, Sakshi, during the investigation; and the contradictory statements of the complainant's domestic help, Shilvi, and driver, Arun, who did not support her claims. Furthermore, there was no evidence to corroborate the complainant's allegations regarding her marriages with the petitioner, whether in Amritsar in November 2015 or in Lajpat Nagar on 21.06.2017 at the complainant's then rented accommodation.

11. He submitted that the complainant alleged that she travelled to Amritsar with the petitioner on 24/25.11.2015 and married him there without any family or friends present. However, she failed to disclose the exact location of the marriage, and the pandit who allegedly officiated was not identified or examined. Additionally, no photographs of the ceremony were provided. Contrarily, records filed with the charge sheet indicate that the petitioner was in Chandigarh at the JW Marriott hotel on those dates.

12. He submitted that the learned Trial Court also noted that the complainant was aware of the petitioner's marital status as early as February 2016 and yet chose to continue the relationship. Additionally, the allegations of the petitioner stealing jewellery and BMW car papers from the complainant's almirah and administering pills that allegedly caused her miscarriage were unsupported by any evidence. Despite these glaring inconsistencies and the absence of corroborative material, the learned Trial Court framed charges against



the petitioner, which he argued was unwarranted and contrary to the judicial principles.

13. He submitted that the complainant did not allege termination of pregnancy in her original complaint or in the FIR. No such statement was made in her Section 161 CrPC statements dated 02.01.2018 and 18.02.2018. It was only as an afterthought that this allegation surfaced in her Section 164 CrPC statement. Moreover, there is no medical evidence or MLC to support this claim.

14. He further argued that the charges framed by the learned Trial Court are vague and lack the specificity mandated by Section 212 of the CrPC. The charges fail to mention precise dates, times, or locations of the alleged offenses. For instance, the charge under Section 328/376 IPC merely states that the incident occurred “*a few days after Diwali in 2015,*” without specifying the exact date. Similarly, the charge under Section 377 of the IPC vaguely refers to “*unknown dates, times, and places between November 2015 to December 2017*”. The charge under Section 493 of the IPC alleges that the petitioner made the complainant believe she was his wife at “*an unknown place in Amritsar*” and later at a rented accommodation in Lajpat Nagar. Charge under Section of the 509 IPC also fail to specify the dates, times, or places of the alleged insults to the complainant’s modesty.

15. He submitted that the complainant, following a consensual relationship that turned sour, became resentful and filed a complaint against the petitioner. Notwithstanding her allegations, she



subsequently travelled to Jaipur with the petitioner on 17-18.01.2018, undermining the credibility of her claims.

16. He argued that the charges framed against the petitioner are ambiguous and lack specificity. He highlighted the inconsistency in the timeline of the alleged incident of rape. In the FIR and the original complaint, the complainant alleged that the incident occurred a few days after Diwali in the year 2015, involving the administration of an intoxicant. However, in her statement under Section 164 of the CrPC, she claimed the incident happened 3-4 days after Diwali in the year 2016. Furthermore, while recording her statement, the learned Metropolitan Magistrate noted, *“At this stage, the victim has stated that she met the petitioner in 2015, and the year 2017 referred to above is actually 2016.”* He further submitted that the complainant’s conduct undermines the credibility of her allegations, as she admitted to willingly engaging in a 2-3 year-long relationship and cohabitation with the petitioner after the alleged incident.

17. He vehemently submitted that when examined in the proper context, the allegations in the FIR clearly demonstrate that the sexual relationship between the petitioner and the complainant was consensual and does not constitute a forcible sexual act, as alleged. While the complainant claimed that the petitioner engaged in sexual relations with her without her consent, it is implausible that such alleged coercion could persist over several years without any protest or complaint from her side. Notably, the alleged incident occurred in November 2015, yet the complainant filed the FIR only on 27.12.2017, after a delay of over two years. This significant lapse in





time further weakens the allegations, rendering the charge under Section 376 of the IPC unsustainable.

18. He also emphasized that there is no medical evidence to substantiate the complainant's claim of being administered an intoxicating substance, which is a *sine qua non* for establishing an offense under Section 328 of the IPC.

19. He contended that the learned Trial Court, in the impugned order, erroneously concluded that there was *prima facie* evidence of the petitioner injuring the complainant's right eye on 27.06.2017, based on the statement of Dr. Deepankar Bose. He argued that the Trial Court overlooked significant discrepancies in the timeline and evidence. According to the FIR and the complainant's account, the alleged incident of the petitioner hitting her eye occurred in February 2016. However, the prescription by Dr. Bose, dated 27.06.2017, does not mention any history of assault and attributes the injury to nails rather than a "blow," as alleged in the complaint. A blow to the eye would have resulted in visible bruising or contusions, which the prescription does not reflect. Furthermore, it is implausible that an incident from February 2016 would lead to an eye examination around 1.5 years later. He submitted that despite this glaring contradiction, the learned Trial Court incorrectly framed charges under Section 323 of the IPC, which he argued was a clear error in judgment.

20. He contended that the case against the petitioner is built on a one-sided narrative. Every allegation requiring corroboration from independent evidence or witnesses has been found to lack such



support, as acknowledged in the proceedings before the learned Trial Court.

21. The learned senior counsel emphasized that the complainant's post-complaint conduct, including visiting and staying with the petitioner, indicates *mala fide* intent. He argued that unsupported allegations should not be weaponized as tools for harassment. When the evidence on record directly contradicts the complainant's version, the charges framed should be quashed, even if the complainant has made a statement under Section 164 of the CrPC.

22. Lastly, he submitted that in the absence of strong evidence raising grave suspicion, the charges framed against the petitioner are unjustifiable. He submitted that the Court must carefully scrutinize the evidence to ascertain whether the allegations are motivated by *mala fide* or vexatious intent.

23. The learned senior counsel, to buttress his arguments, relied upon the following judgments:

- a) *Dhruvaram Murlidhar Sonar v. State of Maharashtra* : (2019) 18 SCC 191
- b) *Deepak Gulati v. State of Haryana* : (2013) 7 SCC 675
- c) *Rajiv Thapar v. Madan Lal Kapoor* : (2013) 3 SCC 330
- d) *Prashant Bharti v. State (NCT of Delhi)* : (2013) 9 SCC 293
- e) *Harishchandra Prasad Mani v. State of Jharkhand* : (2007) 15 SCC 494
- f) *State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335



- g) *Union of India v. Prafulla Kumar Samal* : (1979) 3 SCC 4**
- h) *Kalicharan v. State of U.P.* : (2023) 2 SCC 583**
- i) *State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335**
- j) *Iqbal v. State of U.P.* : (2023) 8 SCC 734**
- k) *Ramezfaqiri v. State (NCT of Delhi)* : 2023 SCC OnLine Del 5741**

**Submissions by the learned counsel for the respondents**

24. *Per contra*, the learned counsel for the State accompanied by the learned counsel for Respondent No. 2 opposed the present petition and submitted that the impugned order is well reasoned and does not come within the category of ‘perverse’ or ‘erroneous’. Thus, no interference by this Court is warranted.

25. They submitted that it is settled law that defence of the accused cannot be seen at the stage of charge, the accused has liberty to lead defence evidence at the appropriate stage, and for proving the same, onus would be shifted upon him. This Court, at this stage, ought not to conduct roving and fishing enquiry into the petitioner’s defence, so as to discharge him.

26. The learned counsel argued that minor inconsistencies in the complainant’s timeline or details do not negate the overall veracity of her allegations. Such inconsistencies are natural and often expected, especially in cases involving prolonged harassment or emotional



distress. The complainant's core allegations remain consistent and are sufficient to proceed to trial.

27. The learned counsel for Respondent No. 2 argued that the domestic help, in her statement under Section 161 CrPC, admitted to witnessing a puja ceremony conducted at the Lajpat Nagar flat where Respondent No. 2 was residing at the time. He further submitted that both the driver, Arun, and the domestic help, Shilvi, were employed by the petitioner, raising doubts about their credibility as witnesses. This lack of reliability was also noted in the impugned orders.

28. He submitted that Respondent No.2 had been constrained to file the second complaint dated 18.02.2018 as the petitioner was exerting undue influence and coercing her to withdraw the FIR and legal proceedings against him.

29. He submitted that Respondent No. 2 remained in the relationship with the petitioner based on his repeated assurances that he was estranged from his wife and that divorce proceedings were ongoing. The petitioner further promised that he would officially marry her once the divorce was finalized. However, despite these assurances, the petitioner refused to register their marriage and, under the guise of a sham marriage, continued to subject Respondent No. 2 to rape, physical abuse, and blackmail. Additionally, he stated that the petitioner had threatened her with dire consequences, including physical harm and the publication of explicit photographs and videos on social media platforms.



30. This Court heard arguments advanced on behalf of both the parties and perused the material placed on record and also the statements as well as other documents which are filed on record.

### Analysis

31. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily.

32. Having meticulously analyzed the case, the allegations, the evidence on record, and the submissions made by both parties, *prima facie*, it becomes evident that the charges framed against the petitioner suffer from significant deficiencies and contradictions. This conclusion addresses the inconsistencies, vague framing of charges, and the legal principles guiding the framing of charges.

33. Since the petitioner has assailed the impugned order whereby the charges under Sections 328/376/323/377/493/509/506(Part I) of the IPC were framed against the petitioner, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC.

The same is set out below:

*“227. Discharge*

*If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

*228. Framing of Charge*



(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

34. The Hon’ble Apex Court in ***Union of India v. Prafulla Kumar Samal*** : (1979) 3 SCC 4, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. *Inter alia*, the following principles were laid down by the Court:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out.

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(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.**”

(Emphasis supplied)

35. The Hon’ble Apex Court, in the case of ***Sajjan Kumar v. CBI*** : (2010) 9 SCC 368, has culled out the following principles in respect



of the scope of Sections 227 and 228 of the CrPC while observing that a prima facie case would depend on the facts and circumstances of each case. The relevant paragraphs read as under :

*“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

*(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

*(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*

*(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

*(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

*(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

*(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this*



*stage, he is not to see whether the trial will end in conviction or acquittal.”*

(emphasis supplied)

36. In *State of Gujarat v. Dilipsinh Kishorsinh Rao : 2023 SCC OnLine SC 1294*, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

*“7. It is trite law that 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 basis of 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 accused has committed the offence which is triable, then necessarily charge has to be framed.*

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*12. The primary consideration at the stage of framing of charge is the test of 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 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 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.”*





37. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

38. In a nutshell, the case of the complainant is that the petitioner herein had established physical relations with her on false pretext of marriage, and he had projected himself as an unmarried man, and when at a later occasion the complainant got to know that the petitioner was already married, the petitioner had again given her assurance that he would obtain divorce from his wife and get married to her.

### **Timeline of relationship and allegations**

39. The complainant alleged that she met the petitioner in October 2015 through her friend, Sakshi, and subsequently entered into a relationship that continued until December, 2017. However, no person named Sakshi was identified or examined during the investigation, which raises serious doubts about the foundational aspects of the complainant's narrative. She further alleged in the complaint that the petitioner spiked her drink and forced himself on her a few days after Diwali in 2015. This claim, however, is devoid of any specific date or time and lacks medical evidence to *prima facie* support the allegation



of the administration of an intoxicant or the alleged sexual assault. The vague nature of these allegations undermines their credibility.

40. The Hon'ble Apex Court in *Harishchandra Prasad Mani v. State of Jharkhand* : (2007) 15 SCC 494, underscored the necessity of medical evidence in allegations of poisoning. The Court observed that without medical evidence indicating poisoning, such claims lack substantiation. It was held as under :

*“12. It is well settled by a series of decisions of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused .....*

*13. In the present case, there is not even an iota of material indicating the guilt of the accused persons. It is true that at the stage of taking cognizance adequacy of evidence will not be seen by the court, but there has to be at least some material implicating the accused, and cognizance cannot be taken merely on the basis of suspicion as it appears to have been done in the present case. To take a contrary view would only lead to harassment of people.”*

41. Furthermore, the complainant asserted that the petitioner entered into a physical relationship with her by making false promises of marriage. Considering the prolonged duration of the relationship and the complainant's own acknowledgment of the petitioner's marital status by February 2016, it *prima facie* appears improbable that her consent for the sexual relationship was obtained under any misconception. The complainant allegedly continued to cohabit with the petitioner and travel with him, even after becoming aware of his marital status.

42. Moreover, the complainant delayed filing her complaint for over two years, from November 2015 to December 2017. Such an unexplained delay severely impacts the reliability of the allegations,



particularly in cases of sensitive offenses like rape, where prompt reporting is often critical to the investigation.

43. In ***Dhruvaram Murlidhar Sonar v. State of Maharashtra*** : (2019) 18 SCC 191, the Hon’ble Apex Court has pointed out the distinction between the offence of rape and consensual sex between two adults. It was held as under:

*“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”*

44. The Hon’ble Apex Court in ***Shambhu Kharwar v. State of Uttar Pradesh*** : 2022 SCC OnLine SC 1032, held that:

*“11. In Pramod Suryabhan Pawar v. State of Maharashtra, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in Sonu @ Subhash Kumar v. State of Uttar Pradesh, observed that:*

*“12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes*



*a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...*

[...]

14. [...] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled...

[...]

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. **The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act...**

[...]

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. **The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”**

(emphasis supplied)

### **Marriage Allegations and Contradictions**

45. The complainant alleged two marriages with the petitioner ; the first marriage was claimed to have occurred on 24/25.11.2015 in Amritsar. However, no photographs, witness statements, or evidence



of a pandit officiating the ceremony is relied by the prosecution in support of the allegations. Contrarily, the record filed with the supplementary chargesheet *prima facie* shows that the petitioner was in Chandigarh on these dates, further discrediting the complainant's version. The second marriage was alleged to have taken place on 21.06.2017 at the complainant's rented accommodation in Lajpat Nagar, witnessed by her driver, Arun, and domestic help, Shilvi. Both these persons, however, categorically denied witnessing any such marriage in their statements under Section 161 of the CrPC. These contradictions, combined with the lack of corroborative evidence, render the allegations of marriage untrustworthy to raise grave suspicion.

46. The learned Trial Court itself acknowledged that the complainant, by February 2016, was aware of the petitioner's marital status and that divorce proceedings with his wife were pending. Despite this, she continued to maintain a relationship with the petitioner, knowing that a valid marriage was legally impossible.

47. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown-up lady, matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of the petitioner's marriage. The prosecutrix giving her consent for sexual relationship under misconception for prolonged period of time in the circumstances and facts as alleged in the charge sheet is highly improbable.



### **Conduct of the Complainant and Subsequent Events**

48. The complainant's actions post-FIR are *prima facie* inconsistent with her allegations of coercion and abuse. She continued to cohabit with the petitioner and even travelled with him to Jaipur on 17-18.01.2018 i.e, after registration of the FIR, as corroborated by flight tickets. Such behaviour is indicative of a consensual relationship and not one driven by deceit or coercion. The learned Trial Court erred in overlooking these critical aspects of the complainant's conduct.

### **Vagueness of Charges Framed**

49. The charges framed against the petitioner also suffers from inherent vagueness and fail to meet the specific requirements under Section 212 of the CrPC. Section 212 of the CrPC reads as under :

*"212. Particulars as to time, place and person.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."....*

50. The vagueness in the charges alleged against the petitioner is apparent as set out below:

- **Section 328 IPC (Causing hurt by means of poison, etc., with intent to commit an offence):** The charge mentions an "unknown date" a few days after Diwali 2015 without any supporting medical evidence.



- **Section 376 IPC (Rape):** The charge refers to an “unknown date” and provides no specific details regarding the alleged incident.
- **Section 377 IPC (Unnatural Offences):** The charge broadly covers “unknown dates, times, and places” between November 2015 and December 2017 without any substantiating *prima facie* evidence.
- **Section 493 IPC (Cohabitation caused by a man deceitfully inducing a belief of lawful marriage):** The allegations of deceitful marriages in Amritsar and Lajpat Nagar are unsupported by any photographs, witness testimonies, or tangible evidence.
- **Section 509 IPC (Word, gesture or act intended to insult the modesty of a woman):** The charge vaguely refers to “unknown dates, times, and places,” making it impossible for the petitioner to mount a meaningful defence.
- As far as offence under Section 323 of the IPC is concerned, bare allegation is made to the effect that the complainant was assaulted. The order framing charge mentions – various beatings given to the complainant at “unknown dates, time and places” without any details being furnished and the said allegation is as vague as it could be.

51. The learned Trial Court, in the impugned order, erroneously concluded that there was *prima facie* evidence of the petitioner injuring the complainant’s right eye on 27.06.2017. This conclusion was based on the statement of Dr. Deepankar Bose, but significant



discrepancies in the timeline and evidence were overlooked. According to the FIR/complaint, the alleged incident of assault occurred in February 2016. However, the prescription issued by Dr. Bose, dated 27.06.2017—more than a year later—makes no mention of any history of assault and attributes the injury to nails rather than a “blow”, as claimed in the complaint. A blow to the eye, as alleged, would typically result in visible bruising or contusions, which are absent in the prescription.

52. The charge is framed and put to accused for the purpose of accused defending the same. In the absence of any specifics, the accused is left to prove the negative.

53. The lack of specificity in these charges not only violates procedural fairness but also prejudices the petitioner’s right to a fair trial.

54. In the recent case of *Mahesh Damu Khare v. State of Maharashtra* : 2024 SCC OnLine SC 3471, the Hon’ble Apex Court reiterated the legal principles concerning consensual relationships and the initiation of criminal proceedings on allegations of sexual relationship on the false promise of marriage. The Hon’ble Apex Court quashed the FIR against the appellant therein and held as under :

*“22..... Thus, in a situation where 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 vitiation of consent under misconception of fact.*





*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 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 demurrer or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.*

*29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.*

*31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.*

*27..... In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.”*



55. The complainant, being an adult, entered into a relationship with the present petitioner out of her own volition which she does not dispute. While she claims that the petitioner initially misrepresented his marital status, her choice to continue the relationship after learning in February 2016 that he was legally married and not separated reflects her unequivocal consent to maintain the relationship despite this knowledge. Her conduct indicates her decision to remain in the relationship voluntarily and the same does not seem to be influenced by alleged deception.

### **Conclusion**

56. The cumulative effect of the inconsistencies, contradictions, and lack of evidence in this case demonstrates that the charges framed against the petitioner are legally unsustainable. The allegations and the evidence collected do not raise grave suspicion so as to subject the petitioner to trial.

57. In view of the foregoing discussion, the FIR bearing No. 02/2018, along with all consequential proceedings arising therefrom, is hereby quashed. The petitioner is discharged of the charges framed against him.

58. The present petition is allowed in the aforesaid terms.

**AMIT MAHAJAN, J**

**NOVEMBER 9, 2024**  
**UG**