

(2025) 04 SC CK 0334

In the Supreme Court Of India

Case No : Criminal Appeal No. 4007 Of 2025 Arising Out Of Special Leave
Petition (Criminal) No. 4007 Of 2024

Jaspal Singh Kaural

APPELLANT

Vs

State Of Nct Of Delhi & Anr

RESPONDENT

Date of Decision : 07-04-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 227, 313India Penal Code, 1860 — Section 375, 376, 506

Citation : (2025) 04 SC CK 0334

Hon'ble Judges : B. V. Nagarathna, J; Satish Chandra Sharma, J

Bench : Division Bench

Advocate : Shekhar Nanavaty, Jitesh Kumar Singh, Shikha Gupta, Shubham Dhyani, Rameshwar Prasad Goyal, Samridhi Arora, Archana Pathak Dave, Mukesh Kumar Maroria, Navin Kumar, Shagun Thakur, Sudhakar Kulwant, Astha Singh

Final Decision : Allowed

Judgement

Satish Chandra Sharma, J

1. Leave granted.

2. The Appellant has approached this Court being aggrieved by the Impugned Order dt. 03.01.2024 passed by the High Court of Delhi in Criminal Revision Petition no. 1161/2023, whereby the Order dt. 08.06.2023 passed by the Ld. Additional Sessions Judge/Spl. FTC Patiala House Courts, New Delhi ["Ld. Sessions Court"] discharging the Appellant in FIR no. 281/2021 dt. 05.06.2021 registered at PS Sagarpur, U/s 376/506 IPC ("FIR"), was set aside.

3. The captioned FIR came to be registered at the behest of the Complainant/ Respondent no.2, alleging that the Appellant had established physical relations with her, with the promise to marry her, and take care of her two children. The Complaint reveals, that the Appellant was known to the prosecutrix since 2011, prior to their respective marriages; however, their love re-kindled in 2016, once

their matrimonial lives became unsettled.

4. It is the case of the Complainant/Respondent no.2 that she was in a relationship with the Appellant since 2016, who was living in Canada at the time, and had come to India, and met her for the first time on 05.02.2017. On that day, he had met the Complainant/Respondent no. 2 in his brother's rental house in Dwarka and established physical relationship with her on the promise that he will marry her after obtaining divorce from his first wife. It is alleged that the Appellant harassed the Complainant into obtaining a divorce from her husband, and had subsequently, also spoken to & assured the first husband, that he would marry the Complainant/Respondent no.2 and take good care of her and her children.

5. The Appellant purportedly lived with the Respondent no. 2 at her house for twenty five days, where he sexually harassed her, and told her that if she refused to establish physical relations with him, he would not marry her. The Complainant has alleged that she obtained divorce from her husband in 2019, on the assurance from the Appellant, that he will marry her; however, on 20.05.2021, the Appellant refused to marry her and even threatened to kill her children. Subsequently thereof, the FIR no. 281/2021 dt. 05.06.2021 was registered upon the Complaint filed by the Complainant/Respondent no.2, when the Appellant failed to appear before the Mahila Police Station for counselling and mediation.

6. During the investigation, the Appellant admitted to having physical relations with the Complainant/Respondent no.2, and paying for the mangalsutra with his initials "Jas" on them. The investigation finally culminated into a charge-sheet on 15.05.2022, under Sections 376/506 IPC against the Appellant.

7. The Appellant filed an Application under Section 227 of the Code of Criminal Procedure, 1973, (for short 'CrPC') seeking discharge, whereby the Ld. Sessions Court vide Order dt. 08.06.2023, was pleased to discharge the Appellant of the offences under Section 376/506 IPC. It was observed by the Ld. Sessions Court that consent by prosecutrix was very well reasoned and was given after understanding the nature and consequence of sexual indulgence and not out of any misconception of fact.

8. Aggrieved thereby, the Complainant/Respondent no.2 filed a Criminal Revision Petition no. 1161/2023 before the Hon'ble Delhi High Court, which was allowed vide Impugned Judgment dt. 03.01.2024. Vide the Impugned Order dt. 03.01.2024, the High Court whilst assailing the order on discharge, made specific observations holding that there is prima-facie material to establish that the Appellant had indulged in sexual relationship with the Complainant/Respondent, with the promise to marry her, and frame charges against the Appellant, for offences under U/s 376/506 IPC in FIR no. 281/2021. The Impugned Order dt. 03.01.2024 is under challenge before this Court.

9. The Learned Counsel for the Appellant submitted that the relationship between

the Appellant and the Complainant/Respondent was purely consensual, and there is no question of an offence either under Section 376 IPC or 506 IPC. A perusal of the FIR and the charge-sheet would establish that there is no material on record, to establish that the Complainant/Respondent no. 2 had entered into a relationship with the Appellant, under coercion or undue influence, or under the mistaken belief or a false assurance of marriage.

10. It is also argued that the Respondent no.2/Complainant was very well aware of the consequences, of her actions, and had reasonably considered them before entering in a relationship with the Appellant. As a matter of fact, it is the own case of the Respondent no.2/Complainant, that she was in a relationship with the Appellant since 2016, while both the parties were in subsisting marriages. Thus, the element of inducement for marriage by the Appellant is manifestly absent and the criminal proceedings registered against the Appellant tantamount to a gross abuse of the process of law.

11. On the other hand, it is argued by the prosecutrix, that she had entered into a physical relationship with the Appellant solely for the reason that he had promised to marry her & take care of her children, and had it not been for the promise of marriage made by the Appellant she would have never entered into a physical relationship with him. It was submitted that the Appellant had not only promised the prosecutrix, but also her family, and her ex-husband, that that he will marry her and take care of the children. It was owing to such conduct of the Appellant that the prosecutrix got divorced from her ex-husband, leaving aside her matrimonial life for him. It is submitted that the conduct of the Appellant amounts to a dishonest inducement, and the physical relationship on a false pretext amounts to rape.

ANALYSIS AND CONCLUSION

12. We have heard counsel for both the parties and have carefully considered the Impugned Order and the material on record. The intervention of this Hon'ble Court is limited to the question as to whether there was sufficient material on record, for the Sessions Court to have discharged the Appellant for offences under section 376 and 506 IPC, arising out of FIR bearing no. 281/2021 dt. 05.06.2021 registered at PS Sagarpur.

13. At the outset, we refer to the ratio in the case of Naim Ahmed Vs State (NCT) of Delhi [2023] 15 SCC 385 whereby this Hon'ble Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the accused/Appellant, upon an assurance to marry. The prosecutrix, who was herself a married woman having three children, had continued to have such relationship with the accused Appellant, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, this Court had observed as under:

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the

misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loins of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that

the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC.”

14. The decision in Naim Ahmed (supra) is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon’ble Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. ‘Mahesh Damu Khare v. The State of Maharashtra and Anr. 2024 SCC OnLine SC 3471’

15. Upon a bare perusal of the FIR and the charge-sheet, the following facts are clearly established:

(i) The physical relationship between the Appellant and the Respondent no. 2 was consensual from the very beginning and cannot be said to be against the will or without the consent of the prosecutrix. Even if the case of the prosecutrix is accepted, there is no material on record to show that there was any dishonest inducement, or incitement on part of the Appellant.

(ii) There is also no material on record, to establish an offence of criminal intimidation under section 506 IPC against the Appellant. In-fact, it is apparent from the conduct of the Appellant, that he was acting in furtherance of the promise to marry. It is the own observation of the High Court, that the Appellant had made a promise to marry the Respondent no.2 and was acting accordingly. The Mangalsutra being prepared with the initials of the name of the Complainant/ Respondent no.2 does reflect his intention and promise to marry. However, in the eventuality of a fall-out or split between the parties, it cannot be said that the promise to marry was false, and the corresponding conduct dishonest.

(iii) There is also no element of criminality that can be accrued to the Appellant, insofar as it is the own case of the prosecutrix, that she was in a relationship with the Appellant, while being in a subsisting marriage. It is also hard to believe that the prosecutrix could have sustained a physical relationship for a prolonged period of five years ‘Prashant Vs State of NCT Delhi 2024 SCC Online SC 3375’, while being in a subsisting marriage, and even subsequently obtaining divorce to sustain the relationship. The prolonged period of the relationship, during which the sexual relations continued between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship. ‘Mahesh Damu Khare Vs State of Maharashtra and Anr. [2024] SCC Online SC 3471’ The prosecutrix was thus, conscious and cognizant of the consequences of her actions, and had given her consent after an active and reasoned deliberation. ‘Pramod Suryabhan Pawar vs State of Maharashtra [2019] 9 SCC 608’

16. In view of the aforesaid, we find that there was sufficient material on record for the Ld. Sessions Court to exercise powers under section 227 CrPC, and discharge the Appellant. It is trite law that at the time of framing of charge, a mini trial is not Permissible 'State of Rajasthan vs Ashok Kumar Kashyap [2021] SCC Online SC 314' and the Trial Court has to proceed with the material brought on record by the prosecution and determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. 'State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709' A bare review of the FIR and the charge-sheet and material placed on record by the prosecution, would clarify that the ingredients of offences under Section 375/506 IPC are not established.

17. We also find that the High Court has undertaken an exhaustive analysis of the allegations in the FIR, and the Charge-sheet, while failing to consider that at the stage of framing of charges, the court must only adjudicate on the basis of material on record. It is trite law that the scope of interference and exercise of revisional jurisdiction is extremely limited and should be exercised very sparingly, specifically in instances, where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely by framing the charge. This is certainly not the case in the present matter insofar as the findings of the Ld. Sessions Court are based on the material on record.

18. For the reasons stated above, we allow this appeal and set aside the order of the High Court dated 03.01.2024 and uphold the Order dt. 08.06.2023 passed by the Sessions Court. At this stage, we deem it appropriate to terminate the criminal proceedings arising out of FIR bearing no. 281/2021 dt. 05.06.2021 registered at PS Sagarpur, U/s 376/506 IPC against the Appellant.

19. Pending application(s), if any, shall stand disposed of. No order as to costs.