

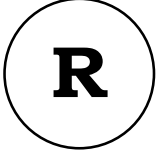
IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.100721 OF 2023



BETWEEN:

SHRI. RAGHVENDRARADDI SHIVARADDI NADUVINAMANI

- 582 103.

... PETITIONER

(BY SRI K.L.PATIL, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH GADAG RURAL P.S.,
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD BENCH,
DHARWAD - 580 011.

2 . XXXX

... RESPONDENTS

(BY SRI V.S.KALASURMATH, HCGP FOR R1;
SMT.ARCHANA A.MAGADUM, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS INITIATED PURSUANT TO GADAG RURAL P.S. CRIME NO. 32/2023 REGISTERED FOR OFFENCES P/U/SEC. 376, 506 OF IPC PENDING ON THE FILE OF II ADDL. CIVIL JUDGE AND JMFC COURT GADAG IN SO FAR AS THE PETITIONER/ SOLE ACCUSED IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.10.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in Crime No.32/2023 registered for the offences punishable under Sections 376, 506, 417 and 420 of the IPC, now pending before the II Additional Civil Judge and JMFC Court, Gadag.

2. Facts in brief, germane are as follows:

The second respondent is the complainant and the petitioner is the sole accused. The petitioner and the complainant claim to

have been in love since 2018 and have had physical relationship as well. It transpires that the complainant was married to one Ramakrishna Kadligondi on 29-06-2021, at the time when the petitioner and the complainant were still in relationship. The marriage between the complainant and Ramakrishna Kadligondi appears to have floundered. The floundering of the relationship leads the complainant walking out of the matrimonial house and staying back with her parents. It is at that time, the petitioner is again alleged to have lured the complainant in continuing the relationship that they had earlier. It is alleged that, on the promise that in the event the complainant would come out of the marriage, he would get married to the complainant and again had physical relationship with the complainant. The complainant then comes to know that she is pregnant for the child, the consequence of the physical relationship of the petitioner and the complainant and further comes to know that the petitioner is wanting to get married to someone else. It is then, the complainant registers the complaint which becomes a crime in Crime No.32/2023, for the afore-quoted offences. Registration of the crime is what has driven the petitioner to this Court in the subject petition.

3. This Court on a *prima facie* ground that they were consensual acts between the petitioner and the complainant, grants an interim order of stay on 10.08.2023. The interim order is in operation even today.

4. Heard Sri K.L.Patil, learned counsel for the petitioner, Sri V.S.Kalasurmath, learned High Court Government Pleader for respondent No.1 and Smt. Archana A. Magadum, learned counsel for respondent No.2.

5. Learned counsel appearing for the petitioner, Sri K.N.Patil would vehemently contend that consensual acts between the petitioner and the complainant cannot be termed to be a 'rape' as the complainant on her own volition wanted a relationship with the petitioner on account of strained relationship between the complainant and her husband. He would further submit that the issue in the *lis* stands covered by plethora of judgments rendered by the Apex Court and that of this Court, with particular reference to the order passed by this Court in CrI.P.No.4761/2022, disposed on 28.02.2023.

6. Smt. Archana A. Magadum, learned counsel appearing for respondent No.2 – complainant would vehemently refute the submissions of the learned counsel for the petitioner contending that when they were in love and the complainant got married to one Ramakrishna Kadligondi, the petitioner had threatened the complainant that he would reveal their relationship to the family of her husband and also he would take away her life. Due to strained relationship between the complainant and her husband, the complainant came out of the relationship and again on the promise of marriage, the petitioner has had physical relationship with the complainant. The complainant becomes pregnant for the child born and when this was brought to the notice of the petitioner, he not only denied everything but goes on to get married to another woman. She would further submit that the consent of the complainant is taken out of deceit and therefore, the offences are appropriately laid. She would also seek summoning of the DNA report.

7. Learned High Court Government Pleader appearing for respondent No.1 - State would also toe the lines of the learned counsel representing the second respondent; has placed on record the charge sheet material and the report of the DNA and would submit that it is a matter of trial for the petitioner to come out clean.

8. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the material on record.

9. The afore-narrated facts are not in dispute and requires no reiteration. The relationship between the petitioner and the complainant spans to four years. In these four years, there are many twists and turns. The petitioner and second respondent – complainant were in love since 2018. Then, being in love resulted in a relationship that was sexual as well but the parents of the complainant get her married to one Ramakrishna Kadligondi; the relationship between the said Ramakrishna Kadligondi and the

complainant strains; the complainant moves out of the matrimonial house and comes back to the parents house.

10. After the aforesaid incidents, the petitioner again rekindles the relationship as bouts of sexual acts, which is alleged to be on the promise of marriage. The promise is breached and the petitioner seeks to get married to someone else. Then springs the complaint. Since the entire issue is now sprung from the complaint, I deem it appropriate to notice the complaint. The complaint dated 26.02.2023, reads as follows:

"ಗೆ,

ತಾಣಾಧಿಕಾರಿಗಳು,

ಗದಗ ಗ್ರಾಮೀಣ ಪೊಲೀಸ್ ಠಾಣೆ.

ನಾನು XXXX ಕೋಂ XXXXXX ವಯಾ 26 ವರ್ಷ ಜಾತಿ ಹಿಂದು ರಡ್ಡಿ ಉದ್ಯೋಗ ಮನೆ ಕೆಲಸ ಸಾ:ಎಣ್ಣೆಹೊಸಳ್ಳಿ ತಾ:ರಾಣೇಬೆನ್ನೂರ ಜಿ: ಹಾವೇರಿ ಹಾಲಿ ವಸ್ತಿ ಬಿಂಕದಕಟ್ಟಿ ತಾ: ಗದಗ ಮೊಬೈಲ್ ನಂಬರ್ XXXX ಗಣಕೀಕರಣ ಮಾಡಿಸಿಕೊಟ್ಟ ಪಿರ್ಯಾದಿ ದಿನಾಂಕ 26-02-2023.

ನನ್ನ ಸ್ವಂತ ಊರು ಗದಗ ತಾಲೂಕು ಬಿಂಕದಕಟ್ಟಿ ಇದ್ದು ನಾನು ಬಿಕಾಂ ವರೆಗೆ ಓದಿರುತ್ತೇನೆ. ನನ್ನ ಮದುವೆಯ ದಿನಾಂಕ 29-06-2021 ರಂದು ರಾಣೇಬೆನ್ನೂರ ತಾಲೂಕಿನ ಎಣ್ಣೆಹೊಸಳ್ಳಿ ಗ್ರಾಮದ ರಾಮಕೃಷ್ಣ ತಂದೆ ಬಸಪ್ಪ ಕಡ್ಲಿಗೊಂದಿ ಇವನ್ನೊಂದಿಗೆ ಮದುವೆಯಾಗಿರುತ್ತದೆ. ಮದುವೆಯಾದ ನಂತರ ನಾನು ಗಂಡನ ಮನೆಗೆ ಬಾಳ್ವೆಮಾಡಲಿಕ್ಕೆ ಹೋಗಿದ್ದು ಅಲ್ಲಿ ನಾನು ನನ್ನ ಗಂಡನೊಂದಿಗೆ ದೈಹಿಕ ಸಂಪರ್ಕವನ್ನು ಇಟ್ಟುಕೊಂಡಿರುವುದಿಲ್ಲ. ಈಗ ಸುಮಾರು 2 ವರ್ಷಗಳ ಹಿಂದೆ ಗಂಡನ ಮನೆ ಬಿಟ್ಟು ನನ್ನ ತವರು ಮನೆ ಬಿಂಕದಕಟ್ಟಿಯಲ್ಲಿ ನನ್ನ ತಾಯಿ ಶಕುಂತಲಾ, ಅಣ್ಣ ಮಂಜುನಾಥ ಇವರೊಂದಿಗೆ ವಾಸವಾಗಿದ್ದು ತಂದೆ ಮರಣ ಹೊಂದಿರುತ್ತಾನೆ.

ನನ್ನ ಮದುವೆಯ ಪೂರ್ವದಲ್ಲಿ 2018 ನೇ ಸಾಲಿನಲ್ಲಿ ನಾನು ಬಿಂಕದಕಟ್ಟಿಯಲ್ಲಿದ್ದಾಗ ನಮ್ಮೂರಿನ ರಾಘವೇಂದ್ರರಡ್ಡಿ ತಂದೆ ಶಿವರಡ್ಡಿ ನಡುವಿನಮನಿ ಇವನು ನನೊಂದಿಗೆ ಬಹಳ

ಸಲುಗೆಯಿಂದ ನಡೆದುಕೊಂಡು ನನ್ನನ್ನು ಪ್ರೀತಿಮಾಡುತ್ತಾ ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆ. ಚೆನ್ನಾಗಿ ನೋಡಿಕೊಂಡು ಹೋಗುತ್ತೇನೆ ನಿನ್ನನ್ನು ಕೈಬಿಡುವದಿಲ್ಲ ಜೀವನ ಪರ್ಯಂತ ನೋಡಿಕೊಂಡು ಹೋಗುತ್ತೇನೆ ಅಂತಾ ಹೇಳುತ್ತಾ ಬಂದು ಒಂದು ದಿನ ದಿನಾಂಕ 18-07-2018 ರಂದು ರಾಘವೇಂದ್ರರಡ್ಡಿ ಇತನು ನನಗೆ ಗದಗ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹಿಂದೆ ಬಯಲು ಜಾಗೆಯಲ್ಲಿ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಮಧ್ಯಾಹ್ನ 1-00 ಗಂಟೆ ಸುಮಾರಿಗೆ ನನಗೆ ಮದುವೆಯಾಗುತ್ತೇನೆ ಅಂತಾ ನಂಬಿಸಿ ನನ್ನೊಂದಿಗೆ ಬಲಾತ್ಕಾರವಾಗಿ ಸಂಭೋಗಮಾಡಿದ್ದು ನಾನು ಅವನಿಗೆ ಎಷ್ಟು ಬೇಡಾ ಅಂತಾ ಹೇಳಿದರೂ ಕೇಳಲಿಲ್ಲ. ನಂತರ ರಾಘವೇಂದ್ರರಡ್ಡಿ ಇತನು ನನಗೆ ಮೇಲಿಂದ ಮೇಲೆ ತಿಂಗಳಲ್ಲಿ ಎರಡು ಮೂರು ಸಾರಿ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹತ್ತಿರ ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನೊಂದಿಗೆ ಸಂಭೋಗಮಾಡುತ್ತಾ ಬಂದನು.

ನಮ್ಮ ಮನೆಯಲ್ಲಿ 2021 ನೇ ಸಾಲಿನಲ್ಲಿ ನನಗೆ ಮದುವೆಮಾಡಬೇಕು ಅಂತಾ ತಿರ್ಮಾನಿಸಿ ವರ ನೋಡಲಿಕ್ಕೆ ಹತ್ತಿದಾಗ. ನಾನು ರಾಘವೇಂದ್ರರಡ್ಡಿಗೆ ಹೇಳಿದರೆ ಅವನು ಮದುವೆಯಾಗುತ್ತೇನೆ ಅಂತಾ ಅನ್ನುತ್ತಾ ನನಗೆ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳಲಿಲ್ಲ. ನನ್ನ ತಾಯಿ ನನಗೆ ರಾಮಕೃಷ್ಣ ಕಡ್ಡಿಗೊಂದಿ ಇವನೊಂದಿಗೆ ಮದುವೆಮಾಡಿದರು. ಮದುವೆಯಾದ ನಂತರ ನನು ಹೊಸದಾಗಿ ಗಂಡನ ಮನೆಗೆ ಹೋಗುವಾಗ ರಾಘವೇಂದ್ರರಡ್ಡಿ ಇತನು ನನಗೆ ಹೆದರಿಸಿ ಬೆದರಿಸಿ. ನೀನು ಗಂಡನ ಜೊತೆ ಬಾಳ್ವೆಮಾಡಿದರೆ ನನ್ನ ನಿನ್ನ ವಿಷಯ ಎಲ್ಲಾ ನಿನ್ನ ಗಂಡನ ಮುಂದೆ ಮತ್ತು ಅವರ ಮನೆ ಜನರಿಗೆ ತಿಳಿಸುತ್ತೇನೆ. ನಾನು ನಿನ್ನ ಮದುವೆ ಆಗತ್ತಿನಿ ಅಲ್ಲಿವರೆಗೂ ಗಂಡನಿಗೆ ಏನಾದರೂ ಸುಳ್ಳು ಹೇಳುತ್ತಾ ಹೋಗು ಅವನೊಂದಿಗೆ ಬಾಳ್ವೆ ಮಾಡಬೇಡಾ ಅಂತಾ ನನಗೆ ಬೆದರಿಕೆ ಹಾಕಿದ್ದರಿಂದ ನಾನು ಗಂಡನ ಮನೆಯಲ್ಲಿ ಗಂಡನೊಂದಿಗೆ ಸರಿಯಾಗಿ ಬಾಳ್ವೆ ಮಾಡಿರುವುದಿಲ್ಲ. ಮತ್ತು ನಾನು ಆಗಾಗ ತವರು ಮನೆಗೆ ಬಂದಾಗ ರಾಘವೇಂದ್ರರಡ್ಡಿ ಇತನು ನನಗೆ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹಿಂದೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಸಂಭೋಗಮಾಡುತ್ತಾ ಬಂದಿರುತ್ತಾನೆ ನಮ್ಮಿಬ್ಬರ ಸಂಭಂದಿಂದ ನನಗೆ ಒಂದು ದೀಪ್ತಿ ಅನ್ನುವ ಹಣ್ಣು ಮಗು ಜನಿಸಿದ್ದು ಈಗ ಒಂದು ವರೆ ವರ್ಷದವಳು ಇರುತ್ತಾಳೆ. ನಾನು ಗಂಡನ ಮನೆಬಿಟ್ಟು ತವರು ಮನೆಗೆ ಬಂದು ಇದ್ದು ರಾಘವೇಂದ್ರರಡ್ಡಿಗೇ ನನ್ನನ್ನು ಮದುವೆಮಾಡಿಕೊ ಈಗಾಗಲೇ ಒಬ್ಬಳು ಮಗಳು ಹುಟ್ಟಿದ್ದು ಮತ್ತು ನನಗೆ ನನ್ನ ಗಂಡನು ಡೈವೋರ್ಸ್ ನೋಟೀಸ್ ಕಳಿಸುತ್ತೇನೆ ಅಂತಾ ನಮ್ಮ ಮನೆಯವರಿಗೆ ಹೇಳುತ್ತಿದ್ದಾನೆ ಅಂತಾ ಹೇಳಿದರೂ ಕೇಳದೆ ನನ್ನೊಂದಿಗೆ ಸಂಭೋಗ ಮಾಡುತ್ತಾ ಕೊನೆಯದಾಗಿ ದಿನಾಂಕ 14-04-2022 ರಂದು ಗದಗ ಗೀತಾಂಜಲಿ ರೆಸಿಡೆನ್ಸಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನೊಂದಿಗೆ ಸಂಭೋಗಮಾಡಿದ್ದು ಇರುತ್ತದೆ ನಾನು ಅವಾಗಿನಿಂದ ಮದುವೆಯಾರ ಮಾಡಿಕೋ ಇಲ್ಲಾಂದ್ರೆ ರಜಿಸ್ಟರ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳೋಣ ಅಂತಾ ಹೇಳುತ್ತಾ ಬಂದಿದ್ದು ಅವನು ನನ್ನ ಮಾತಿಗೆ ಬೆಲೆಕೊಡದೇ ಈಗ ಅವರ ಮನೆಯಲ್ಲಿ ಬೇರೆ ಹುಡುಗಿಯನ್ನು ನೋಡಿ ಮದುವೆಮಾಡಿಕೊಳ್ಳುತ್ತಿರುವುದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ.

ಕಾರಣ ರಾಘವೇಂದ್ರರಡ್ಡಿ ತಂದೆ ಶಿವರಡ್ಡಿ ನಡುವಿನಮನಿ ಸಾಃ ಬಿಂಕದಕಟ್ಟಿ ಇತನು ನನಗೆ ಮದುವೆಯಾಗುತ್ತೇನೆ ಅಂತಾ ನಂಬಿಸುತ್ತಾ ಬಂದು ನನ್ನೊಂದಿಗೆ ಬಲಾತ್ಕಾರವಾಗಿ ಸಂಭೋಗಮಾಡುತ್ತಾ ಬಂದಿದ್ದರಿಂದ ನನಗೆ ಒಂದು ಮಗು ಆಗಿದ್ದು ನಾನು ಮದುವೆಯಾಗಿ ಗಂಡನ ಮನೆಯಲ್ಲಿದ್ದರೂ ಕೂಡ ಗಂಡನೊಂದಿಗೆ ಬಾಳ್ವೆ ಮಾಡಿದರೆ ನೀನು ನನ್ನೊಂದಿಗೆ ಅನೈತಿಕ ಸಂಭಂದ ಹೊಂದಿರುತ್ತಿ ಅಂತಾ ಅವರಿಗೆ ತಿಳಿಸುತ್ತೇನೆ ಮತ್ತು ನನ್ನ ಮಾತು ಕೇಳದಿದ್ದರೆ ನೀನ್ನ ಜೀವಕ್ಕೆ ಅಪಾಯಮಾಡುತ್ತೇನೆ ಅಂತಾ ಹೆದರಿಸಿ ಬೆದರಿಸುತ್ತಾ ಬಂದು ನನಗೆ ಮೋಸಮಾಡಿದ್ದು ನಾನು ಅವನು ಮದುವೆಮಾಡಿಕೊಳ್ಳುತ್ತಾನೆ ಅಂತಾ ಈವರೆಗೂ ಕಾದಿದ್ದು ಅವನು ಮದುವೆಯಾಗದೇ ಇದ್ದುದರಿಂದ ಈ ದಿವಸ ತಡವಾಗಿ ಬಂದು ಇವನ ಮೇಲೆ ದೂರು ಸಲ್ಲಿಸಿದ್ದು ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಲು ವಿನಂತಿ ಇರುತ್ತದೆ.”

The complainant narrates in the afore-quoted complaint, the instances they had happened between 2018 and 2023. The allegation is that all acts of getting physical by the petitioner with the complainant is on promise of marriage. The law in this regard is now doubt settled with regard to the consensual acts, which cannot be termed as 'rape'. The judgments rendered by the Apex Court and this Court are the principles which govern the challenge to such proceedings.

11. The twist in the case at hand is with regard to, what has become of the relationship. On the vehement opposition of the learned counsel appearing for the complainant, this Court summoned the charge sheet material and the report of the Forensic Science Laboratory. The DNA test report would indicate that the petitioner is the father of the child of the complainant. The DNA report opines as follows:

“Reasons

From the comprehensive analysis of the test results as shown in Annexure I, it is found that:

*The alleles in the DNA profile result of Deepti Kadligondi, sample blood sent in item no.3 is **consistent with having***

come from the offspring of Raghavendra Naduvinamani s/o Shivaraddi and xxxx xxxxx w/o Ramakrishna and **matching** with that of the alleles present in the DNA profile result of sample blood sent in item nos. 1 and 2 under 23 autosomal STR (short tandem repeats) loci.

OPINION

From the DNA profile results of samples sent, it is found that:

xxxx xxxxxx w/o Ramakrishna, sample blood sent in item no. 2 is **included** from being the **biological mother** and Raghavendra Naduvinamani s/o Shivaraddi, sample blood sent in item no. 1 is **included** from being the **biological father** of Deepti Kadligondi, sample blood sent in item no. 3 **Enclosure.**

Nine (Annexure-1, Annexure-II, three identification forms, three forwarding notes and sample seal of DNA, RFSL Hubballi)

NOTE

1. This report is per se admissible u/s 293 Cr.P.C.
2. The results relate only to the items tested.
3. The test report shall not be reproduced in full except with written approval of the Laboratory.
4. In case of court evidence is required, the summons may be sent to Dr. Malik Ahmed Pasha
5. The examination Report No. DNA 339/2023 must be quoted in all the correspondence and summons
6. Reference: Working Procedure Manual No. RFSL/HBL/DNA/WPM
7. Blood samples were brought in ice cold condition."

The report of the DNA clearly indicates that the biological mother is the complainant and the biological father is the petitioner. In the light of the analysis of the DNA of the child, the mother and the

petitioner, being positive towards the fact that the biological parents being the petitioner and the complainant, the allegations by the complainant would stand to reason. If it were to be consensual acts, which have become nothing, it would have been a circumstances altogether different. It is therefore, the entire charge sheet material which was already filed before the concerned Court was summoned and column No.17 of the said charge sheet after investigation which is the product of investigation reads as follows:

“17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ (ಅವಶ್ಯಕವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ)

ಮಾನ್ಯ ಘನ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಗೊಳಪಡುವ ಗದಗ ಗ್ರಾಮೀಣ ಪೊಲೀಸ್ ಠಾಣೆ ಹದ್ದಿ ಪ್ರೆಕೆ. ಗದಗ ಆರ್‌ಟಿಒ ಆಫೀಸ್ ಹತ್ತಿರ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹಿಂದೆ, ದಿನಾಂಕ 18.07.2018 ರಂದು 13:00 ಘಂಟೆಯ ಸುಮಾರಿಗೆ, ಚಾರ್ಜ್‌ಶೀಟ್ ಕಾಲಂ ನಂಬರ 12 ರಲ್ಲಿ ನಮೂದ ಮಾಡಿದ ಆರೋಪ ರಾಫ್‌ವೇಂದ್ರ @ ರಾಫ್‌ವೇಂದ್ರರಡ್ಡಿ ತಂದೆ ಶಿವರಡ್ಡಿ ನಡುವಿನಮನಿ ವಯಾ-25 ವರ್ಷ ಸಾಬಿಂಕದಕಟ್ಟೆ ಅಜರಡ್ಡಿ ಪ್ಲಾಟ್ ತಾ:ಜಿ:ಗದಗ ಇವನು. ಪಿಯಾದುದಾರಳೊಂದಿಗೆ ಬಹಳ ಸಲುಗೆಯಿಂದ ನಡೆದುಕೊಂಡು, ಪ್ರೀತಿಮಾಡುತ್ತಾ ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆ. ಚೆನ್ನಾಗಿ ನೋಡಿಕೊಂಡು ಹೋಗುತ್ತೇನೆ, ಅಂತಾ ಹೇಳಿ ದಿನಾಂಕ 18.07.2018 ರಂದು ಗದಗ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹಿಂದೆ ಆರ್‌ಟಿಒ ಆಫೀಸ್ ಹತ್ತಿರ ಬಯಲು ಜಾಗೆಯಲ್ಲಿ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಮಧ್ಯಾಹ್ನ 1-00 ಗಂಟೆ ಸುಮಾರಿಗೆ ಮತ್ತು ಗದಗ ಗೀತಾಂಜಲಿ ರೆಸಿಡೆನ್ಸಿ ರೂಂ ನಂಬರ 204. 205 ನೇದ್ದರಲ್ಲಿ ಎಷ್ಟು ಬೇಡ ಅಂತಾ ಹೇಳಿದರೂ ಕೇಳದೇ ಮೇಲಿಂದ ಮೇಲೆ ತಿಂಗಳಲ್ಲಿ ಎರಡೂ ಮೂರು ಸಾರಿ ಅಂಜುಮನ್ ಕಾಲೇಜು ಹತ್ತಿರ ಬಯಲು ಜಾಗೆಯಲ್ಲಿ ಎಷ್ಟೇ ಬೇಡವೆಂದು ಬೇಡಿಕೊಂಡರೂ ಸಹ ನನ್ನೊಂದಿಗೆ ಸಹಕರಿಸದ್ದರೆ ಮತ್ತು ನಾನು ಕರೆದಾಗ ನನ್ನೊಂದಿಗೆ ಬರದಿದ್ದರೆ ನಿನ್ನನ್ನು, ನಿನ್ನ ಮಗುವನ್ನು ಮತ್ತು ನಿನ್ನ ತಾಯಿಯನ್ನು ಬಿಡುವದಿಲ್ಲ ಹಾಗೂ ನಿನ್ನ ನನ್ನ ಸಂಬಂಧದ ಬಗ್ಗೆ ಊರಿಗೆಲ್ಲಾ ತಿಳಿಸುತ್ತೇನೆ ಮತ್ತು ನಿನ್ನ ಗಂಡ ವ ಅವನ ಮನೆಯವರಿಗೆ ತಿಳಿಸಿ ನಿನ್ನ ಜೀವನವನ್ನೇ ಹಾಳು ಮಾಡುತ್ತೇನೆ ಅಂತಾ ಬೆದರಿಕೆ ಹಾಕುತ್ತಾ, ಸುಮ್ಮನೇ ನಾನು ಹೇಳಿದ ಹಾಗೆ ಕೇಳು ಮುಂದೆ ಮದುವೆ ನಿನ್ನನ್ನು ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ ಅಂತಾ ನಂಬಿಸಿ ಪಿಯಾದುದಾರಳೊಂದಿಗೆ ಬಲವಂತವಾಗಿ ಒತ್ತಾಯದಿಂದ ಸಂಭೋಗ ಮಾಡಿದ್ದಲ್ಲದೇ. ಪಿಯಾದುದಾರಳು ಮದುವೆಯಾಗಿ ಗಂಡನ ಮನೆಯಲ್ಲಿದ್ದರೂ ಕೂಡಾ ಗಂಡನೊಂದಿಗೆ ಬಾಳ್ವೆ ಮಾಡಿದರೆ ನೀನು ನನ್ನೊಂದಿಗೆ ಅನೈತಿಕ ಸಂಭಂದ ಹೊಂದಿರುತ್ತೀ ಅಂತಾ ಅವರಿಗೆ ತಿಳಿಸುತ್ತೇನೆ ಮತ್ತು ನನ್ನ ಮಾತು ಕೇಳದಿದ್ದರೆ ನಿನ್ನ

ಮತ್ತು ನಿನ್ನ ಮನೆಯ ಜನರ ಜೀವಕ್ಕೆ ಅಪಾಯಮಾಡುತ್ತೇನೆ ಅಂತಾ ಹೆದರಿಸಿ ಬೆದರಿಸುತ್ತಾ ಬಂದು ಮೋಸ ಮಾಡಿ. ಕಲಂ 376, 506, 417, 420 IPC ಪ್ರಕಾರ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧ ಎಸಗಿರುತ್ತಾನೆ.

18. ಪಿರಾಧಿಯ ಮೇಲೆ ನೋಟೀಸು ಜಾರಿ ಮಾಡಲಾಗಿದೆಯೇ ಹೌದು/ಇಲ್ಲ
ದಿನಾಂಕ:

19. ವೃತ್ತ ನಿರೀಕ್ಷಕರ ಷರಾ ಮತ್ತು ನ್ಯಾಯಾಧೀಶರಿಗೆ ಕಳುಹಿಸಿದ ದಿನಾಂಕ:

ಟಿಪ್ಪಣಿ : 1) ಸಾಕ್ಷಿದಾರರು ಮತ್ತು ಆರೋಪಿತರ ಹೆಸರು, ವಿಳಾಸಗಳು ಸರಿಯಾಗಿರುತ್ತವೆ
ಅಂತಾ ದೃಢೀಕರಿಸುತ್ತೇನೆ.

2) ಪಿಯಾರ್‌ದುದಾರಳ ಹೇಳಿಕೆಯನ್ನು ಕಲಂ 164 ಸಿಆರ್‌ಪಿಸಿ ಅಡಿಯಲ್ಲಿ
ದಿನಾಂಕ 28.02.2023 ರಂದು ಮಾನ್ಯ ಜೆ.ಎಮ್.ಎಫ್.ಸಿ 2ನೇ
ನ್ಯಾಯಾಲಯ ಗದಗರವರಲ್ಲಿ ಮಾಡಿಸಿದ್ದು, ಮೂಲ ಹೇಳಿಕೆಯನ್ನು ಈ
ಪ್ರಕರಣದಲ್ಲಿ ಅಳವಡಿಸಿಕೊಳ್ಳಲು ವಿನಂತಿ.

3) ಚಾರ್ಜ್‌ಶೀಟ್ ಕಾಲಂ ನಂಬರ 11 ರಲ್ಲಿ ನಮೂದಿಸಿದ ಅ.ನಂಬರ 01
ರಿಂದ 11ನೇ ಜಪ್ತ ವಸ್ತುಗಳನ್ನು ರಸಾಯನ ಪರೀಕ್ಷೆ ಕುರಿತು
ಆರ್‌ಎಫ್‌ಎಸ್‌ಎಲ್ ಬೆಳಗಾವಿ ರವರ ಬಳಿಗೆ ಕಳುಹಿಸಿದ್ದು, ಅವುಗಳನ್ನು
ಹಿಂದಿನಿಂದ ಪಡೆದು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಹಾಜರಪಡಿಸಲು
ಅನುಮತಿ ಇರಲು ಮನವಿ.

4) ಆರೋಪಿ, ಪಿಯಾರ್‌ದಿ, ಮಗುವಿನ ರಕ್ತದ ಮಾದರಿಗಳನ್ನು ಡಿಎನ್‌ಎ
ಪರೀಕ್ಷೆ ಕುರಿತು ಆರ್‌ಎಫ್‌ಎಸ್‌ಎಲ್ ಹುಬ್ಬಳ್ಳಿಗೆ ಕಳುಹಿಸಿದ್ದು, ಅವರಿಂದ
ಪರೀಕ್ಷಾ ವರದಿಯನ್ನು ಹಿಂದಿನಿಂದ ಪಡೆದು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ
ಹಾಜರಪಡಿಸಲು ಮತ್ತು ಪರೀಕ್ಷೆ ಮಾಡಿದ ತಜ್ಞರನ್ನು ಸಾಕ್ಷಿ ಅಂತಾ
ಪರಿಗಣಿಸಲು ಅನುಮತಿ ಇರಲು ಮನವಿ.”

The investigation has lead to the aforesaid finding and the finding has lead to the inclusion of the offences under Sections 417 and 420 of the IPC along with Sections 376 and 506 of the IPC. The issue that arises for consideration is, whether the offence of rape could be met in the case at hand or offence of cheating is required to be considered.

12. The narration in the complaint or summary of the charge sheet would indicate that the petitioner and the complainant were in love, continued to be in love and after the strained relationship between the husband of the complainant and the complainant, the petitioner takes advantage and rekindles the sexual relationship, all on the promise of marriage. Though sexual acts on promise of marriage would not attract Section 376 of the IPC or as held by the co-ordinate benches of this Court, the offence of cheating in the case at hand is distinguishable without much ado though consensual acts would not amount to a rape. The Apex Court in the case of **SHAMBHU KARWAR v. STATE OF UTTAR PRADESH AND ANOTHER**¹, while considering the interplay between the rape and consensual acts has held that it would not amount to rape. The Apex Court has held as follows:

"7. The parameters governing the exercise of the jurisdiction of Section 482 of CrPC are well-settled and have been reiterated in a consistent line of decisions of this Court. In Neeharika Infrastructure v. State of Maharashtra, a three Judge Bench of this Court which one of us was a part of (D.Y. Chandrachud J.), reiterated the parameters laid down in R.P. Kapur v. State of Punjab and State of Haryana v. Bhajan Lal and held that while the Courts ought to be cautious in exercising

¹ 2022 SCC OnLine SC 1032

powers under Section 482, they do have the power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence. The Court does not enter into the merits of the allegations or trench upon the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence.

8. *In Bhajan Lal (supra) this Court formulated the parameters in terms of which the powers in Section 482 of CrPC may be exercised. While it is not necessary to revisit all these parameters again, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:*

"102.(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. (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 155(2).

[...]

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

9. *In Dhruvaram Murlidhar Sonar v. State of Maharashtra, a two Judge Bench of this Court while dealing with similar facts as the present case reiterated the parameters laid down in Bhajan Lal (supra) held that:*

*"13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. **If the allegations set out in the complaint do not constitute the offence of which cognizance has***

been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

(emphasis supplied)

10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

"375. Rape - A man is said to commit "rape" if he -

[...]

under the circumstances falling under any of the following seven descriptions

Firstly ...

Secondly. - Without her consent.

[...]

Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or..."

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*,⁷ 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*,⁸ 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)***

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent.

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under Section 482 of CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in

dispute, would indicate that the ingredients of the offence under Section 376 IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482 of CrPC on a completely misconceived basis.

15. We, accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 5 October 2018 in application u/s 482 No 33999 of 2018. The application under Section 482 of CrPC shall accordingly stand allowed. The Case Crime No 11 of 2018 registered at Police Station Rasra, District Ballia, charge-sheet dated 23 April 2018 in the aforementioned case and the order dated 24 May 2018 in Criminal Case No 785 of 2018 in the Court of the Addl. Chief Judicial Magistrate (First), Ballia taking cognizance of the charge-sheet shall accordingly stand quashed.”

(Emphasis supplied)

If in the light of the facts obtaining in the case at hand are considered on the bedrock of the principles laid down by the Apex Court in the afore-quoted judgment, the offence under Section 376 of the IPC cannot be laid against the petitioner and permitting further proceedings to continue would become an abuse of the process of the law and therefore, the said offence is to be obliterated.

13. What remain are, the offences punishable under Section 417 420 and 506 of the IPC - cheating and criminal intimidation.

All of them are found in the case at hand. The petitioner has undoubtedly lured the complainant taking advantage of the strained relationship between the complainant and her husband, on such promise of marriage, which has resulted in child being born from, out of the wedlock. Vehement submissions were made by the learned counsel for petitioner that the child has not born to the petitioner but it was Smt. Archana A. Magadum, learned counsel for respondent No.2 – complainant who vehemently opposed the contentions and insisted upon the production of the DNA report as according to the instructions of the complainant, the child is born to the petitioner and the complainant.

14. This Court had to direct DNA reports to be placed on record. The DNA report is as afore-quoted, clearly indicates that the petitioner and the complainant are the biological parents of the child born from the acts of the petitioner and the second respondent – complainant and the petitioner has no intention of ever getting married to the complainant. He had only intention to have physical relationship and therefore, *prima facie*, the offence of

cheating is met and the result of such cheating is the birth of the child.

15. The other offence is for criminal intimidation, punishable under Section 506 of the IPC. Even that would be met in the case at hand as the allegation in the complaint or the summary of the charge sheet is that, the petitioner has threatened the complainant throughout four years. Therefore, it would become the ingredients of Section 503 of the IPC. The offences under Section 506 of the IPC is also to be sustained.

16. On a coalesce of what is observed hereinabove, the result would be that, the offence under Section 376 of the IPC is to be obliterated and the offences under other provisions of law i.e., Sections 506, 417 and 420 of the IPC are to be sustained.

17. In terms of the complaint, the summary of the charge sheet, the statements recorded and the report of the samples of the DNA which clearly emerge that the child is born due to the acts of the petitioner and the complainant and now the complainant is left

in the lurch as she has neither the support of her husband, as her relationship is completely strained nor the petitioner who is wanting to marry another lady. In the crossfire between the petitioner and the complainant, the innocent child is caught. Therefore, in the peculiar facts of this case, as it is found that the petitioner is the biological father of the child, he cannot now show a hands off to the responsibility of the child which is born to him *albeit*, till the conclusion of the trial.

18. I therefore, deem it appropriate to direct the petitioner to pay maintenance to the child at Rs.10,000/- p.m. till the conclusion of the trial.

19. For the aforesaid observations, the following:

ORDER

- a. The criminal petition is allowed in part.
- b. The proceedings in Crime No.32/2023, pending before the II Additional Civil Judge and JMFC, Gadag, insofar as the offence punishable under Section 376 of the IPC, stands

quashed and the offences under Sections 417, 420 and 506 of the IPC stands sustained.

- c. The petitioner shall pay maintenance to the child at Rs.10,000/- p.m., from the date of receipt of a copy of the order, till conclusion of the trial.

**Sd/-
JUDGE**

nvj
CT: MJ