



2025:CGHC:24675

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 552 of 2021

Rajeev Kumar Sahu, S/o A.R. Sahu, Aged About 50 Years R/o- Triveni Vihar, Behind Ramkrishna Hospital, Tikrapara Raipur, District - Raipur Chhattisgarh

... Applicant

versus

1. State of Chhattisgarh, Through - Station House Officer, Police Station - Chakradhar Nagar Raigarh, District - Raigarh Chhattisgarh
2. X, w/o - y, resident of Bilaspur, District - Bilaspur Chhattisgarh (identity of the prosecutrix not disclosed and would be provided as and when directed)

... Respondents

For Applicant	: Ms. Fouzia Mirza, Senior Advocate assisted by Mr. Navin Shukla, Advocate.
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For Respondent No.1/State	: Ms. Monika Thakur, Panel Lawyer.
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For Respondent No.2	: Mr. Prabhat Kumar Saxena, Advocate.
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Hon'ble Shri Ramesh Sinha, Chief Justice

Order on Board

16.06.2025

1. Heard Ms. Fouzia Mirza, learned Senior Advocate assisted by Mr. Navin Shukla, learned counsel appearing for the applicant. Also heard Ms. Monika Thakur, learned Panel Lawyer, appearing for the

respondent No.1/State as well as Mr. Prabhat Kumar Saxena, learned counsel, appearing for the respondent No.2.

2. The applicant has filed this criminal revision against the order dated 03.07.2021 passed by learned Additional Sessions Judge F.T.C., District – Raigarh, (C.G.) in Session Trial No. 37/2021, whereby the charge under Section 376 of the Indian Penal Code was framed against the applicant.
3. According to the prosecution's case, the victim, a housewife residing in Bilaspur and originally from West Bengal, lodged a report on 03.03.2020, at Police Station Chakradhar Nagar, District Raigarh stating inter-alia that after her marriage, she moved to Bilaspur and lived with her husband. While working at an NGO office, she became acquainted with the applicant, who would visit Bilaspur and engage in conversation with her. He allegedly claimed that her husband was a drunkard who did not care for her and promised to keep her as his wife. Under this pretext, he rented a separate house for her and sexually abused her since 2008. The victim later moved to Raigarh with her children and lived with the applicant, who continued to sexually abuse her under the promise of marriage, which he never fulfilled. On 11.11.2019, the applicant told her that he had to go to Raipur for a week but did not return. The victim alleged that the applicant, claiming his wife was dead, raped her under the false promise of marriage.
4. Based on her report, an FIR was registered and her statement was recorded under Section 164 of the CrPC. After completing the investigation, a charge-sheet was submitted on 22.10.2020, before

the Chief Judicial Magistrate, Raigarh, for offence punishable under Section 376 of the IPC.

5. The applicant has been granted anticipatory bail vide order dated 29.06.2020 by this Court in M.Cr.C.A. No. 528/2020.
6. On 03.07.2021 the Additional Session Judge (FTC), Raigarh framed charge against the applicant by observing as below:-

“That, between June 2008 till dated 11.11.2019 the petitioner has without independent consent and wish forcefully committed sexual intercourse with the Prosecutrix and hence he has committed an offence which is punishable U/s 376 of IPC and is under the cognizance of the Court.”

7. Against the registration of FIR No. 68/2020 at police station Chakradhar Nagar, Raigarh and filing of the final report under Section 376 of the IPC, the applicant has preferred Cr.M.P. No. 1220/2020, which was dismissed by this Court with the following observation:-

“From the perusal of the above discussion and considering the materials placed on record, I am of the view that no case is made out for interference by this Court.”

However, this Court has observed that it is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present Criminal Miscellaneous Petition. The trial Court is directed to proceed further, in accordance with law, without being influenced by any of

the observations made by this Court while deciding this Criminal Miscellaneous Petition.

8. Learned Senior Advocate for the applicant submits that learned trial Court has erred in facts as well as in laws, while framing charge under Section 376 of the IPC without taking into consideration the allegation and the investigation conducted by the prosecution under Section 376 of the IPC on the basis of the FIR registered in crime No. 68/2020 at police station Chakradhar Nagar, Raigarh. She submits that the statements of the neighbors under Section 161 of the Cr.P.C. annexed with the charge-sheet itself reflect that the applicant and the complainant were in consensual relationship and were cohabiting as husband and wife. Even in the statement recorded under section 164 of the CrPC, she has stated that her marriage with her previous husband has been solemnized in the year 1991 and she in the year 2008 in a social meeting has been separated from her husband and her statement recorded under oath before learned JMFC, Raigarh under Section 164 CrPC in the same crime number it has been made in the name X @ X-1 wife of Rajeev. She further submits that a month prior to lodging of the report at police station Chakradhar Nagar, Raigarh, the complainant has filed a complaint at Sakhi One Stop Center Mahila Evam Bal Vikas District Raigarh addressing Center Administrator dated 04.02.2020 stating herself as X-1 wife of Rajeev Sahu showing that her love marriage has been solemnized twelve years back with the applicant and she has three children out of the

wedlock and she has prayed that her husband should be advised to fulfill his obligations.

9. She also submits that the applicant himself has lodged a complaint before the Inspector General of Police Bilaspur on 25.02.2020 informing the conduct of the respondent No.2 as well as the manner in which she has prepared documents by stating different names in different government identification documents. The complainant has alleged in the FIR that she was assured by the applicant that he would marry her and on that basis she agreed to have sexual relation with him. The complainant herself is a married lady and having known him since 2008, it is unbelievable that she has been induced by him on false assurance of marriage as she is cohabiting as husband and wife. The respondent No.2 in one of her voter identification card which has also been issued by Election Commission of India has mentioned her names as X-1 W/o- Y similarly in Gas connection Form and bank statements also her name has been mentioned as X-1 W/o- Y. The suppression of such cardinal facts have been overlooked by learned Court below while framing charge. She further submits that in the Aadhar Card her name has been mentioned as X Wife of the applicant, she has prepared another voter identification card, Ration Card, declaring her to be wife of the applicant. In the letter issued by Raipur Development Authority, her name has been mentioned to be wife of the applicant. Earlier also the victim has filed a written complaint on 12.01.2020 before the Superintendent of Police Raigarh, District Raigarh (C.G.), wherein she has stated that applicant Rajeev

Kumar Sahu has committed sexual intercourse with her on the pretext of marriage, thereafter, the statement of the victim was recorded by the concern police, wherein she has made the similar allegation against the applicant. She contended that on perusal of the charge-sheet the case of the prosecution does not even corroborate with sufficient evidence and the case is riddled with gaps, there is no evidence annexed with the charge-sheet to substantiate the identity of the complainant i.e. respondent No.2. As such, the revision deserves to be allowed and impugned order framing charge deserves to be quashed. She relied upon the judgments rendered by the Hon'ble Supreme Court in the cases of ***XXXX Vs. State of Madhya Pradesh and Another*** passed in ***Criminal Appeal No. 3431 of 2023*** on ***06.03.2024*** and ***Amol Bhagwan Nehul Vs. The State of Maharashtra and Another*** in ***SLP (Crl.) No. 10044 of 2024*** on ***26.05.2025***.

10. On the other hand, learned Panel Lawyer appearing for respondent No.1 and learned counsel appearing for respondent No.2 support the impugned order framing charge and submit that the trial Court has rightly framed the charge under Section 376 of the IPC which warrants no interference by this Court.
11. That, it is settled law that due weightage to the age, educational qualifications, family and social background of the victim to ascertain whether her consent could have been obtained by fraud in such like cases. The law on consent based on misconception of fact has been succinctly laid down in various judgments of the Hon'ble Supreme Court.

12. In the case of **Vinod Kumar v. State of Kerala : (2014) 5 SCC 678** the Hon'ble Supreme Court observed that "the prosecutrix therein was a graduate and even otherwise was not a gullible women of feeble intellect as is evident from her conduct in completing her examination successfully even on the eventful day. In fact she had displayed mental maturity of an advanced and unusual scale. She was aware that a legal marriage could not be performed and, therefore, was content for the time being that an agreement for marriage be executed. In the above case, the Supreme Court further observed that the Court is duty bound when assessing presence or absence of consent, to satisfy itself that none of the parties are ad-idem on essential features; in that case Prosecutrix was lead to believe that her marriage to appellant, therein had been duly and legally performed. The Hon'ble Supreme Court opined that it is not sufficient that she convinced herself of existence of this factual matrix, without appellant inducing or persuading her to arrive at that conclusion. It is not possible to convict a person who did not hold out any promise or make any misstatement of facts or law or who presented a false scenario which had the consequence of inducing the other party into commission of an act. There may be cases where one party may, owing to his or her own hallucinations, believe in existence of a scenario which is a marriage and in creation of which other party has made no contribution. If other party is forthright or honest in endeavoring to present the correct picture, such party cannot obviously be found culpable.

13. There is no straitjacket formula for determining whether consent given by the victim to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.
14. The Hon'ble Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335** has held as under: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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

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

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

- 15.** The Hon'ble Supreme Court in the case of **XXXX v. State of Madhya Pradesh** (supra) has observed as under:-

“8. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10.12.2018. However, the fact remains that decree of divorce was passed only on 13.01.2021. 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 about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of ₹1,00,000/- to the prosecutrix through banking channel which was not returned back.”

- 16.** The Hon'ble Supreme Court in the case of **Amol Bhagwan Nehul** (supra) has observed as under:-

“9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly [*Naim Ahmed Vs. State (NCT) of Delhi, reported in (2023) SCC Online SC 89*] to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.”

17. From perusal of the impugned order passed by the trial Court, as well as the documents available on record, and after hearing learned counsel for the parties and perusing the pleadings, it appears that both the complainant and the applicant are married persons. The complainant/victim had been residing with the applicant as husband and wife with her own consent and was involved in a consensual physical relationship with him. Moreover, the fact that the victim/complainant has also changed her husband's name to that of the present applicant on all government identification cards further supports that she willingly resided with the applicant.
18. Considering the fact that as the victim/complainant has been living with the applicant since 2008 and made physical relationship with him and also she has changed her husband's name to that of the present applicant on all government identification cards further supports that she willingly resided with the applicant and also

considering the law laid down by the Hon'ble Supreme Court in the above-stated judgments, I am of the view that the applicant has made out a case for interference.

19. Accordingly, criminal revision is **allowed** and the order dated 03.07.2021 passed by the Additional Session Judge (FTC), Raigarh, District Raigarh, Chhattisgarh in Session Trial No. 37/2021, whereby the Additional Session Judge has framed the charge against the applicant for offence under Section 376 of the IPC is hereby **set-aside**.
20. A copy of this order be sent to the concerned trial Court for necessary compliance and follow up action.

Sd/-
(Ramesh Sinha)
Chief Justice

HEAD NOTE

A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual of such a heinous offence.