

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 03.03.2025
Pronounced on 02.05.2025**

CRMC No. 552/2018

Rajinder Kumar

.....Appellant(s)/Petitioner(s)

Through: Mr. Mazher Ali Khan, Adv.

Vs

State of J&K and Anr.

..... Respondent(s)

Through: Mr. Sumeet Bhatia, GA for No. 1
None for No. 2

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This petition has been filed for quashing the FIR No. 38/2018 dated 16.08.2018 registered with Police Station, Panchari, District Udhampur under sections 376 and 506 RPC by respondent No. 1 at the instance of respondent No. 2.
2. It is stated in the petition that false and frivolous FIR without mentioning the date, time and place of occurrence has been registered against the petitioner at the instance of respondent No. 2 and a bare perusal of the same would reveal that no offence is made out against the petitioner, even if, the allegations at their face value, are assumed to be correct. It is also urged by the petitioner that respondent No. 2 has alleged the occurrence to have taken place in the month of June 2011 and the contents of the complaint itself establish that respondent No. 2 has grievance in respect of the broken promise of marriage, though the petitioner denies the same. In

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the FIR, though it is stated that respondent No. 2 had maintained the relationship with the petitioner for seven years, but the petitioner did not even know respondent No. 2.

3. The petitioner has further tried to demonstrate the falsity of the FIR impugned by submitting that the petitioner was selected as Constable in Sashastra Seema Bal in May 2011 and the petitioner joined the service on 09.05.2011 at 45th Battalion, Bhopal MP and underwent the basic recruitment training course from 20.06.2011 to 14.04.2012 in the Training Center Gorakhpur, UP and during that period, he had not availed any kind of leave or remained absent from the duties and the original service certificate issued in this regard has been placed on record. Rather in the year 2016, the parents of respondent No. 2 had approached the father of the petitioner for solemnizing the marriage which the father of the petitioner had refused but the respondent No. 2 was adamant to solemnize marriage with the petitioner and had openly declared that she would cross any limit and not allow the solemnization of the marriage of the petitioner with someone else. The FIR has been lodged only because the marriage of the petitioner has been fixed after his engagement on 12.09.2018.
4. It is also stated by the petitioner that he obtained leave from the Unit with effect from 29.08.2018 only, therefore, there was no occasion for him to be posted in J&K as alleged in the complaint. He is posted at Lumla District Tawang, Arunchal Pradesh on the Indo Bhutan Border where even mobile facility is not available. The petitioner has also placed on record his wedding invitation card, leave order and certificate to prove that the

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petitioner had not obtained any kind of leave from 09.05.2011 to 14.04.2012 and had not even remained absent from the duties during that period.

5. The respondent No. 1 has filed the response, narrating the factual aspects of the case and it is stated that the present petition is not maintainable as disputed questions of fact have been raised.
6. The respondent No. 2 has also filed the response, thereby submitting that because of in-action of the Police Authorities, she filed a complaint before the Chief Judicial Magistrate, Udhampur and after hearing her counsel, the complaint was forwarded to SHO Police Station Pancheri to proceed in terms of section 156(3) Cr.P.C. Pursuant to which, FIR No. 38/2018 dated 16.08.2018 for commission of offences under sections 376 and 506 RPC has been registered. It is also contended by respondent No. 2 that the date, place and time of occurrence has been stated by the complainant before the SHO during investigation of the case and absence of every minute detail of the occurrence would not render the FIR illegal. Though the respondent No. 2 has denied the contentions raised by the petitioner, but she has stated that during the span of seven years, the petitioner had committed rape upon her by making false promise with her.
7. Mr. Mazher Ali Khan, learned counsel for the petitioner has submitted that the false and frivolous FIR had been lodged by respondent No. 2 just to create hindrance in the solemnization marriage of the petitioner which was fixed on 12.09.2018. He has further argued that even if, the allegations leveled in the complaint and the FIR are taken to be true, no offence is

made out against the petitioner, more particularly, when the respondent No. 2 has herself admitted that she had remained in relation with the petitioner for seven long years. In this context, he has relied upon the judgment of the Hon'ble Supreme Court of India in **Sonu @ Subhash Kumar v. State of Uttar Pradesh and another, AIR 2021 SC 1405** and **Prashant v State of NCT of Delhi, 2024INSC879**.

8. On the contrary, Mr. Sumeet Bhatia, learned GA appearing for respondent No. 1, has argued that the contentions raised by the petitioner in this petition cannot be considered in this petition, as it amounts to the defence of the petitioner, which the petitioner can raise during the course of the trial.
9. Heard and perused the record including the Case Diary.
10. The record depicts that an application was submitted by respondent No. 2 before the Chief Judicial Magistrate, Udhampur on 14.08.2018 and the same was forwarded by the court of Chief Judicial Magistrate, Udhampur to SHO Police Station, Pacheri in terms of section 156(3) Cr.P.C. The allegations leveled in the application (with errors) are extracted in verbatim as under:

“2. That it is in the month of June 2011, when the complainant was on her way from Hr. Sec. School Panchari to her house, the non-applicant followed her and when he found alone, he committed rape on her and afterward threatened that if she ever disclose to anyone she will be eliminated from this world. On second day he again followed her and asked her to make relation with him. She denied and when she raised hue and cry the non applicant wrapped her mouth with her dupatta and again committed rape and when she tried to call route passers, the non applicant in order to shut her mouth made a fake promise that he will marry with her and if she ever tried to disclose to any one at home or

police station the complainant will face consequences and non-applicant will never asked her to marry.

3. That the non-applicant firstly committed rape with the complainant and taking undue advantage of poor and immature complainant, used to merely fulfil his lust and desire and cheated her and kept her in darkness under false assurance that he will marry with her, after taking to his parents house.

5. That the non-applicant now pretends that the complainant is a stranger for him and denying strongly that he will never think about his marriage with such girls and if she ever tried to come in his way, the non-applicant complainant will be eliminated from the world and for this very reason, threatened that her family will also be eliminated.”

11. A perusal of the allegations, as extracted above, reveals that the petitioner established physical relation with respondent No. 2 in the month of June-2011 when she was coming from Higher Secondary School, Pancheri to her house. The petitioner repeated the same on the second day also and when respondent No. 2 tried to call the passer-by, the petitioner, in order to shut her mouth, made a false promise that he would marry her and if she disclosed to anyone or Police, she would face consequences and would not marry her. It is also alleged by respondent No. 2 that the petitioner had been using her for the last six to seven years and cheating her on the pretext of marriage. It needs to be noted that the first time when the petitioner allegedly committed rape on her, it was the month of June-2011 and thereafter, the petitioner and the respondent No. 2 maintained relations with each other though the respondent No. 2 has stated in the FIR that she was used for 6 to 7 years on the false pretext of marriage. She has also mentioned in the FIR that the petitioner has now openly declared that he would not solemnize marriage with respondent No. 2. The statement of

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the victim/respondent No. 2 has been recorded under section 164-A Cr.P.C.

12. The prosecutrix/respondent No. 2 in her statement has stated that the petitioner committed rape upon her in the summers of 2011 when she was coming from school to her house and repeated the same on the second day also. The petitioner assured her that he would solemnize marriage with her. She has further stated that when she asked the petitioner to send the proposal of marriage to her parents, he refused. Thereafter, she went to the Police Station, but nothing was done.
13. The date of birth of respondent No. 2 in the FIR has been mentioned as 20.03.1991, meaning thereby that she was more than 20 years of age in the month of June, 2011. The FIR admittedly has been lodged seven years after the first incident and during this span of seven years, respondent No. 2 never made any complaint in respect of conduct of the petitioner. Rather she and the petitioner maintained their relationship during that period. Through the respondent No. 2 alleged that the petitioner maintained physical relationship with her on the false pretext of marriage but it is evident that there was physical relationship between the petitioner and respondent No. 2 for seven long years and as per the statement of respondent No. 2, she lodged FIR only when the petitioner refused to accede to the demand of respondent No. 2 to send proposal of his marriage to her parents.

14. In almost similar facts and circumstances, the Hon'ble Supreme Court of India in **Prashant v State of NCT of Delhi, 2024 INSC 879** quashed the criminal proceedings by observing as under:

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. **Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.**

18. **It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part.** Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. **Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.”**

(emphasis added)

14. Further in '**Biswajyoti Chatterjee v. State of W.B., 2025 SCC OnLine SC 741**', the Hon'ble Supreme Court of India quashed the criminal proceedings, with the following observations:

18. A careful reading of the evidence on record also clearly shows that there is no evidence against the Appellant, to conclude that there was any *fraudulent or dishonest*

inducement of the Complainant to constitute an offence under Section 415 IPC. One may argue that the Appellant was in a position of power to exert influence, however, there is nothing on record to establish 'inducement' or 'enticement'. There is also no material on record, that there was any threat of injury or reputation to the Complainant. **A bare allegation that the Appellant had threatened the Complainant or her son cannot pass the muster of an offence of criminal intimidation under Section 506 IPC.**

20. We find that there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext to marry, in the event of a fall out. It is such *lis* that amounts to an abuse of process of law, and it is under such circumstances, that we deem fit to terminate the proceedings at the stage of charge itself."

(emphasis added)

- 15.** In its latest pronouncement, the Hon'ble Supreme Court of India in case titled '**Jothiragawan v. State**', **2025 SCC OnLine SC 6288**, quashed the criminal proceedings, by observing as under:

8. As per the complaint and the statement given by the victim, the couple had sexual intercourse thrice. They first met in a family function, where they both exchanged their phone numbers. After a few days, the accused expressed his desire to marry the victim, when the victim categorically told him that she was studying and she would think it over, after completing her studies. Thus, started a relationship which resulted in frequent conversations and exchange of messages over the mobile phone and intermittent visits by the accused, to the house of the victim's grandmother, where she was residing; as stated by the complainant herself. **On 17.04.2021, at the request of the accused, the victim accompanied him to a movie after which, she felt dizzy and they took a room in a hotel where according to the victim, there was an 'abrupt and unexpected' sexual intercourse, under coercion against her wish. Despite protesting and crying out the accused continued the act, after which she told him that he had ruined her life. It was at this juncture, that a promise was made by the accused, putting his hand on her head, that he would marry her. From the statements recorded we do not find any inducement by the accused, with a promise of marriage, before the alleged crime, leading to the sexual intercourse.** The marriage proposal was not accepted by the victim and there is not even a statement that she succumbed to the sexual intercourse on such proposal; being made. It is

the definite case put forth by the victim that the accused had acted unexpectedly and she was coerced into a sexual intercourse despite her protests. The promise as stated, if at all, was after the intercourse.

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

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

(emphasis added)

16. The Hon'ble Apex Court in **Sonu @ Subhash Kumar v State of Uttar**

Pradesh and another, AIR 2021 SC 1405 has held as under:

“8. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

(i) The relationship between the appellant and the second respondent was of a consensual nature;

(ii) The parties were in the relationship for about a period of one and a half years; and

(iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.

9. In **Pramod Suryabhan Pawar (supra)**, while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"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...**"

10. Further, the Court has observed:

"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 in bad faith marriage must have been a false promise, given in bad 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."

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

17. In view of the allegations levelled in the FIR impugned as well as in the statement made by the prosecutrix under section 164-A Cr.P.C, the following admitted facts emerge:

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(i) that the petitioner and respondent No. 2 were major in the year, 2011.

(ii) that they maintained their relations for six to seven long years.

(iii) that the FIR was lodged only after the petitioner did not accede to the demand made by respondent No. 2 to send a proposal of his marriage to her parents and prior to that, no complaint was ever made by the respondent No. 2.

18. For all what has been said, discussed and analyzed hereinabove, no offence is made out against the petitioner, as it is evident that the respondent No.2 remained in relationship with the petitioner for six-seven long years and lodged FIR only, when the petitioner did not accede to the demand of the respondent No.3 to send marriage proposal to her parents. The present petition is allowed. Accordingly, FIR impugned bearing No. 38/2018 dated 16.08.2018 for commission of offences under sections 376 and 506 RPC registered with Police Station, Panchari, District Udhampur is quashed.

19. The CD file be returned to Mr. Sumeet Bhatia, GA.

(RAJNESH OSWAL)
JUDGE

Jammu:
02.05.2025
Rakesh PS

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes