

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3594 OF 2022



BETWEEN:

SHRI B.ASHOK KUMAR
S/O BYRALINGE GOWDA
AGED ABOUT 56 YEARS
RESIDENT OF NO.1, VIJAYA NAGAR
2ND STAGE, B.K.ROAD
3RD CROSS, SAGARA
SHIVAMOGGA DISTRICT – 577 401.

... PETITIONER

(BY SRI P.PRASANNA KUMAR, ADVOCATE A/W.,
SRI SANDESH P.NADIGER, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
THROUGH SUB-INSPECTOR OF POLICE
WOMEN POLICE STATION
SHIVAMOGGA
REPRESENTED BY S.P.P
HIGH COURT
BENGALURU - 560 001.

2 . SMT. Xxxxxx
W/O xxxxxx
xxxxxx
Xxxxxx

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R1;
SMT. REKHA M., ADVOCATE, FOR
SRI H.C.SHIVARAMU, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR, COMPLAINT, CHARGE SHEET AND ENTIRE PROCEEDINGS THEREON IN C.C.NO.109/2022 ON THE FILE OF J.M.F.C.-II, SHIVAMOGGA FOR THE OFFENCES P/U/S 376(2)(n), 342, 307, 355, 323, 368, 504, 506 OF IPC REGISTERED BEFORE WOMEN P.S., SHIVAMOGGA IN CR.NO.114/2021.

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

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question proceedings in C.C.No.109 of 2022 pending before the JMFC II Court, Shivamogga arising out of crime in Crime No. 114 of 2021 registered for offences punishable under Sections 376(2)(n), 368, 342, 307, 355, 323, 504 and 506 of the IPC.

2. Facts, in brief, germane are as follows:-

The petitioner is working as a Circle Inspector in the Police Department. The 2nd respondent is the complainant, wife of one Sri Somashekar, a constable in the Police Department. It is the case of the prosecution that the complainant had come in contact with the petitioner in the year 2017 when she had been to the Bhadravathi Rural police station with other public in relation to some other case. The intimacy between the two turned into physical as well. In this regard, a complaint comes to be registered by the complainant in the month of May 2021 before the Women's Police Station alleging physical and sexual harassment meted out to her by the petitioner after which, the petitioner is said to be threatening the complainant to withdraw the case that she had filed and failure on her part to do so, he would kill her children as well. It is then another complaint comes to be registered by the complainant on 21-09-2021 in Crime No.341 of 2021 alleging offences punishable under Section 504 and 506 of the IPC. The complaints were not taken forward as the complainant did not choose to pursue them further. On 11-11-2021, it is the case of

the complainant that she was picked up at 7.30 p.m. by the petitioner, driven into a hotel and there he forcibly had sex with her and assaulted her badly and dropped her at the Sagar Bus stop in the morning hours of 2.45 a.m. It is then the complainant goes to the hospital and gets treatment for the injuries sustained out of the assault and registers the crime. This becomes a crime in Crime No.114 of 2021 i.e., the subject crime for the offences as afore-quoted. Police after investigation file a charge sheet. Filing of the charge sheet is what has driven the petitioner to this Court in the subject petition.

3. Heard Sri P. Prasanna Kumar, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for the 1st respondent and Smt. M. Rekha, learned counsel appearing for the 2nd respondent.

4. The learned counsel for the petitioner would contend that it was a consensual act right from the year 2017 till 2022 and on those consensual acts, the complainant has gone on registering crimes. She had also registered proceedings under Section 138 of

the Negotiable Instruments Act, 1881 ('NI Act' for short) in which the concerned Court has acquitted the petitioner. The husband of the complainant is a Police Constable who has been dismissed from service, though it has no bearing to the present issue. He would contend that the allegations in the complaint or the summary of the charge sheet are so vague that they cannot meet any of the ingredients so alleged against the petitioner. He would, in all, seek quashment of the proceedings placing reliance upon several judgments of the Apex Court and this Court which have all held consensual acts between the two cannot be dubbed to be a rape under Section 376(2)(n) of the IPC or the other offences so alleged.

5. Per contra, the learned counsel Smt. M.Rekha, representing the 2nd respondent would refute the submissions by taking this Court through the statement of objections so filed threadbare to contend that the petitioner was a Circle Inspector in the Police Department and the husband of the complainant was a constable though not directly subordinate to him but in a different Police Station in the same Department. The complainant, wife of the said constable, was a social worker. The relationship between

the complainant and the accused/petitioner started in the year 2017 and intermittently broke and regained. It is the submission of the learned counsel that consent of the complainant to have sexual relationship by the petitioner was obtained by force, fraud and deceit as the husband of the complainant was a constable and the petitioner could yield dominance over the constable to get his wife into the fold of sexual relationship. The learned counsel would further submit that the Police after investigation have filed a charge sheet. The charge sheet appends to it several documents which are statements of individual witnesses. It is the statement of the other constable who drove the car which took the complainant and threw the complainant out of the car at the bus stop in Sagar Town at around 2.45 a.m. The wound certificate and the statements would clearly indicate that wounds are inflicted by the petitioner upon the complainant. Therefore, it is a case where physical relationship between the two has developed on promise of marriage or any other inducements. The petitioner and the complainant both were already married and had children. Therefore, it is a case of consent obtained on deceit or dominance which would amount to rape is the emphatic submission of the learned counsel.

6. In reply to the said submissions, the learned counsel for the petitioner would take this Court through the statement of the complainant under Section 164 of the Cr.P.C., vis-à-vis an earlier crime in which she says that the petitioner and the complainant are happy for themselves and there is no allegation that is worth the name against the petitioner. Yet another circumstance the learned counsel would seek to project is that, the complainant is in the habit of registering crimes against the petitioner, as financial transaction between the two formed the basis of these allegations. In all, he would seek quashment of proceedings on the score that it is an abuse of the process of law.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts though not in dispute would require slight reiteration taking the issue to the events that have happened anterior to the subject crime. The relationship of the petitioner and the complainant is what is narrated both in the

complaint as well as in the summary of the charge sheet. The relationship has turned sore. The first crime that emerges is on 27-03-2021 in crime No.38 of 2021 for the offences punishable under Sections 354(A), 376(c), 417, 504 and 506 of the IPC. The police conduct investigation and file a 'B' report in the said crime. The complainant files her protest petition. During the subsistence of the protest petition, a truce is arrived between the complainant and the petitioner. Therefore, the complainant files a memo stating that she is not interested in pursuing the matter. The learned Magistrate, after recording the statement under Section 164 of the Cr.P.C., closes the complaint. It becomes necessary to notice the statement so recorded by the learned Magistrate in Crime No.38 of 2021. It reads as follows:

“2ನೇ ಹೆಚ್ಚುವರಿ ಸಿವಿಲ್ ನ್ಯಾಯಾಧೀಶರು ಮತ್ತು ಪ್ರಥಮ ದರ್ಜೆ ನ್ಯಾಯಿಕ ದಂಡಾಧಿಕಾರಿಗಳ

ನ್ಯಾಯಾಲಯ, ಶಿವಮೊಗ್ಗ

(ಸಿ.ಎಸ್. ಸಂಖ್ಯೆ: 932/2021)

ಅಪರಾಧ ಸಂಖ್ಯೆ: 38/2021

ಸ್ವಾಕ್ಷೇಪ ಹೆಸರು: XXXX
 ಗಂಡನ ಹೆಸರು: XXXX
 ವಯಸ್ಸು: 38 ವರ್ಷ
 ಉದ್ಯೋಗ: ಗೃಹಿಣಿ
 ವಾಸಸ್ಥಳ: ದೈರಿ ಮಾಚೇನಹಳ್ಳಿ
 ಶಿವಮೊಗ್ಗ

ದಿನಾಂಕ: 29.03.2021

ದಿನಾಂಕ: 29.03.2021 ರಂದು ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣಾ ಪೊಲೀಸರು ತಮ್ಮ ಠಾಣಾ ಪಿ ಎಸ್ ಐ ರವರ ಮೂಲಕ ಒಂದು ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿ ಶ್ರೀಮತಿ XXXX ಎಂಬ ಅತ್ಯಾಚಾರದ ಆರೋಪದ ಮೇಲೆ ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆಯ ಅಪರಾಧ ಸಂಖ್ಯೆ: 38/2021 ರಲ್ಲಿ ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆಯ ಕಲಂ 354(2) 376(2) 417, 504, 506 ಐಪಿ ಸಿ ರೀತ್ಯಾ ಪ್ರಕರಣ ದಾಖಲಾಗಿದ್ದು, ನೊಂದ ಮಹಿಳೆ XXXX ರವರ ಹೇಳಿಕೆಯನ್ನು ದಾಖಲಿಸಿಕೊಳ್ಳಬೇಕೆಂದು ಮನವಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಮನವಿಯನ್ನು ಸ್ವೀಕರಿಸಿ ಮನವಿಯನ್ನು ಪರಿಗಣಿಸಲು ಪ್ರಕರಣವನ್ನು ಸಿ.ಮಿಸ್.932/2021 ಎಂದು ದಾಖಲಿಸಿಕೊಂಡು ಬರುವಂತೆ ಕಚೇರಿಗೆ ನಿರ್ದೇಶನ ನೀಡಿರುತ್ತೇನೆ.

ದಿನಾಂಕ: 29.03.2021 ರಂದು ಸಂಜೆ 5.00 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಪಿ ಎಸ್ ಐ ರವರ ಮೂಲಕ ನೊಂದ ಮಹಿಳೆ XXXX ರವರನ್ನು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರುಪಡಿಸಿರುತ್ತಾರೆ. ನೊಂದ ಮಹಿಳೆ XXXX ರವರ ಅಪಹರಣ ಮತ್ತು ಅತ್ಯಾಚಾರ ಆರೋಪ ಇರುವ ಕಾರಣ ನೊಂದ ಮಹಿಳೆ XXXX ರವರ ಹೇಳಿಕೆ ನೀಡುವಾಗ ಆಗಬಹುದಾದ ಮುಜುಗರ ಹಾಗೂ ನೋವನ್ನು ತಪ್ಪಿಸಲು ಈ ಪ್ರಕರಣವನ್ನು ಇನ್ ಕ್ಯಾಮೆರಾದಲ್ಲಿ ನಡೆಸಲು ಪರಿಶೀಲನೆ ಕೈಗೊಂಡಿರುತ್ತೇನೆ. ಈ ಹಂತದಲ್ಲಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿದ್ದ ಎಲ್ಲಾ ವಕೀಲರನ್ನು, ಕಡ್ಡಿದಾರನ್ನು, ಬೆಂಚ್ ಕ್ಲರ್ಕ್ ಹಾಗೂ ಪೊಲೀಸ್ ಸಿಬ್ಬಂದಿಯವನ್ನು ನ್ಯಾಯಾಲಯದಿಂದ ಹೊರಗೆ ಇರುವಂತೆ ಸೂಚಿಸಿರುತ್ತೇನೆ. ಇದಾದ ಬಳಿಕ ನೊಂದ ಮಹಿಳೆ XXXX ನ್ಯಾಯಾಧೀಶರು ಮತ್ತು ಈ ಪ್ರಕರಣದ ಬೆರಳಚ್ಚು ಮಾಡುತ್ತಿರುವ ಶ್ರೀಮತಿ ಮೀನಾಕ್ಷಮ್ಮ ಮಾತ್ರ ಇರುತ್ತಾರೆ. ನೊಂದ ಮಹಿಳೆ XXXX ಹೇಳಿಕೆ ನೀಡುವ ಸಮಯದಲ್ಲಿ ಸದರಿ ಕೊಠಡಿಯಲ್ಲಿ ಬೇರೆ ಯಾರೂ ಇರಲಿಲ್ಲ.

ಈ ಹಂತದಲ್ಲಿ ನೊಂದ ಮಹಿಳೆ XXXX ರವರಿಗೆ ನಾನು ನ್ಯಾಯಾಲಯದಲ್ಲಿರುವ ನ್ಯಾಯಾಧೀಶ ಎಂಬ ಮನವರಿಕೆ ಮಾಡಿರುತ್ತೇನೆ. ಯಾವುದಾದರೂ ಘಟನೆ ನಡೆದಿದ್ದರೆ ನಿರ್ಭೀತಿಯಿಂದ ನಡೆದ ಘಟನೆಯನ್ನು ಯುಥಾ ರೂಪದಲ್ಲಿ ಹೇಳಬೇಕು ಎಂದು ಮನವರಿಕೆ ಮಾಡಿರುತ್ತೇನೆ.

ಕಲಂ 164 ಸಿ. ಆರ್.ಪಿ.ಸಿ ಅಡಿಯಲ್ಲಿ ನೊಂದ ಮಹಿಳೆ XXXX ರವರ ಹೇಳಿಕೆ
(ಪ್ರಾರಂಭಿಸುವ ಸಮಯ ಸಂಜೆ 4.55 ಗಂಟೆ)

ನೊಂದ ಮಹಿಳೆ XXXX ಗೆ ಪ್ರಮಾಣ ವಚನ ಭೋಧಿಸಲಾಯಿತು.

ನನ್ನ ಮೇಲೆ ಯಾವುದೇ ದೌರ್ಜನ್ಯ ಆಗಿರುವುದಿಲ್ಲ. ನಾವು ಚೆನ್ನಾಗಿ ಇರುತ್ತೇವೆ.

(ಈಗ ಸಮಯ ಸಂಜೆ 5.05 ಗಂಟೆ ಆಗಿರುತ್ತದೆ ಮೇಲೆ ದಾಖಲಿಸಿಕೊಂಡಂತೆ ನೊಂದ ಮಹಿಳೆಯು ನೀಡಿದ ಹೇಳಿಕೆಯನ್ನು ಆಕೆಗೆ ಓದಿ ಹೇಳಿದೆನು. ನೀನು ಹೇಳಿದ ವಿಚಾರವನ್ನು ಯುಥಾ ಸ್ಥಿತಿಯಲ್ಲಿ ದಾಖಲಿಸಲಾಗಿದೆಯೇ

ಎಂದು ನೊಂದ ಮಹಿಳೆ XXXX ರವರ ಬಳಿ ಕೇಳಿ ಆಕೆಗೆ ಅರ್ಥೈಸಿದಾಗ ಆಕೆ ನಾನು ಹೇಳಿದಂತೆ ಸರಿ ಇದೆ ಎಂದು ಒಪ್ಪಿ ಕೊಂಡಿರುತ್ತಾರೆ.)

ಸಹಿ/-

2ನೇ ಹೆಚ್ಚುವರಿ ಸಿವಿಲ್ ನ್ಯಾಯಾಧೀಶರು ಮತ್ತು ಜೆಎಂಎಫ್ ಸಿ
ಶಿವಮೊಗ್ಗ.”

It is not that the learned Magistrate closes the proceedings on account of Section 164 Cr.P.C., statement, but the statement leads the police to file a 'B' report. The proceedings have not been taken forward on the score that the complainant herself makes a communication to the jurisdictional police that she is not interested to pursue the complaint in Crime No.38 of 2021. The communication reads as follows:

“ಗೆ,

D.Y.S.P ಯವರಿಗೆ

ಶಿವಮೊಗ್ಗ ಉಪವಿಭಾಗ,

ಶಿವಮೊಗ್ಗ.

ಇಂದ,

XXXX W/o XXXX

ಡೈರಿ ಗಂಗಾನಗರ,

ಭದ್ರಾವತಿ, ಶಿವಮೊಗ್ಗ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: - ನಾನು ಕೊಟ್ಟ ದೂರು ವಿಚಾರವಾಗಿ.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಅಶೋಕ್‌ಕುಮಾರ C.P.I ಸಾಗರ. ಇವರ ಬಗ್ಗೆ ಕೊಟ್ಟ ದೂರನ್ನು ಮುಂದುವರಿಸುವುದಿಲ್ಲ ಎಂದು ಈ ಮೂಲಕ ಹೇಳುತ್ತಿದ್ದೇನೆ. ನಾನು ಮಹಿಳಾ ಸ್ಟೇಷನ್

ಶಿವಮೊಗ್ಗ, ಇಲ್ಲಿ ದೂರನ್ನು ನೀಡಿದ್ದು, ಆ ಪ್ರಕಾರವಾಗಿ 38/21 ಸಂಖ್ಯೆಯ ಪ್ರಕರಣ ದಾಖಲಾಗಿದ್ದು, ಈ ಪ್ರಕರಣವನ್ನು ನಾನು ಮುಂದುವರಿಸಲು ಇಚ್ಛಿಸಿರುವುದಿಲ್ಲ. ಈ ಪ್ರಕರಣವನ್ನು ಮುಕ್ತಾಯ ಮಾಡಲು ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.

ದಿನಾಂಕ: - 03/04/2021

ಸ್ಥಳ: - ಶಿವಮೊಗ್ಗ.

ಇಂತಿ ತಮ್ಮ ವಿಶ್ವಾಸಿ

ಸಹಿ/-“

The truce did not last for long. On the ground that the petitioner was threatening the complainant that he would cause injury to the complainant and her children, one more crime is registered in Crime No.341 of 2021 alleging offences punishable under Sections 504, 506 and 34 of the IPC. This was pending investigation. In the interregnum, the complainant also institutes proceedings under Section 138 of the NI Act against the petitioner concerning a cheque given by the petitioner on alleged financial transaction with the complainant. It is besides the point that the concerned Court has acquitted the petitioner.

9. The fulcrum of the *lis* in the present case is an event that happens on 11-11-2021. It is the allegation that on 11-11-2021 the petitioner forced the complainant to come near Bhadravathi Military Camp at 7.30 p.m. Thereafter both of them headed to a hotel

Ashoka Grand in B.H.Road. It is here the two have had physical relationship and the petitioner assaulting the complainant. It is then in the wee hours of 12-11-2021 the petitioner takes the complainant in the car and drops at Sagar private bus stop, at which point in time it was 2.45 a.m. A few passersby who saw the complainant in bad condition took her to the nearest hospital and gets her treatment. It is after that the complaint is registered on the next day on 12-11-2021 which becomes a crime in Crime No.114 of 2021 for the afore-quoted offences. Since the issue has now triggered from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

“ದಿನಾಂಕ: 12/11/2011

ಗೆ,

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಮಹಿಳಾ ಪೊಲೀಸರ ಕಛೇರಿ
ಶಿವಮೊಗ್ಗ

ಇಂದ,

ಶ್ರೀಮತಿ XXXX ಕೋಂ XXXX
30 ವರ್ಷ, ಲಿಂಗಾಯಿತ ಜಾತಿ, ಗೃಹಿಣಿ
ವಾಸ: ಮಜ್ಜೆಗೇನಹಳ್ಳಿ ಬಿದರೆ ಪೊನ್ನ
ಭದ್ರಾವತಿ ತಾ|| ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲೆ
ಎಂ.ನಂ. 9845068696.

ನಾನು ಈ ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ನನ್ನ ಸಂಸಾರದೊಂದಿಗೆ ವಾಸವಾಗಿರುತ್ತೇನೆ. ನನಗೆ ಎರಡು ಮಕ್ಕಳಿದ್ದು, ನಮ್ಮ ಯಜಮಾನರು ಪೊಲೀಸ್ ಇಲಾಖೆಯಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದರು. ನಾನು ಬೇರೆ

ಯಾವುದೂ ಕೇಸಿಗೆ ಸಾರ್ವಜನಿಕರ ಜೊತೆ ಗ್ರಾಮಾಂತರ ರಾಣಿ ಭದ್ರಾವತಿಗೆ ಹೋದಾಗ ಅಶೋಕ್ ಕುಮಾರ್ ಸರ್ಕಲ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಆಗಿದ್ದರು. ಆಗ ನನಗೆ ಪರಿಚಯವಾದರು. ಅಂದಿನಿಂದ ಇಂದಿನವರೆಗೂ ಫೋನಿನಲ್ಲಿ ಮಾತನಾಡುತ್ತಾ ಇದ್ದೆವು. ಅವರು ನನ್ನೊಂದಿಗೆ ಬಲವಂತವಾಗಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡುತ್ತಿದ್ದರು. ಇದರಿಂದ ನಾನು 2021ರ ಮಾರ್ಚ್ ತಿಂಗಳಿನಲ್ಲಿ ನಾನು ಮಹಿಳಾ ಸ್ಟೇಷನ್ ನಲ್ಲಿ ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದು ಅಶೋಕ್ ಕುಮಾರ್‌ನ ಮೇಲೆ ಕೇಸು ದಾಖಲಿಸಿದ್ದು ಆಗ ಅಶೋಕ್ ಕುಮಾರ್ ರವರು ವಿಡಿಯೋ ಕಾಲ್ ಮಾಡಿ ನನ್ನ ಹೆಂಡತಿ ವಿಷ ಕುಡಿದಿದ್ದಾಳೆ ನನ್ನನ್ನು ಉಳಿಸು ಕೋರ್ಟಿಗೆ ಹೋಗಿ ಜಡ್ಡ ಹತ್ತಿರ ಅಶೋಕ್ ಕುಮಾರ್ ಅವರು ನನ್ನ ಮೇಲೆ ದೌರ್ಜನ್ಯ ಮಾಡಿಲ್ಲ, ನಾವು ಚೆನ್ನಾಗಿ ಇದ್ದೇವೆ ಎಂದು ಹೇಳಿಕೆ ಕೊಡು ದಿವ್ಯವಸ್ತಿ ಹತ್ತಿರ ಹೋಗಿ ಕೇಸು ಮುಂದುವರಿಸಬೇಡಿ ಎಂದು ಹೇಳಿಕೆ ಕೊಡು, ಒತ್ತಾಯ ಮಾಡಿದ್ದರಿಂದ ನಾನು ಅದೇ ರೀತಿ ಕೋರ್ಟಿನಲ್ಲಿ ಮತ್ತು ದಿ.ವ್ಯ.ಎಸ್ಸಿ ಸರ್ ಹತ್ತಿರ ಹೋಗಿ ಹೇಳಿಕೆ ಕೊಟ್ಟಿದ್ದೇನು. ನಂತರದಲ್ಲಿಯೂ ಅಶೋಕ್ ಕುಮಾರನ್ನು ನಿನಗೂ ನಿನ್ನ ಮಕ್ಕಳಿಗೂ ಕೊಲೆ ಮಾಡುವುದಾಗಿ ಬೆದರಿಕೆ ಹಾಕುತ್ತಿದ್ದರಿಂದ 21/09/2021 ರಂದು ಶಿವಮೊಗ್ಗದ ಗ್ರಾಮಾಂತರ ಪೊಲೀಸ್ ಸ್ಟೇಷನ್ ಅಲ್ಲಿ ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದು ಕೇಸು ದಾಖಲಾಗಿರುತ್ತದೆ. ನಂತರದಲ್ಲಿಯೂ ದಿನಾಂಕ:11-11-2021 ರಂದು ಬೆಳಗ್ಗೆ ಅಶೋಕ್ ಕುಮಾರ್ ಫೋನು ಮಾಡಿ ನಾನು ಗುಬ್ಬಿ ಕೋರ್ಟಿಗೆ ಸಾಕ್ಷಿ ಹೇಳಲು ಹೋಗುತ್ತಿದ್ದೇನೆ ಎಂದು ಹೇಳಿದರು. ಸಂಜೆ ಪುನಹ್ ಫೋನ್ ಮಾಡಿ ನಿನ್ನ ಜೊತೆ ಮಾತನಾಡಬೇಕು, ಬನ್ನಿ ಎಂದು ತಿಳಿಸಿದ್ದು ನಾನು ಬದ್ರಾವತಿ ಮಿಲ್ಟ್ರಿ ಕ್ಯಾಂಪ್ ಹತ್ತಿರ ಹೋದೆ. ಸಂಜೆ ಸುಮಾರು 7.30 ಗಂಟೆ ಅಶೋಕ್ ಕುಮಾರ್ ಕಾರಿನಲ್ಲಿ ಬಂದು ನನ್ನನ್ನು ಕಾರಿನಲ್ಲಿ ಹತ್ತಿಸಿಕೊಂಡು ಕಾಫಿ ಕುಡಿಯುತ್ತ ಮಾತನಾಡೋಣ ಎಂದು ಶಿವಮೊಗ್ಗ ಬಿ.ಎಚ್ ರಸ್ತೆಯಲ್ಲಿರುವ ಅಶೋಕ ಗ್ರಾಂಡ್ ಹೋಟೆಲ್ ಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿದ್ದು. ಕಾಫಿ ಕುಡಿದ ನಂತರದಲ್ಲಿ ರೂಮ್ ಮಾಡಿದ್ದೇನೆ. ರೂಮಿನಲ್ಲಿ ಮಾತನಾಡೋಣ ಎಂದು ಹೇಳಿ 4ನೇ ಫ್ಲೋರ್ ನಲ್ಲಿರುವ ರೂಮಿನ ನಂಬರ್ 306 ಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ರೂಂ ಬಾಗಿಲು ಹಾಕಿದ್ದು ನೀನು ನನ್ನ ಮೇಲೆ ಕಂಪ್ಲೇಂಟ್ ಕೊಟ್ಟಿದ್ದೀಯಾ ನಾನು ಸರ್ಕಲ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಅಂದುಕೊಂಡಿದ್ದೀಯಾ ಆಜಾಮ ಅಂದುಕೊಂಡಿದ್ದೀಯಾ. ನೀನು ಗ್ರಾಮಾಂತರ ಸ್ಟೇಷನ್ ನಲ್ಲಿ ಇರುವ ಕೇಸು ವಾಪಸ್ಸು ತೆಗೆದುಕೋ ಮತ್ತು ಚಿತ್ರದುರ್ಗದಲ್ಲಿ ನಡೆಯುತ್ತಿರುವ ಇಲಾಖೆ ವಿಚಾರಣೆಯನ್ನು ಮುಂದುವರಿಸುವುದಿಲ್ಲ ಎಂದು ಬರೆದುಕೊಟ್ಟು ಬಾ ಎಂದು ಗಲಾಟೆ ಮಾಡಿದ್ದು ನಾನು ಒಪ್ಪದೇ ಇದ್ದುದಕ್ಕೆ ನನಗೆ ಕುತ್ತಿಗೆಯನ್ನು ಹಿಡಿದು ಕೊಲೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿದ್ದು. ನಾನು ಬಿಡಿಸಿಕೊಂಡಿದ್ದು ನನ್ನ ಕುತ್ತಿಗೆಗೆ ಗಾಯವಾಗಿರುತ್ತದೆ. ಎರಡು ಬದಿ ಮಾರ್ಕುಗಳು ಆಗಿದ್ದು ತುಂಬಾ ಅಶೋಕ್ ಕುಮಾರ್ ರವರು ಬೆರಳುಗಳು ಉಗುರುಗಳು ನಾಟಿದ್ದು ಕುತ್ತಿಗೆ ಗಾಯವಾಗಿರುತ್ತದೆ. ನನಗೆ ಬೂಟ್ ಕಾಲಿನಿಂದ ಬಂದಿದ್ದಲ್ಲದೆ ಬೂಟ್ ಬಿಚ್ಚಿಕೊಂಡು ನನ್ನ ಎಡಭುಜಕ್ಕೆ ಹೊಡೆದರು. ಅಲ್ಲದೆ ನೀನು ಸೂಳೇ ನೀನು ಸೂಳೆತರ ನನ್ನ ಜೊತೆ ಇರಬೇಕು ನಾನು ಹೇಳಿದಂತೆ ಕೇಳಬೇಕೆಂದು ಹೇಳಿ ರಾತ್ರಿ ಸುಮಾರು 11.30 ಗಂಟೆಯಿಂದ ಒಂದು ಗಂಟೆಯ 1.00 ಗಂಟೆವರೆಗೆ ಎರಡು ಬಾರಿ ನನ್ನೊಂದಿಗೆ ಬಲವಂತವಾಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿದರು. ನಂತರ ಡ್ರೈವರ ಸುಕೂರ ಎಂಬವರಿಗೆ ಫೋನ್ ಮಾಡಿ ಕರೆಸಿಕೊಂಡು ನನಗೆ ಮನೆಗೆ ಬಿಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ಕಾರಿನಲ್ಲಿ ಕೂರಿಸಿಕೊಂಡು ನನಗೆ ಮನೆಗೆ ಬಿಡುತ್ತೇನೆಂದು ಹೇಳಿ ಕಾರಿನಲ್ಲಿ ಕೂರಿಸಿಕೊಂಡು ಡ್ರೈವರಿಗೆ ನೋಡೋ ಸುಕೂರ ಈ ಕಾರನ್ನು ಎಲ್ಲೂ ನಿಲ್ಲಿಸಬೇಡ ನೀಡಾ ಸಾಗರಕ್ಕೆ ಹೋಗು ಹೇಳಿ ಕಾರಿನಲ್ಲಿಯೇ ನನಗೆ ಎರಡು ಕೈಗಳಿಂದ ಕುತ್ತಿಗೆಯನ್ನು ಅದುಮಿ ಉಸಿರುಗಟ್ಟಿಸಿ ಸಾಯಿಸಲು ಪ್ರಯತ್ನಿಸಿದಲ್ಲದೆ ನನ್ನ ವೇಲಿನಿಂದ

ಕುತ್ತಿಗೆಗೆ ಬಿಗಿದು ಸಾಯಿಸಲು ಪ್ರಯತ್ನಿಸುತ್ತಾರೆ. ಕೈಮುಷ್ಟಿಯಿಂದ ಮೂಗಿಗೆ ಗುದ್ದಿದ್ದು ಸಿಕ್ಕಾಪಟ್ಟೆ ರಕ್ತ ಮೂಗಿನಿಂದ ಬಂದಿರುತ್ತದೆ. ನಿನನ್ನು ಸಾಗರದ ನನ್ನ ಮನೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಹೆಂಡತಿಯ ಎದುರು ನಿನಗೆ ವಿಷವನ್ನು ಕೊಡಿಸುತ್ತೇನೆ. ಈ ದಿನ ನಿನ್ನನ್ನು ಜೀವಂತವಾಗಿ ಬಿಡುವುದಿಲ್ಲ ಸಾಯಿಸಿಯೇ ನಾನು ನಿನ್ನನ್ನು ರಕ್ತ ಮೇಲೆ ಬಿಸಾಡಿ ನಿನ್ನ ಮೇಲೆ ಕಾರನ್ನು ಹತ್ತಿಸಿಕೊಂಡು ಹೋಗುವುದಾಗಿ ಹೇಳುತ್ತಿದ್ದರು. ರಾತ್ರಿ ಸುಮಾರು 2.45 ಗಂಟೆಗೆ ಸಾಗರದ ಪ್ರೈವೇಟ್ ಬಸ್ಸಾಂಡ್ ಬಳಿ ಕಾರನ್ನು ನಿಲ್ಲಿಸಿ ನಿನ್ನನ್ನು ಯಾವನಾದರೂ ಕರೆದುಕೊಂಡು ಹೋಗಲಿ ಎಂದು ಹೇಳಿ ನನ್ನನ್ನು ಕಾರಿನಿಂದ ಕೆಳಗೆ ಇಳಿಸಿದರು. ನಾನು ಅಲ್ಲಿಂದ ಕಾರನ್ನು ಬಾಡಿಗೆಗೆ ಮಾಡಿಕೊಂಡು ಶಿವಮೊಗ್ಗದ ಮೆಗ್ಗಾನ್ ಆಸ್ಪತ್ರೆಗೆ ಬಂದು ಚಿಕಿತ್ಸೆ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ನಂತರ ನಾನು ಸಕಿ ಕೇಂದ್ರಕ್ಕೆ ಹೋಗಿ ಚಿಕಿತ್ಸೆಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ.

ನನಗೆ ಬಲವಂತವಾಗಿ ಅತ್ಯಾಚಾರ ಮಾಡಿ ಬಾಟುಕಾಲಿನಿಂದ ಒದ್ದು. ಕೈ ಮುಷ್ಟಿಯಿಂದ ಮೂಗಿಗೆ ಗುದ್ದಿ ಗಾಯಮಾಡಿ ಬಾಟಿನಿಂದ ಹೊಡೆದು ಕುತ್ತಿಗೆ ಹಿಚುಕಿ ಗಾಯಪಡಿಸಿ ಮೇಲಿನಿಂದ ಕುತ್ತಿಗೆಗೆ ಬಿಗಿದು ಕೊಲೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿರುವ ಅಶೋಕ್ ಕುಮಾರ್ ಅವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಂಡು ನೊಂದ ನನಗೆ ನ್ಯಾಯ ಕೊಡಿಸಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಬೇಡಿಕೊಳ್ಳುತ್ತೇನೆ.

ದಿನಾಂಕ: 12/11/2021

ಸ್ಥಳ: ಶಿವಮೊಗ್ಗ,

ಇಂತಿ ದು:ಖತಪ್ಪೆ

ಸಹಿ/-

ದಿನಾಂಕ: 12-11-2021 ರಂದು ರಾತ್ರಿ 10:45 ಗಂಟೆಗೆ ಪಿಯಾರ್‌ದುದಾರರು ರಾಣೆಗೆ ಹಾಜರಾಗಿ ನೀಡಿದ ಲಿಖಿತ ದೂರನ್ನು ಸ್ವೀಕರಿಸಿಕೊಂಡು ರಾಣಾ ಗುನ್ಯ ನಂ. 114/2021 ಕಲಂ, 376 (2)(N), 355, 307, 323, 504, 506, ಐಪಿಸಿ ರಿತ್ಯ ಪ್ರಕರಣ ದಾಖಲಿಸಿದೆ.

ಸಹಿ/-

ಪೊಲೀಸ್ ಸಬ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್

ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆ

ಶಿವಮೊಗ್ಗ.”

What is noticed hereinabove is the narration in the complaint. The police conduct investigation and file a charge sheet. The summary of the charge sheet, as obtaining in column No.17, reads as follows:

“17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ದೋಷಾರೋಪಣೆ ಪತ್ರ ಸಂಖ್ಯೆ 12 ರಲ್ಲಿ ಕಂಡ ಆರೋಪಿಯು ಸಾಕ್ಷಿ 1 ರವರಿಗೆ 4 ವರ್ಷಗಳ ಹಿಂದೆ ಯಾವುದೋ ಕೇಸ್ ಸಲುವಾಗಿ ಭದ್ರಾವತಿ ಗ್ರಾಮಾಂತರ ವೃತ್ತ ಕಛೇರಿಗೆ ಹೋದಾಗ ಪರಿಚಯವಾಗಿದ್ದು, ನಂತರದಲ್ಲಿ, ಫೋನ್ ನಲ್ಲಿ ಸಂಪರ್ಕದಲ್ಲಿದ್ದರು,

2018 ರ ಜನವರಿ 15/16-01-2018 ರಂದು ಆರೋಪಿಯು ಸಾಕ್ಷಿ 1 ರವರನ್ನು ಶಿವಮೊಗ್ಗ, ಜಿಲ್ಲೆ, ಭದ್ರಾವತಿ ತಾ. VISL ಗೆಸ್ಟ್ ಹೌಸ್ ನ ರೂಂ ನಂ. 10 ಕ್ಕೆ ಕಾರ್ ನಂ. ಕೆ.-ಎ-01-ಎಂ.ಜೆ-745 ನೇಯದಲ್ಲಿ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಲವಂತವಾಗಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡಿರುತ್ತಾರೆ. ನಂತರದಲ್ಲಿಯೂ ಆರೋಪಿಯು ಸಾಕ್ಷಿ 01 ರವರೊಂದಿಗೆ ಸಂಪರ್ಕ ಇಟ್ಟುಕೊಂಡಿದ್ದು, 2021 ರ ಮಾರ್ಚ್ ತಿಂಗಳಿನಲ್ಲಿ, ಸಾಗರದ ಗ್ರೀನ್ ಎಂಬರ್ಸಿ ಲಾಡ್ಸ್ ಗೆ ಕರೆಸಿಕೊಂಡು ಅಲ್ಲಿಯೂ ಬಲವಂತವಾಗಿ ದೈಹಿಕ ಸಂಪರ್ಕ ಮಾಡಿದ ನಂತರವು ಪದೇ ಪದೇ ಕರೆದಲ್ಲಿಗೆ ಬರಬೇಕೆಂದು ಒತ್ತಾಯ ಮಾಡುತ್ತಿದ್ದರಿಂದ ಸಾಕ್ಷಿ 1 ರವರು ಒಪ್ಪದೇ ಇದ್ದುದಕ್ಕೆ ಸಾಕ್ಷಿ 1 ಮತ್ತು ಅವರ ಮಕ್ಕಳಿಗೆ ಕೊಲೆ ಬೆದರಿಕೆ ಹಾಕಿದ್ದರಿಂದ ಸಾಕ್ಷಿ 1 ರವರು ದಿ:27-03-2021 ರಂದು ಶಿವಮೊಗ್ಗ, ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ಕೇಸ್ ದಾಖಲು ಮಾಡಿರುತ್ತಾರೆ, ನಂತರದಲ್ಲಿ ಕೇಸಿನ ತನಿಖೆಯನ್ನು ಮುಂದುವರಿಸದಂತೆ ಹೆದರಿಸಿ, ಕೆಲಸವಾದ ನಂತರ ಮತ್ತೆ ಫೋನ್ ಮಾಡಿ ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿದ್ದರಿಂದ ದಿನಾಂಕ:21-09-2021 ರಂದು ಶಿವಮೊಗ್ಗ ಗ್ರಾಮಾಂತರ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ಕೇಸ್ ದಾಖಲು ಮಾಡಿಸಿರುತ್ತಾರೆ.

ಮೇಲ್ಕಂಡ ಕೇಸ್ ಗಳ ವಿಚಾರವಾಗಿ ಮಾತಾನಾಡಬೇಕು ಎಂದು ದಿನಾಂಕ: 11-11-2021 ರಂದು ಸಂಜೆ 7.30 ಗಂಟೆಗೆ ಆರೋಪಿಯು ತನ್ನ ಸ್ಟೀಫ್ಟ್ ಡಿಸೈರ್ ಕಾರ್ ನಂ. ಕೆ ಎ 01 ಎಂ.ಜೆ-745 ನೇಯದಲ್ಲಿ, ಭದ್ರಾವತಿ ತಾ, ಕೃಷ್ಣಪ್ಪ ಸರ್ಕಲ್ ನಿಂದ ಸಾಕ್ಷಿ 1 ರವರನ್ನು ಹತ್ತಿಸಿಕೊಂಡು ಶಿವಮೊಗ್ಗ, ನಗರದ ಸಾಗರ ರಸ್ತೆಯಲ್ಲಿರುವ ಆಶೋಕ ಗ್ರಾಂಡ್ ಲಾಡ್ಸ್ ರೂಂ ನಂ. 306 ಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬಂದು ಅಕ್ರಮ ಬಂಧನದಲ್ಲಿಟ್ಟುಕೊಂಡು "ನನ್ನ ವಿರುದ್ಧ ಕಂಪ್ಲೆಂಟ್ ಕೊಡಲು ಎಷ್ಟು ಧೈರ್ಯ, ನನ್ನನ್ನು ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ಅಂದು ಕೊಂಡಿದ್ದೀಯ ಇಲ್ಲ ಹಜಾಮಾ ಎಂದುಕೊಂಡಿದ್ದೀಯೋ, ಕೊಟ್ಟಿರುವ ಕೇಸ್ ಎಲ್ಲವನ್ನು ವಾಪಾಸ್ ತೆಗೆದುಕೋ" ಎಂದು ಆರೋಪಿಯು ಸಾಕ್ಷಿ 1 ರವರಿಗೆ ಹೇಳಿದ್ದನ್ನು ನಿರಾಕರಿಸಿದ್ದಕ್ಕೆ "ಸೂಳೇ, ಸೂಳೆ ತರಹ ನನ್ನ ಜೊತೆ ಇರಬೇಕು ನೀನು" ಎಂದು ಅವಾಚ್ಯವಾಗಿ ಬೈದು ಸಾಕ್ಷಿ 1 ರವರಿಗೆ ಕೈಯಿಂದ ಹಲ್ಲೆ ಮಾಡಿ, ಶೂ. ನಿಂದ ಮೈ ಕೈಗೆ ಹೊಡೆದು, ಕೈಯಿಂದ ಕುತ್ತಿಗೆ ಹಿಡಿದು ಸಾಯಿಸಲು ಪ್ರಯತ್ನಿಸಿರುತ್ತಾರೆ ಮತ್ತು ಕೂಗಾಡಿದರೆ ಪ್ಯಾನ್ ಗೆ ನೇತು ಹಾಕುತ್ತೇನೆ ಎಂದು ಪ್ಯಾನ್ ತೋರಿಸಿ ಹೆದರಿಸಿ, ಬಲವಂತವಾಗಿ 2 ಬಾರಿ ಅತ್ಯಾಚಾರ ಮಾಡಿರುತ್ತಾರೆ, ನಂತರದಲ್ಲಿ, ಅಶೋಕ ಗ್ರಾಂಡ್ ಲಾಡ್ಸ್ ರೂಂ ನಿಂದ ಹೊರಟು ಮತ್ತೆ ಭದ್ರಾವತಿಗೆ ಬಿಡುತ್ತೇನೆ ಎಂದು ತನ್ನ ಸ್ಟೀಫ್ಟ್ ಡಿಸೈರ್ ಕಾರ್ ನಲ್ಲಿ ಹತ್ತಿಸಿಕೊಂಡು ಭದ್ರಾವತಿಗೆ

ಬಿಡದೇ, ಕಾರ್ ನಿಂದ ಇಳಿಯಲು ಅವಕಾಶ ಕೊಡದೇ ಅಕ್ರಮ ಬಂಧನಕ್ಕೆ ಒಳಪಡಿಸಿ, ಸಾಗರದವರೆಗೂ ಅವಹರಿಸಿಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ, ಆರೋಪಿಯು ಸಾಕ್ಷಿ 1 ರವರಿಗೆ ಕಾರ್ ನಲ್ಲಿ, ಕೈಯಿಂದ ಮೂಗಿಗೆ ಗುದ್ದಿ ರಕ್ತ ಗಾಯ ಪಡಿಸಿ ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯವನ್ನುಂಟು ಮಾಡಿರುತ್ತಾರೆ ಮತ್ತು ಕೈಯಿಂದ ಕುತ್ತಿಗೆ ಹಿಡಿದು ಕೊಲೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿರುತ್ತಾರೆ, ಮತ್ತು ಶೂ ಮತ್ತು ಕೈ ಯಿಂದ ಹೊಡೆದು, ನಿನ್ನನ್ನು ಸಾಯಿಸಿ ನಿನ್ನನ್ನು ಸಾಯಿಸುತ್ತೇನೆ ಎಂದು ಜೀವ ಬೆದರಿಕೆ ಹಾಕುತ್ತಾ ಸಾಕ್ಷಿ 1 ರವರನ್ನು ಸಾಗರ ಹಳೇ ಬಸ್ ನಿಲ್ದಾಣದ ಬಳಿ ಇಳಿಸಿ ಹೊರಟು ಹೋಗಿರುತ್ತಾರೆ, ಎಂದು ಇದುವರೆಗಿನ ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಆರೋಪಿಯ ವಿರುದ್ಧ ಕಲಂ 376(2) (ಎನ್), 368, 342, 307, 355, 323, 504, 506 ಐಪಿಸಿ ರೀತಿ ಆರೋಪ ದೃಢಪಟ್ಟಿದ್ದರಿಂದ ಆರೋಪಿಯ ವಿರುದ್ಧ ಸಲ್ಲಿಸಲಾದ ದೋಷಾರೋಪಣೆ ಪತ್ರ.

ಪ್ರಕರಣದಲ್ಲಿ, ವೈಜ್ಞಾನಿಕ ವರದಿಗಳು, ಆರ್ ಟಿ ಓ ಪರೀಶೀಲನಾ ವರದಿ, ಸಿಡಿಆರ್/ಎಸ್ ಡಿಆರ್, ಸಿ ಎ ಎಫ್, ನ 65 ಬಿ ಪ್ರಮಾಣ ಪತ್ರ ಬಾಕಿ ಇದ್ದು, ಮತ್ತು ಇನ್ನು ಕೆಲವು ದಾಖಲಾತಿಗಳನ್ನು ಪಡೆದು ಪೂರಕ ಸಾಕ್ಷಿಗಳನ್ನು ವಿಚಾರಣೆ ಮಾಡಿ ಹೆಚ್ಚುವರಿ ದೋಷಾರೋಪಣೆ ಪಟ್ಟಿ”

Certain statements are recorded of the relevant witnesses whom I deem it appropriate to notice. The vehicle which took the petitioner and the complainant was driven by one Abdul Shukoor, a constable in the Police Department. His statement assumes significance. It reads as follows:

“ಶಿವಮೊಗ್ಗ ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆಯ ಮೊ.ಸಂ.114/2021 ರ 376(2) (ಎನ್), 355, 307, 323, 504, 506 ಐಪಿಸಿ ಪ್ರಕರಣದಲ್ಲಿ ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆ:

ಶ್ರೀ ಅಬ್ದುಲ್ ಶುಕೂರ್, ಎಸ್ ಬಿನ್ ಅಬ್ದುಲ್ ಇಮಾಂ ಸಾಬ್, 33 ವರ್ಷ, ಸಾಗರ ಟೌನ್ ಪೊಲೀಸ್ ಠಾಣೆ, ಸಿವಿಲ್ ಕಾನ್ಸ್ ಟೇಬಲ್, ಮೆಟಲ್ ನಂ. 1361. ವಾಸ: ಸಾಗರ ಪೊಲೀಸ್ ಕ್ವಾಟ್ರಸ್ ಸ್ವಂತ ಉರು ಕುಂಚೂರು ಹರಪ್ಪನಹಳ್ಳಿ ತಾ. ವಿಜಯನಗರ ಜಿಲ್ಲೆ. ಮೊ.ನಂ. 8749038737.

ದಿ: 19-11-2021

ನಾನು ಜುಲೈ 13-2015 ರಂದು ಪೊಲೀಸ್ ಇಲಾಖೆಗೆ ಸೇರಿಕೊಂಡಿರುತ್ತೇನೆ. ಸಾಗರ ಟೌನ್ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ಕಾನ್ಸ್ ಟೇಬಲ್ ಆಗಿ 2016 ರಿಂದ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದೇನೆ. ಠಾಣೆಯಲ್ಲಿ ನೈಟ್ ಬೀಟ್, ಜನರಲ್ ಡ್ಯೂಟಿ, ಬಂದೋಬಸ್ತ್ ಡ್ಯೂಟಿ ನಿರ್ವಹಿಸುತ್ತೇನೆ. ಒಮ್ಮೊಮ್ಮೆ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ಹೇಳಿದಂತೆ ಜೇಪ್ ನ್ನು ಡೈವ್ ಮಾಡುತ್ತೇನೆ.

ದಿನಾಂಕ: 11-11-2021 ರಂದು ನಾನು ಸಾಂದರ್ಭಿಕ ರಜೆಯನ್ನು ಹಾಕಿದ್ದೇನು, ಆ ದಿನ ಸಾಗರ ಟೌನ್ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರಾದ ಅಶೋಕ್ ಕುಮಾರ್ ರವರು ನನಗೆ ಫೋನ್ ಮಾಡಿ ಗುಬ್ಬಿ ಕೋರ್ಟ್ ಗೆ ಸಾಕ್ಷಿ ನುಡಿಯಲು ಹೋಗಬೇಕಾಗಿದೆ. ನನ್ನ ಕಾರ್ ನ್ನು ತೆಗೆದುಕೊಂಡು ಹೋಗೋಣ ಬಾ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ನಾನು ಬೆಳಿಗ್ಗೆ, 7.30 ಗಂಟೆಗೆ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ಅಶೋಕ್ ಕುಮಾರ್ ರವರನ್ನು ಕರೆದುಕೊಂಡು ಅವರ ಸ್ವಿಫ್ಟ್ ಡಿಸೈರ್ ಕಾರ್ ನಲ್ಲಿ ಹೊರಟಿದ್ದು, ಮಧ್ಯಾಹ್ನ 12.30 ಪಿಎಂ ಗೆ ಗುಬ್ಬಿ ಕೋರ್ಟ್ ಗೆ ಹೋದೆವು, ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ಕೋರ್ಟ್ ಗೆ ಹೋಗಿ ಬಂದರು. ಮಧ್ಯಾಹ್ನ ಅಲ್ಲಿಂದ ಹೊರಟಿದ್ದು, ಅವರಿಗೆ ಫೋನ್ ಬರುತ್ತಿತ್ತು, ಭದ್ರಾವತಿ ಕ್ಯಾಂಪ್ ಬಳಿ ಬಂದಾಗ ಸಂಜೆ 7.30 ಗಂಟೆಯಾಗಿದ್ದು, ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ನನ್ನ ಪರಿಚಯದ XXXX ಎಂಬವರು ಬರುತ್ತಾರೆ ಅವರನ್ನು ಶಿವಮೊಗ್ಗಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಬೇಕು. ನನ್ನ ಡಿಇ ವಿಚಾರವಾಗಿ ಅವಳೊಂದಿಗೆ ಮಾತಾನಾಡುವುದು ಇದೆ ಎಂದು ಕಾರ್ ನಿಲ್ಲಿಸುವಂತೆ ಹೇಳಿದ್ದರಿಂದ ನಿಲ್ಲಿಸಿದೆನು. ಅಲ್ಲಿ ಒಬ್ಬ ಲೇಡಿ ಕಾರ್ ನ್ನು ಹತ್ತಿದರು. ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ಹೊರಡು ಎಂದಿದ್ದಕ್ಕೆ ಹೊರಟಿದ್ದು, ಶಿವಮೊಗ್ಗದ ಗ್ರಾಂಡ್ ಹೋಟೆಲ್ ಬಳಿ ನಿಲ್ಲಿಸು ಎಂದರು. ಹೋಟೆಲ್ ಬಳಿ ನಿಲ್ಲಿಸಿದೆ. ಲೇಡಿ ಜೊತೆಯಲ್ಲಿ ಕೇಸ್ ಬಗ್ಗೆ ಮಾತಾನಾಡುವುದಿದೆ. ಎಂದು ಅವರು ಹೋಟೆಲ್ ಒಳಗೆ ಹೋಗಿ ರೂಂ ಬುಕ್ ಮಾಡಿಕೊಂಡರು. ಆಮೇಲೆ ಅವರು ರೂಂ ಗೆ ಹೋದರು. ನಂತರ ನನಗೆ ಫೋನ್ ಮಾಡಿ ಸಿಗರೇಟ್ ಮತ್ತು ಆಫ್ಲೇಟ್ ತಂದು ಕೊಡುವಂತೆ ತಿಳಿಸಿದರು. ನಾನು ಅದನ್ನು ತೆಗೆದುಕೊಂಡು ಅವರು ಹೇಳಿದ ರೂಂ ನಂ. 306 ಕ್ಕೆ ಹೋಗಿ ಕೊಟ್ಟು ಬಂದೆನು. ಇನ್ಸ್ ಪೆಕ್ಟರ್ ಮತ್ತು ಇನ್ನೊಬ್ಬ ಲೇಡಿ XXXX ರವರು ಕುಳಿತುಕೊಂಡಿದ್ದರು. ನಂತರ ನಾನು ಹೊರಗೆ ಬಂದಿದ್ದು, ಎಗ್ ರೈಸ್ ತಿಂದು ಕಾರ್ ನಲ್ಲಿ ಕುಳಿತಿದ್ದೇನು. ತುಂಬಾ ಹೊತ್ತು ಕಾದರೂ ಅವರು ಬಾರದೇ ಇದ್ದುದರಿಂದ ಕಾರ್ ನಲ್ಲಿಯೇ ಮಲಗಿದೆನು ರಾತ್ರಿ ಸುಮಾರು 1.45 ಗಂಟೆಗೆ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ಮತ್ತು ಲೇಡಿ ಬಂದರು. ಮತ್ತೆ

ಅವರಿಬ್ಬರೂ ಚೆನ್ನಾಗಿಯೇ ಕಾರ್ ನಲ್ಲಿ ಕುಳಿತರು. ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ಭದ್ರಾವತಿಗೆ ಬಿಡುವುದಾಗಿ XXXX ರವರಿಗೆ ಹೇಳಿದ್ದರು. ಕಾರ್ ಸ್ಟಾರ್ಟ್ ಮಾಡಿದ ನಂತರ ಲೋ, ನನ್ನ ಮಗನೇ, ನೀನು ನನ್ನ ಕೆಳಗೆ ಕೆಲಸ ಮಾಡುವ ಪೇದೆ, ನಾನು ಹೇಳಿದ ಹಾಗೇ ಕೆಲಸ ಮಾಡಬೇಕು ಇಲ್ಲ. ಅಂದರೆ ನಿನ್ನ ನೌಕರಿ ತೆಗೆಯುತ್ತೇನೆ ಎಂದು ಹೆದರಿಸಿ ನನಗೆ ವಾಹನವನ್ನು ಸಾಗರದ ಕಡೆಗೆ ಓಡಿಸು, ಎಲ್ಲಿಯೂ ನಿಲ್ಲಿಸಬೇಡ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ನಾನು ಭಯಗೊಂಡು ಮೇಲಾಧಿಕಾರಿಯಾದ ಅವರ ಮಾತನ್ನು ಕೇಳಿ ವಾಹನವನ್ನು ಸಾಗರಕ್ಕೆ ಓಡಿಸುತ್ತಿದ್ದೇನು. ಈ ಮಧ್ಯೆ ಅವರು XXXX ರವರೊಂದಿಗೆ ಬಾಯಿ ಮಾತು ಗಲಾಟೆ ಮಾಡಿಕೊಂಡು ಕೈಯಿಂದ ಹೊಡೆದಿದ್ದು, ಅವಳ ಮೂಗಿನಿಂದ ರಕ್ತ ಬರುತ್ತಿತ್ತು. ಹಿಂಬದಿ ಕುಳಿತಿದ್ದ XXXXರವರಿಗೆ ಅಶೋಕ್ ಕುಮಾರ್ ರವರು ಶೂ ಕಾಲಿನಿಂದ ಹೊಡೆಯುತ್ತಿದ್ದಾಗ ನಾನು ಏನು ಮಾಡಲಾಗದೇ ನನ್ನ ನೌಕರಿಯನ್ನು ಉಳಿಸಿಕೊಳ್ಳುವ ಸಲುವಾಗಿ ವಾಹನವನ್ನು ಓಡಿಸಿಕೊಂಡು ಹೋದೆನು, ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ಹೇಳಿದಂತೆ XXXXರವರನ್ನು ಸಾಗರದ ಹಳೆ ಬಸ್ ನಿಲ್ದಾಣದ ಬಳಿಯಲ್ಲಿ, ಬಿಟ್ಟೆವು. ನಂತರ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರನ್ನು ಮನೆಗೆ ಬಿಟ್ಟು. ನಾನು ಮನೆಗೆ ಹೋದೆನು. ನಂತರ ಏನಾಯಿತು ಎಂಬ ವಿಚಾರ ನನಗೆ ಗೊತ್ತಿಲ್ಲ.

ನಂತರದಲ್ಲಿ ನಮ್ಮ ಸ್ಟೇಷನ್ ನವರಿಂದ XXXX ರವರು ಅಶೋಕ್ ಕುಮಾರ್ ರವರ ಮೇಲೆ ದೂರು ನೀಡಿದ್ದಾರೆಂದು ವಿಚಾರ ಗೊತ್ತಾಯಿತು. ನಾನು ಅಶೋಕ್ ಕುಮಾರ್ ರವರಿಗೆ ಕಾನೂನು ಕ್ರಮವಾಗಬೇಕೆಂದು ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಹಾಜರಾಗಿ ಸಾಕ್ಷಿಯನ್ನು ನೀಡಿರುತ್ತೇನೆ.”

Statement of the driver who dropped the complainant to the McGann hospital assumes significance. It reads as follows:

“ನಾನು ಮೇಲಿನ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಸುಮಾರು 20 ವರ್ಷಗಳಿಂದ ಡೈವರ್ ಆಗಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಾನು ಮೂಲತಃ ಸಾಗರದವನು. ನಾನು ಮೊದಲಿನಿಂದಲೂ ರಾತ್ರಿ ಸಮಯದಲ್ಲಿಯೇ ಡೈವಿಂಗ್ ಕೆಲಸವನ್ನು ಮಾಡಿಕೊಂಡು ಬಂದಿರುತ್ತೇನೆ.

ದಿನಾಂಕ: 12-11-2021 ರಂದು ಬೆಳಗಿನ ಜಾವ 2.30 ಗಂಟೆಗೆ ನಾನು ಸಾಗರದ ಹಳೇ ಬಸ್ ನಿಲ್ದಾಣದ ಹತ್ತಿರ ಕೋರ್ಟ್ ಎದುರು ಭಾಗದಲ್ಲಿ ಎಂದಿನಂತೆ ಆಟೋವನ್ನು ನಿಲ್ಲಿಸಿಕೊಂಡು ಇದ್ದೇನು. ಆಗ ಒಬ್ಬ ಮಹಿಳೆ ನನ್ನ ಬಳಿ ಬಂದು ಶಿವಮೊಗ್ಗಕ್ಕೆ ಹೋಗಲು

ಕಾರ್ ಬಾಡಿಗೆಗೆ ಬೇಕು ಎಂದು ಕೇಳಿದರು. ನಾನು 3500/-ಬಾಡಿಗೆ ಆಗುತ್ತದೆ ಎಂದು ಹೇಳಿದೆ. ಆ ಹೆಂಗಸು ಹಣ ಜಾಸ್ತಿಯಾಯ್ತು 2000/- ರೂ. ಕೊಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದರು. ಆಮೇಲೆ 2500/- ರೂ. ಹೇಳಿದ್ದು, 2700/- ಕ್ಕೆ ಅಂತಿಮವಾಗಿ ಕೇಳಿದರು. ನಂತರ ಆ ಹೆಂಗಸು ಫೋನ್ ಮಾಡಿ ಮಾತಾನಾಡಿ ಎಂದು ನನ್ನ ಕೈಗೆ ಅವರ ಮೊಬೈಲ್ ನ್ನು ಕೊಟ್ಟರು. ನಾನು ಮಾತಾನಾಡಿದೆ. ಅವರು ನಾನು ಸಾಗರ ಟೌನ್ ಸ್ಟೇಷನ್ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ಮಾತಾನಾಡುತ್ತಿರುವುದು, ಅವರನ್ನು ಶಿವಮೊಗ್ಗಕ್ಕೆ ಬಿಟ್ಟು ಬನ್ನಿ. ಬಾಡಿಗೆ ನಾನು ಕೊಡುತ್ತೇನೆ, ಎಂದು ಹೇಳಿದರು. ಆಗ ನಾನು ನನ್ನ ಸ್ನೇಹಿತ ವೆಂಕಟೇಶ್ ನ ಮಗನಾದ ವಿನಯ್ ಬಳಿ ಕಾರ್ ಇದ್ದು, Etios ಕಾರ್ ಇದ್ದು, ಕೆ ಎ 01-ಎಜಿ-4270, ಬಿಳಿ ಬಣ್ಣದ್ದಾಗಿರುತ್ತದೆ. ನಾನು ವಿನಯ್ ನಿಗೆ ಫೋನ್ ಮಾಡಿ ಬಾಡಿಗೆಗೆ ಹೋಗಬೇಕು, ಕಾರ್ ಕೊಡಿ ಎಂದು ಕೇಳಿದೆ. ಆಗ ವಿನಯ್ ನು ಕಾರ್ ನ್ನು ಆಟೋಸ್ಟಾಂಡ್ ಗೆ ತಂದನು, ಆಗ ಸಮಯ ಬೆಳಗಿನ ಜಾವ 3.00 ಗಂಟೆಯಾಗಿತ್ತು. ಆ ಕಾರಿನಲ್ಲಿ ನಾನು ಆ ಲೇಡಿಸ್ ರವರನ್ನು ಕರೆದುಕೊಂಡು ಶಿವಮೊಗ್ಗಕ್ಕೆ ಬಂದೆನು. ಅವರು ಮೆಗ್ಗಾನ್ ಆಸ್ಪತ್ರೆಗೆ ಬಿಡು ಎಂದು ಹೇಳಿದರು. ನಾನು ಮೆಗ್ಗಾನ್ ಆಸ್ಪತ್ರೆಯ ತುರ್ತು ಚಿಕಿತ್ಸೆ ವಿಭಾಗದ ಬಳಿ ಬಿಟ್ಟೆನು. ಆಗ ಸಮಯ 4.00 ಗಂಟೆಯಾಗಿತ್ತು. ಅಲ್ಲಿ ಆ ಲೇಡಿಸ್ ರವರು ನನಗೆ ಮಾಸ್ಕ್ ನ್ನು ತೆಗೆದು ಮೂಗಿನಲ್ಲಿ ರಕ್ತ ಬರುತ್ತಿದೆ ಎಂದು ತೋರಿಸಿದರು. ವೇಲ್ ಮೇಲೆ ರಕ್ತ ಬಿದ್ದಿದ್ದು ಕಂಡು ಬರುತ್ತಿತ್ತು. ಇದು ಹೇಗಾಯ್ತು ಎಂದು ಕೇಳಿದೆ. ಆಗ ಅವರು ಕಾರ್ ಹತ್ತುವಾಗ ಏನನ್ನು ಹೇಳಲಿಲ್ಲ. ಏಕೆ ಎಂದು ಕೇಳಿದೆ. ಈ ರೀತಿಯಾಗಲು ಸಾಗರ ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರು ಕಾರಣ, ಶಿವಮೊಗ್ಗದಿಂದ ನನ್ನನ್ನು ಕಾರ್ ನಲ್ಲಿ, ಅಶೋಕ ಕುಮಾರ್ ರವರು ಕರೆದುಕೊಂಡು ಹೋಗುವಾಗ ಕೈಯಿಂದ, ಕಾಲಿನಿಂದ ಹೊಡೆದಿರುತ್ತಾರೆ, ಕಾರ್ ನಿಂದ ದಬ್ಬಲು ಪ್ರಯತ್ನ ಮಾಡಿರುತ್ತಾರೆ. ನಾನು ಸತ್ತು ಬದುಕಿದ್ದೇನೆ ಎಂದು ಹೇಳಿದರು. ನಂತರ ಬಾಡಿಗೆ ಹಣ 2700/- ರೂ. ಹಣವನ್ನು ಕೊಟ್ಟರು. ನಾನು ಅವರನ್ನು ಆಸ್ಪತ್ರೆ ಬಳಿ ಬಿಟ್ಟು ಸಾಗರಕ್ಕೆ ಹೋದೆ. ಮಾರನೇ ದಿನ ಅಂದರೆ ದಿ:12-11-2021 ರಂದು ಬೆಳಿಗ್ಗೆ ನಾನು ಇನ್ಸ್ ಪೆಕ್ಟರ್ ರವರ ಬಳಿ 3000/- ರೂ. ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಆ ನಂತರದಲ್ಲಿ ಆ ಲೇಡಿಸ್ ಹೆಸರು XXXX, ಭದ್ರಾವತಿಯವರು ಎಂದು ಗೊತ್ತಾಯಿತು,

ಓ, ಹೇ. ಕೆ ಸರಿಯಿದೆ.”

What is discernible from the afore-quoted statements is link in the chain of events. The petitioner and the complainant enter into Ashoka Grand hotel in the official car. At 1.45 a.m. it is the statement of the driver/constable who drove them that both of them came back to the car, sat and nothing untoward incident happened till that time, but suddenly squabble erupted between the two and the petitioner assaulted the complainant. The aftermath of dropping is captured by one Ramesh, the driver who took the complainant to the hospital. It is his statement that the complainant was bleeding and when he asked as to how this happened, she has narrated the story that is narrated in the statement. All this corroborate with the wound certificate. The wound certificate is appended to the charge sheet. The wounds inflicted are as follows:

"	<i>Pt c/o pain in the neck bleeding from nose Pain over nose lower Pain over (L) side abdomen</i>
O/e →	<i>Tenderness and mild swelling over nose -B/L nasal bones</i>
→	<i>Tenderness over (L) Iliac & lumbar region</i>

I am of opinion that the above mentioned injuries are simple in nature.

Station:SHIVAMOGGA.
Date:6/1/2022

Name:Dr.flama Shetty
Rank: CMO

*Sd/-
Casualty Medical Officer
Mc.Gann.Teaching Hospital
SIMS, SHIVAMOGGA.*

*Recd on 6/1/22
Sd/-
Police Inspector
Women Police Station
SHIVAMOGGA."*

The treatment is on 12-11-2021 at 4.20 a.m. at McGann Hospital, Shimoga. Therefore, the link in the chain of events would undoubtedly pin the petitioner down for the allegations that are made in the complaint and summarized in the charge sheet. Not for nothing statements are recorded and culminated into the summary of the charge sheet.

10. The learned counsel for the petitioner would seek to take recourse to one statement made by the complainant when she was taken to the hospital. He would take this Court through the recording of the doctor with regard to the assault. It is the complainant's statement that assault is by a Police Officer and does not reveal the name of the petitioner. Taking cue from this statement, the learned counsel for the petitioner seeks to project

that it was not him who has assaulted. This submission is noted only to be rejected, as copious evidence by way of statements are recorded during the investigation which would *prima facie* belie whatever defence that the petitioner seeks to project.

11. The issue now would be, whether acts of the petitioner with the complainant throughout between 2017 to the date of registration of complaint in 2021 amount to the ingredients of Section 376(2)(n) of the IPC – the offence of repeated rape. Section 376 (2)(n) reads as follows:

"376. Punishment for rape.—(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

... ..

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

If the narration in the complaint or the averments in the statement of objections or even the summary of charge sheet is taken note of, the complainant visits the petitioner for the first time in the year 2017 in connection with the affairs of the Karnataka Rakshana Vedhike of Shivamogga District of which the complainant was the President. It is from the said meeting blossoms friendship, and friendship into relationship. The relationship even physical between the complainant and the petitioner, as found in the material placed before the Court, would clearly indicate that they were at times peaceful and they were at times marred with violent acts on the part of the petitioner. But, insofar as the offence of rape is concerned, the acts between the complainant and the petitioner were not out of fraud, force or deceit as is alleged. They were all consensual acts. These consensual acts can be gathered from the statement of the complainant herself in the earlier crime in Crime No.38 of 2021 which was registered for the same offence. Therefore, such consensual acts between the petitioner and the complainant, for four long years, cannot be termed as offence of repeated rape, though the projection, is that consent was obtained by fraud, dominance or otherwise. The consent cannot be obtained

by these methods for four long years. Therefore, I decline to accept the submission of the learned counsel for the complainant that the acts amount to rape, and accept the submission of the learned counsel for the petitioner that they were all consensual, as the facts obtaining in the case at hand are akin to what is considered by the Apex Court in the case of **DR. DHURVARAM MURLIDHAR SONAR v. STATE OF MAHARASHTRA**¹, wherein the Apex Court holds as follows:

"....

14. In the instant case, FIR was registered against the appellant and the co-accused under Sections 376(2)(b), 420 read with Section 34 IPC and under Section 3(1)(x) of the SC/ST Act. Section 376(2)(b) prescribes punishment for the offence of rape committed by a public servant taking advantage of his official position on a woman in his custody as such public servant or in the custody of a public servant subordinate to him. The said provision during the relevant point of time was as under:

"376. Punishment for rape.—

(1) * * *

(2) Whoever,—

(a)***

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

¹ (2019) 18 SCC 191

(c)-(g)***

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine."

15. Section 375 defines the offence of rape and enumerates six descriptions of the offence. The first clause operates where the woman is in possession of her senses and, therefore, capable of consenting but the act is done against her will and the second where it is done without her consent; the third, fourth and fifth when there is consent but it is not such a consent as excuses the offender, because it is obtained by putting her, or any person in whom she is interested, in fear of death or of hurt. The expression "against her 'will' " means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.

16. Section 90 IPC defines "consent" known to be given under fear or misconception:

"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;"

17. Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the

significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

18. In *Uday v. State of Karnataka* [*Uday v. State of Karnataka*, (2003) 4 SCC 46: 2003 SCC (Cri) 775], this Court was considering a case where the prosecutrix, aged about 19 years, had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus: (SCC pp. 56-57, paras 21 & 23)

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix 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.

* * *

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in

love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

19. In *Deelip Singh v. State of Bihar* [*Deelip Singh v. State of Bihar*, (2005) 1 SCC 88: 2005 SCC (Cri) 253], the Court framed the following two questions relating to consent: (SCC p. 104, para 30)

(1) Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?

(2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the

intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.

20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus : (*Deelip Singh [Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253]* , SCC p. 106, para 35)

“35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that “later on”, the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in *Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775]* at para 24 come to the aid of the appellant.”

21. In *Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3*

SCC (Cri) 660] , the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

22. Recently, this Court, in *Shivashankar v. State of Karnataka* [*Shivashankar v. State of Karnataka*, (2019) 18 SCC 204] , disposed of on 6-4-2018, has observed that it is difficult to hold that sexual intercourse in the course of a relationship which has continued for eight years is "rape", especially in the face of the complainant's own allegation that they lived together as man and wife. It was held as under : (*Shivashankar*

case [*Shivashankar v. State of Karnataka*, (2019) 18 SCC 204] , SCC p. 205, para 4)

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

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.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to

different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."

(Emphasis supplied)

The Apex Court again in the case of **LALU YADAV v. STATE OF UTTAR PRADESH**², has held as follows:

² 2024 SCC OnLine SC 2876

"... .."

8. We have already taken note of the facts revealed from the subject FIR itself that the time of occurrence of offence is allegedly, from 05.01.2013 to 05.01.2018 and that it was registered only at 21.34 hrs. on 21.02.2018. That apart, it is evident that even going by respondent No. 4, the complainant herself and the appellant were living as husband and wife. The complaint of respondent no. 4, as is revealed therefrom, is that the appellant had deceived her by promising to marry and then by establishing physical relationship. At the risk of repetition, we will have to refer to the FIR, carrying the following recitals from her complaint:

"... Lalu Yadav S/o Seshnath Yadav R/o Atarsuya P.S. Nandganj District-Ghazipur, used to come to my house along with the brother-in-law Ravindra Yadav of my elder sister, at that time about five years back I was a student of High School, then the said Lalu Yadav by way of deceiving myself promise that he will marry me and established physical relationship with me without my consent and started living with me as the husband."

(underline supplied)

9. At the very outset, it is to be noted that there is a huge irregularity between the statements "established physical relationship with me without my consent" and "started living with me as the husband". Be that as it may, bearing in mind the allegations raised by respondent No. 4 reflected in the subject FIR, we will refer to the relevant decisions of this Court.

10. While dismissing the writ petition under the impugned order, presumably taking note of the contentions based on time lag of five years, the High Court relied on its Full Bench decisions in *Ajit Singh @ Muraha v. State of U.P.*², and in *Satya Pal v. State of U.P.*³. as well as the decision of this Court in *State of Haryana v. Bhajan Lal*⁴. It observed and held that there could be no interference with the investigation or order staying arrest unless cognizable offence is not ex-facie discernible from the allegations contained in the FIR or there exists any statutory restriction operating against the power of

the Police to investigate a case. There can be no two views on the exposition of law thus made relying on the said decisions. In the same breath we will have to say that those decisions can be no bar for the exercise of power under Section 482, Cr. P.C., in various other situations dealt with, in detail, by this Court, including in the decision in *Bhajan Lal's case* (supra).

11. To determine whether the case in hand deserves to be quashed at the present stage we will refer to some of the decisions. We have already taken note of the fact that though there was an allegation in the FIR regarding commission of offence under Section 313, IPC, on completion of the investigation, the investigating agency itself omitted the offence under Section 313, IPC against the appellant-accused. In paragraph 102 of the decision in *Bhajan Lal's case* (supra) this Court held thus:—

"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."*

12. In the decision in *Shivashankar alias Shiva v. State of Karnataka*⁵, this Court held thus:—

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

13. The decision in "**XXXX**" v. *State of Madhya Pradesh*⁶, also assumes relevance in the contextual situation. This court took into consideration an earlier decision of this Court in *Naim Ahamed v. State (NCT of Delhi)*², where the allegation was one of alleged rape on false promise of marriage, made five years after the complainant and the accused started having relations and even got pregnant from the accused, of course when she was having a subsisting marriage, the Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. Having considered the said decision and finding identity in facts, this court in the decision reported in (2024) 3 SCC 496 reversed the order impugned therein dismissing the petition filed under Section 482, Cr. P.C. for quashment of FIR and allowed the appeal by setting aside the impugned order and quashing the subject FIR.

14. Now, having bestowed our anxious consideration to the decisions referred *supra* with reference to the factual situations obtained in the case at hand, we are of the considered view that the High Court has palpably gone wrong in not considering the question whether the allegations in the complaint reveals *prima facie* case that the complainant had given her consent for the sexual relationship with the appellant under misconception of fact, as alleged, or whether it reveals a case of consensual sex. Firstly, it is to be noted that the subject FIR itself would reveal that there occurred a delay of more than 5 years for registering the FIR; secondly, the very case of the complainant, as revealed from the FIR, would go to show that they lived for a long period as man and wife and thirdly, the facts and circumstances obtained from the subject FIR and other materials on record would reveal absence of a *prima facie* case that the complainant viz., respondent No. 4 had given her consent for sexual relationship with the appellant under misconception of fact. At any rate, the allegations in the FIR would not constitute a *prima*

***facie* case of false promise to marry from the inception with a view to establish sexual relationship and instead they would reveal a *prima facie* case of long consensual physical relationship, during which the complainant addressed the appellant as her husband. Moreover, it is also the case of the complainant, revealed from the subject FIR and the other materials on record that she went along with the appellant to Varanasi with the knowledge of her family and stayed with him in hotels during such visits. The subsequent refusal to marry the complainant would not be sufficient, in view of the facts and circumstances obtained in the case at hand, by any stretch of imagination to draw existence of a *prima facie* case that the complainant had given consent for the sexual relationship with the appellant under misconception of fact, so as to accuse the appellant guilty of having committed rape within the meaning of Section 375, IPC."**

(Emphasis supplied)

In the light of afore-quoted judgments of the Apex Court, the offence of repeated rape laid against the petitioner cannot be sustained. Therefore, said offence requires to be obliterated.

12. The other offences alleged are the ones punishable under Sections 368, 342, 307, 355, 323, 504 and 506 of the IPC. What has happened on 11-11-2021 which forms the fulcrum of the *lis*, as observed hereinabove and the statements recorded thereon would clearly indicate violent behaviour of the petitioner upon the complainant, be it for offence of attempt to murder under Section

307 of the IPC or assault as obtaining under the provisions as noted hereinabove. They are all met *albeit, prima facie*, in the case at hand. The statement of the complainant in Crime No.38 of 2021 which lead to filing of 'B' report and closure of proceedings does not in any way overlap the crime impugned in the proceedings, as long after the statement so rendered in Crime No.38 of 2021 the acts of the petitioner are found.

13. I deem it appropriate to hold that consensual acts between the accused and the victim for having sexual relationship, can never become a licence to the man to assault the lady. The case at hand projects gross misogynist brutality upon the complainant. In the light of the preceding analysis, the unmistakable inference would be obliteration of offence of rape alleged against the petitioner as obtaining under Section 376(2)(n) of the IPC as, consensual acts between the two cannot become a rape. The other offences are all to be sustained, as any amount of consensus cannot handover a man with, the licence to assault a woman. Therefore, all the offences other than

the one of repeated rape, are sustained and the petitioner has to be tried, and trial is a must.

14. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is partly allowed.
- (ii) The offence of rape under Section 376(2)(n) of the IPC alleged against the petitioner is obliterated.
- (iii) All other offences alleged in C.C.No.109 of 2022 stand sustained.
- (iv) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings that are pending against the accused/petitioner.

Consequently, I.A.No.1 of 2024 filed for vacating stay also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

Bkp
CT:SS