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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1529 of 2023

- Palash Chandel S/o Narayan Chandel Aged About 30 Years R/o Railway Station Chowk, Kuberpara, Naila-Janjgir, District: Janjgir-Champa, Chhattisgarh. ---- **Petitioner**

Versus

1. State of Chhattisgarh, Through The Secretary, Ministry of Home, Mahanadi Bhawan, Mantralaya, Naya Raipur, District: Raipur, Chhattisgarh.
2. The Station House Officer Police Station Janjgir, District: Janjgir-Champa, Chhattisgarh.
3. Xyz Nill. ---- **Respondents**

(Cause Title is taken from Case Information System)

For Petitioner	:	Mr. B. P. Sharma, Advocate along with Mr. Hari Agrawal and Ms. Anita Verma, Advocate
For Respondents No.1&2/State	:	Ms. Hamida Siddiqui, Deputy Advocate General
For Respondent No.3	:	Mr. Ashok Gadhewal and Ms. Pushpa Sewa, Advocates
Date of hearing	:	23.08.2023
Date of order	:	21.09.2023

Hon'ble Shri Justice Rakesh Mohan Pandey

CAV ORDER

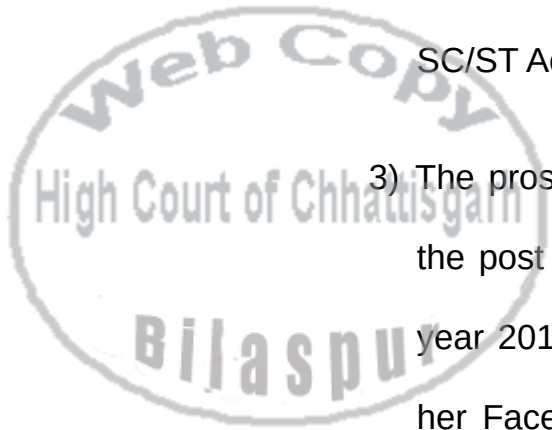
- 1) The instant petition has been filed under Section 482 of the Cr.P.C. for quashing the charge sheet, final report No. 244 of 2023 and subsequent criminal proceedings for the offences punishable under Sections 376, 376(2)(n), 313, 323 of the IPC and Sections 3(2)(v) and 3(2)(v)(a) of the SC/ST Act.



-2-

2) Respondent no.3/victim made a written complaint to various state authorities including the Chhattisgarh Women Commission, Raipur making an allegation of sexual assault against the petitioner and pursuant to said letter dated 18.01.2023, an FIR bearing Crime No. 00/2023 was registered at Police Station Mahila Thana, Raipur for the aforesaid offences. Thereafter, the FIR was sent to the jurisdictional Police Station i.e. Janjgir, District - Janjgir-Champa and the same was registered as FIR No. 72/2023 for the offences punishable under Sections 376, 376 (2)(n), 313, 323 of the IPC and 3(2)(v) and 3(2)(v)(a) of the SC/ST Act.

3) The prosecution story, in brief, is that the victim was posted on the post of Sports Teacher at the relevant time in Janjgir in the year 2018. The petitioner sent a friend request to the victim on her Facebook ID which was accepted by her and they started talking through Facebook Messenger. They also exchanged their contact numbers and finally met on 03.01.2019, thereafter, the petitioner came to her house and proposed to her for marriage. The victim reminded him about her previous marriage and her caste (Scheduled Tribes) thereafter, the petitioner took time to think over it on 06.01.2019. The petitioner came to her house and forcibly had sexual intercourse in the month of January 2021. The victim conceived and became pregnant and in the month of March 2021, her pregnancy was diagnosed. On 13.03.2021, the petitioner brought *Paneer Chilli* and after eating it the victim suffered an abortion. On 18.04.2021, the petitioner



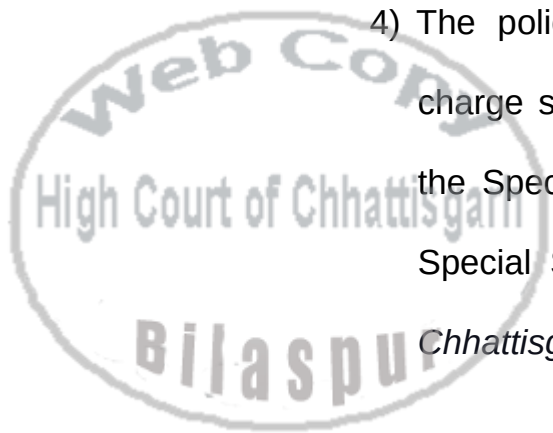


-3-

again tried to establish physical relations but the victim refused, therefore, she was slapped by him and her eardrums were ruptured. The victim requested the petitioner to leave her or marry her. In the month of October 2022, the petitioner and one Amit Yadav came to her house, took her phone and deleted call details as well as other data. In the month of November 2022, the petitioner refused to marry the victim on the ground that she belongs to the Scheduled Tribes and also verbally abused her, thereafter, she lodged the complaint.

4) The police, after the conclusion of the investigation; filed a charge sheet bearing C.S. No. 244/2023 on 22.05.2023 before the Special Judge (Atrocities) and the case was registered as Special Sessions Trial No. 34 of 2023 parties being "*State of Chhattisgarh v. Palash Chandel*".

5) Learned counsel appearing for the petitioner would submit that the petitioner has already been enlarged on bail in Criminal Appeal No.737/2023 vide order dated 08.05.2023 by this Court. He would further submit that on the alleged first date of the incident, the victim was aged about 37 years and she was a married lady with a subsisting marriage. It is also stated that the victim is a well-educated lady and she is a Government Employee who has knowledge of the pros and cons of a relationship. The relationship between the petitioner and the victim continued for a period of two and half years and the same was consensual in nature. He would further submit that when the

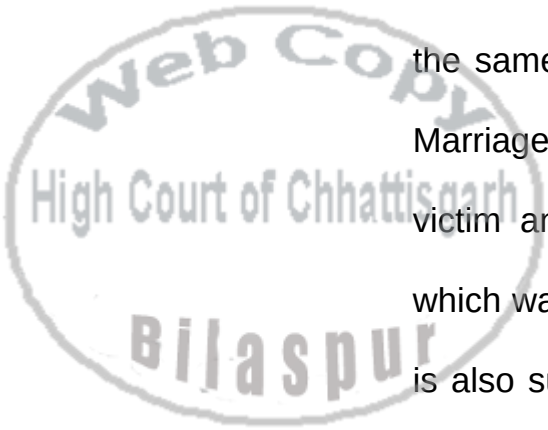




-4-

petitioner expressed his disinclination for marriage the victim lodged an FIR against the petitioner. Learned counsel for the petitioner would next submit that no offence is made out as the alleged relationship was between two adults who knew the significance and outcome of their acts and it was consensual in nature. It is also stated that an individual who makes a reasoned choice to act after evaluating various alternative actions as well as the possible consequences flowing from such action or inaction, consents to such action. It is further stated that there was no element of marriage as the victim is a married lady and the same is evident from her marriage certificate issued by the Marriage Registrar on 25.05.2017, in which photographs of the victim and her husband have been affixed on the certificate, which was filed along with the return in WPCR No. 57 of 2023. It is also submitted that the victim is a major married woman and she is working as a Sports Teacher, but she had not obtained a divorce from her spouse, therefore, the allegation of sexual assault on the pretext of marriage does not arise.

- 6) He would submit that with regard to Section 313 of the IPC, no material has been brought on record or in the final report that the victim conceived and aborted therefore Section 313 of the IPC is not attracted at all.
- 7) With regard to Section 3(2)(v) of the SC/ST Act, it is submitted that the alleged offence is not made out against the petitioner as the relationship between them was consensual and this offence





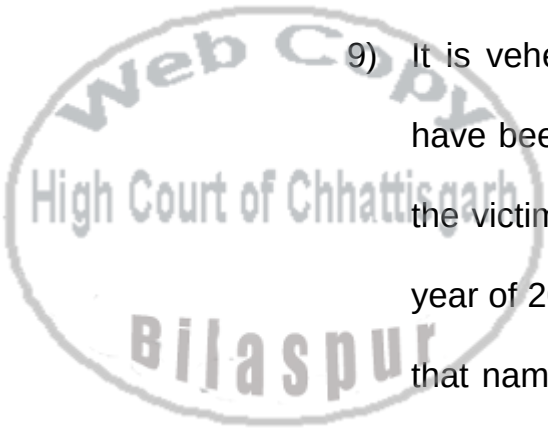
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is not a substantive offence in itself. He would further contend that in the absence of any offence under Sections 376, 313 of the IPC, no offence under Section 3(2)(v) of the SC/ST Act is made out.

8) With regard to Section 323 of the IPC, he would submit that under Section 3(2)(va) of the SC/ST Act though Section 323 of the IPC is a scheduled offence, the ingredients of Section 323 of the IPC are missing, therefore, no offence under Section 3(2)(va) of the SC/ST Act is made out.

9) It is vehemently argued that though the FIR and charge sheet have been registered against the petitioner, the doctor by whom the victim is slated to be examined, has stated that in the entire year of 2021, he has not treated the victim or any other patient of that name therefore no offence under Section 323 of the IPC is made out.

10) In support of his contention, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Haji Iqbal Alias Bala versus State of UP and others, Criminal Appeal No.2343 of 2023 arising out of SLP Criminal No.2988 of 2023** decided on 08.08.2023, where it has been held that the Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution of India need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials





-6-

collected in the course of investigation. The relevant paragraph

No. 14 is reproduced herein below:-

“14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under [Section 482](#) of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under [Article 226](#) of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

11) In the matter of **Uday v. State of Karnataka**, reported in **(2003)**

4 SCC 46, the Hon'ble Supreme Court while dealing with

Sections 375 & 90 and 376 of the IPC held in para 23 and 25

which reads as under:-

“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.





-7-

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 it. 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.

25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of [Section 90](#) IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, is permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 O'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to





-8-

impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent. ”

12) In the matter of **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra** reported in **(2019) 18 SCC 191**, the Hon'ble Supreme Court held in para 15, 16, 17 and 23-24 which reads as under:-

“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.

[Section 90](#) of the IPC defines "consent" known to be given under fear or misconception:-

"[Section 90](#): Consent known to be given under fear or misconception.—A consent is not such a consent as it 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"

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.





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 later 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](#) of the 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 some time 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 complainant has failed to prima facie show the commission of rape, the complaint registered under [Section 376\(2\)\(b\)](#) cannot be sustained."



-10-

13) In the matter of **Sonu @ Subhas Kumar v. State of Uttar Pradesh** reported in **2021 SCC Online SC 181**, the Hon'ble Supreme Court in para 7 held as under:-

"7. On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed a physical relationship which spread over a period of one and a half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the appellant returned to his home town at Jhansi on 5 January 2018 when he had made a phone call to her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the appellant that the appellant did not wish to marry her. The contents of the statement under [Section 164](#) of CrPC also indicate that the second respondent had "voluntarily developed relationship of husband-wife with him". The second respondent has then stated that "now, he and his family members are refusing to marry with me". The second respondent has further stated that "my sole grievance is that Sonu is refusing to marry with me"

14) The Hon'ble Supreme Court in the matter of **Shambhu Kharwar v. State of Uttar Pradesh** reported in **2022 SCC Online SC 1032** in para 12 held as under:-

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





15) With regard to Section 3(2)(v) and 3(2)(v)(a) SC/ST Act, in the matter of **Shaju Thomas v. Sub Inspector of Police** reported in **2019 SCC OnLine Ker 23039** the High Court of Kerala held that:-

“.... Accordingly it is only to be held that since the sexual incidents have happened only on the basis of voluntary and consensual sexual relationship between the petitioner and the 2 respondent, none of the vital ingredients of the offence of rape as per Section 375 of IPC are made out in this case. Since that is the position, the offence as per Section 3(2) (v) of SC/ST (POA) Act, which is not an independent substantive offence will also crumble to the ground. The offence as per Section 3(2)(v) of the SC/ST (POA) Act is relating to commission of an offence as per the IPC, which is included in the schedule to the SC/ST (POA) Act, 1989. Section 3(2)(v) of the SC/ST (POA) Act, 1989 stipulates that whoever not being a member of SC/ST, commits any offence under the IPC punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of SC/ST or such property belongs to such member shall be punishable with imprisonment for life and with fine etc. So in the instant case, the gravamen of the allegation in relation to the offence as per Section 3(2)(v) of the said Act is that as the petitioner has committed the offence of rape as per Section 375 of IPC and that he has also incidentally committed the offence as per Section 3(2)(v) of the above said Act, as R-2 (alleged victim) belongs to SC community. Since the prosecution for the offence of rape has no legs to stand, it goes without saying that equally the offence as per Section 3(2)(v) of the said Act would also fall to the ground.....”

16) In the matter of **Narain Trivedi and others v. State of UP** reported in **2009 SCC OnLine All 30**, the Hon'ble Supreme Court in para-9 held as under:-

“9. As would appear from the language used by the Legislature in section 3(2)(v) SC/ST Act, it is clear that this section does not constitute any substantive offence and if any person not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of Scheduled Caste or Scheduled Tribe or such property belongs to





-12-

such member, then enhanced punishment of life imprisonment would be awarded in such case, meaning thereby that conviction and sentence under section 3(2) (v) SC/ST, Act simplicitor is not permissible and in cases where an offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more is committed against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, then in such case the accused will be convicted and sentenced for the offence under Penal Code, , 1860 read with Section 3(2)(v) SC/ST Act with imprisonment for life and also with fine. Therefore, in the present case, the appellants could not be convicted and sentenced under section 3(2)(v) SC/ST Act simplicitor."

17) On the other hand, learned Counsel appearing for the State would oppose the submissions advanced by learned counsel for the petitioner and submit that the petitioner was aware of the factum of the marriage of the victim even though he maintained physical relations. He would next submit that in the medical evidence that has been brought on record, the victim has categorically stated that her pregnancy was aborted by the petitioner. His next contention is that the petitioner was very well aware of the fact that the victim belonged to the Scheduled Tribes community and with intent to take advantage of her status, he committed the aforesaid offences and maintained a relationship for a considerable period i.e. 2.5 years. Thereafter he refused to marry her, thus, the petition is devoid of the merits and deserves to be dismissed.

18) Learned counsel for the victim would submit that the petitioner is a powerful person and after several attempts, the FIR was registered against him. It is further stated that the fact of the marriage was within the knowledge of the petitioner from the very beginning of the relationship and it was disclosed to the





-13-

petitioner by the victim though he expressed his desire to marry her. It is next submitted that the petitioner was aware of the fact that the victim is a member of the Scheduled Tribes community even though he promised to marry her and maintained a physical relationship for a considerable period i.e. 2.5 years and subsequently, he refused to marry her on the ground of her caste. It is further stated that during their relationship the victim conceived which was aborted by the petitioner, though there is no medical document in this regard however she was medically examined by the gynecologist. It is further alleged that the victim was assaulted by the petitioner and according to the doctor's report, there was some hearing problem to the victim in the right ear from April, 2021 and the doctor opined that the cause of hearing loss is due to rupture of the eardrums.

19) I have heard learned counsel for the respective parties, considered their rival submissions made hereinabove and also perused the documents placed on the record.

20) From a perusal of the material available in the final report, it is clearly seen that there is no material except the statement of the victim. There was a promise for marriage by the petitioner and intentionally in order to get benefit, the petitioner maintained relations with her but from the very beginning facts of marriage and caste were known to him. It is also discernible that the petitioner and the victim were in a relationship for about 2.5 years and during that period she became pregnant and was

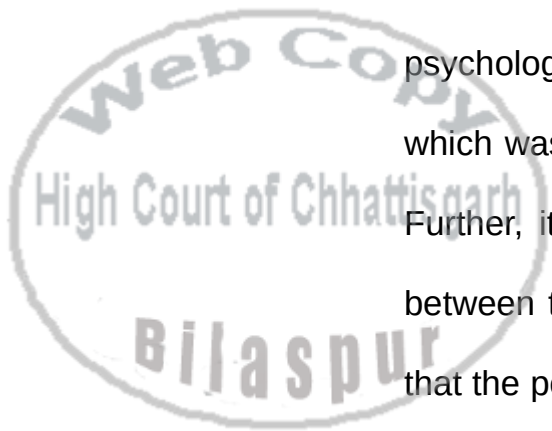




-14-

subsequently aborted by the petitioner but there is no material or document to establish such an allegation. The victim is a member of the Scheduled Tribes community, which is not disputed and at the relevant time the age of the victim was 37 years. She is a government servant working in the post of sports teacher in a government school; whereas, the petitioner was aged about 27 years at the time of the incident and both fell in love and entered into love relation. The victim had made 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 which was not the result of a misconception created in her mind. Further, it is also noticeable that there was no previous enmity between their family members; therefore, it cannot be presumed that the petitioner made a physical relationship with the victim just to deceive her.

- 21) From the perusal of the contents of FIR and the statement of the victim recorded under section 161 of the CrPC, it appears that it is a case of a consensual relationship, as both of them came in contact through social media i.e. Facebook. They chatted together and met outside, exchanged their mobile numbers and started talking and meeting. They were in a relationship with each other for quite some time and enjoyed each other's company. The victim is a well-educated lady who knows the pros and cons of such a relationship and entered into it with wide and open eyes based on her consent and volition. It is also not in dispute that the



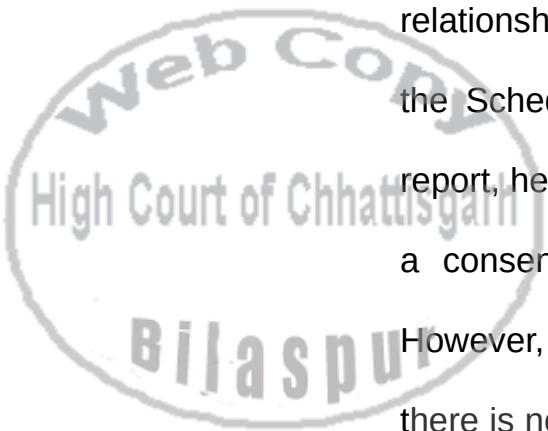


-15-

victim has not obtained a divorce from her first husband. Since that is the indisputable factual position in this case, it cannot be held that the consent of the victim was obtained based on a misconception of fact or fraud.

22) With regard to the offence of atrocities, it is held by various High Courts that the offences under Sections 3(2)(v) and 3(2)(va) of the SC/ST Act are not substantive offences, even though the Sections 376 and 376 (2)(n) of the IPC are not scheduled offences. There is no allegation that the petitioner entered into the relationship with the victim only on the ground that she belongs to the Scheduled Tribes community though according to the final report, he was aware of the caste of the victim and both agreed to a consensual relationship on account of love and affection. However, at the cost of repetition, it is pertinent to note here that there is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Tribes community. The offences punishable under Sections 3(2)(v) and 3(2)(va) of the SC/ST Act will not be attracted automatically just because the victim belongs to the specified community.

23) With regard to Section 313 of the IPC, in the present case, there is little evidence to establish that the petitioner had caused the victim to miscarry. No material has been brought on record to establish the allegation of abortion of the pregnancy. In the statement recorded under Section 161 of the Cr.P.C., there is an





-16-

allegation with regard to pregnancy and abortion but in the absence of any medical report, it cannot be said that the petitioner played an active role in abortion. The essential ingredient of Section 313 I.P.C. is 'causing miscarriage without woman's consent'. Thus, apart from the victim stating so, there is no evidence whatsoever to establish that the petitioner had committed the said offence. On a prima facie consideration, this Court comes to the conclusion that Section 313 of the Indian Penal Code is not attracted in the instant case.

24) With regard to Section 323 of the IPC, there is an allegation of assault and according to the medical report, there was an injury on the victim's ear where the eardrums were ruptured, but the doctor has not given any opinion with regard to the duration of the injury however the victim has made specific allegations against the petitioner.

25) In the overall view of the matter in light of the judgments discussed above, I am convinced that if the contents of the FIR and subsequent charge-sheet are taken at their face value and accepted in their entirety, they do not make out the offences under Sections 376, 376(2)(n), 313 of the IPC and Sections 3(2)(v) and (2)(va) of the SC/ST Act against the petitioner, however, the offence under Section 323 of the IPC is prima-facie made out against the petitioner as there is a specific allegation with regard to the assault which finds corroboration with the doctor's report.

26) For the foregoing reasons, the petition is allowed in part and the



-17-

FIR, charge sheet and criminal proceedings are hereby quashed with respect to offences punishable under Sections 313, 376, 376(2)(n) of the IPC and Sections 3(2)(v) and 3(2)(va) of the SC/ST Act, however, the continuance of the criminal proceedings under Section 323 of the IPC is hereby maintained and the learned trial Court is directed to take necessary steps in furtherance of this order.

Sd/-

(Rakesh Mohan Pandey)
Judge



Nadim