



Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. _____ of 2024
(Arising out of SLP (Crl.) No. 9371 of 2018)

Lalu Yadav **...Appellant(s)**

Versus

The State of Uttar Pradesh & Ors. **...Respondent(s)**

J U D G M E N T

C.T. RAVIKUMAR, J.

Leave granted.

1. The captioned Appeal is directed against the order dated 26.07.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 16825 of 2018. The said Writ Petition was filed under Article 226 of the Constitution of India seeking quashment of FIR dated 21.02.2018 bearing Case Crime No. 28 of 2018 registered under Sections 376 and 313 of the Indian Penal Code, 1860 (for short the 'IPC') at Police Station Nandganj in Ghazipur District of the State of Uttar

Pradesh. In view of the fact that quashment of FIR was sought under Article 226 of the Constitution of India, it is relevant to refer to a decision of this Court in ***Pepsi Foods Ltd. v. Special Judicial Magistrate***¹. It was held therein that the High Court could exercise its power of judicial review in Criminal matters and it could exercise the power either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C'), to prevent the abuse of process of the court or otherwise to secure the ends of justice. Nomenclature under which a petition is filed is not quite relevant. If the court finds that the petitioner could not invoke the jurisdiction of the Court under Article 226, it may treat the petition under Section 482, Cr. P.C.

2. Heard the learned counsel for the appellant and the learned counsel for the State of Uttar Pradesh for respondent Nos. 1 to 3 and also the learned counsel for respondent No. 4 (the complainant).

3. The gravamen of her complaint, based on which the above-mentioned crime was registered on 21.02.2018, is revealed from the following allegations made thereunder: -

¹ (1998) 5 SCC 749

“...My elder sister Meera Devi was married to Satendra Yadav Village Kukuda P.S. Nandganj, District – Ghazipur, 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. He used to say that he would marry me when he gets a job. My mother Rajvati Devi and my father Hari Singh Yadav was also of the knowledge of our relation. When my father and mother raised an objection about our relation then Lalu Yadav told her that he will marry Preeti. He told her that nobody should object and therefore my parents went silent and Lalu Yadav kept established with me the applicant without my consent due to which I became pregnant after the knowledge of which he give me a medicine of with which and abortion has occurred and when the said Lalu Yadav came to the house of the applicant on 28.09.2017 then he took the said applicant to Varanasi on 29.09.2017 and kept me in a hotel and again made physical relationship with me due to which I became pregnant in May 2017 and said Lalu Yadav did my abortion

my pressuring me again, thereafter again 17.12.2017 the said Lalu Yadav took me to a hotel in Varanasi an made physical relationship with me their, thereafter Lalu Yadav got a job in army and after which he is refusing to marry the applicant...”

4. In the contextual situation, it is relevant to refer to the details given under item No. 3 in Annexure- P2/FIR, which read thus: -

“3 (a) occurrence of offence.

1. Day Date from – 05.01.2013

Date To – 05.01.2018

(b) Information received at P.S:

Date: 21.02.2018. Time: 21.34 hr.”

5. Before delving into the rival contentions, it is relevant to note that though this Court stayed further proceedings in case Crime No. 28/2018 on 13.11.2018, this Court virtually modified the same on 18.08.2023 as under: -

“It is made clear that the interim order passed by this Court staying further proceedings in Crime No. 28/2018 registered at P.S. Nandganj, District Ghazipur, U.P. dated 13.11.2018 will not stand in the way of investigation for investigating into the offence under Section 313 of IPC.

List the matter after two months.”

6. Earlier, on behalf of respondent Nos. 1 to 3 counter affidavit was filed fully justifying the impugned order. On behalf of the respondent No. 4 also, a counter affidavit was filed, evidently, on the same line. Pursuant to the order dated 18.08.2023, virtually, permitting continuance of investigation in Crime No. 28/2018 in respect of the allegation of commission of offence under Section 313 IPC, investigation in that regard was continued and completed. Thereupon, an additional affidavit was filed on behalf of the first respondent - State with respect to the status of investigation and the same, insofar as it is relevant, reads thus: -

“6. That pursuant to the direction, the investigating officer had conducted investigation with respect to offence u/s 313 IPC and after due investigation and material available on record, including her statement, medical reports etc. has concluded that there is no evidence/material available with respect to offence u/s 313 IPC i.e. no material substantiating abortion of the victim in the present offence and hence as on 02.02.2024 omitted offence u/s 313, IPC.

7. That the investigation u/s 376 is still pending as the same is stayed by this Hon’ble Court.”

7. In view of the statement in the afore-extracted paragraph 6 and 7, the undisputed position obtained that the allegation of commission of offence under Section 313, IPC stands omitted against the appellant. What survives for consideration is only the question whether the impugned order invites interference and the subject FIR be quashed invoking the inherent jurisdiction?

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 and Ors. v. Bhajan Lal and Ors.***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

² 2006 (56) ACC 433

³ 2000 CrLJ 569

⁴ AIR 1992 SC 604

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 and Anr.***⁵, this Court held thus: -

“4. In the facts and circumstances of the present case, it is difficult to sustain the

⁵ (2019) 18 SCC 204

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 and Anr.*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)*⁷, 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

⁶ (2024) 3 SCC 496

⁷ 2023 SCC OnLine SC 89

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.

15. The long and short of the above discussion is that the case at hand is a befitting case where the High Court should have exercised the power available under Section 482, Cr.P.C. to prevent abuse of the process of the Court. Now that the allegation of offence under Section 313, IPC is omitted, there is absolutely no *prima facie* case for proceeding further against the appellant on the allegation of commission of offence punishable

under Section 376, IPC. We are of the considered view that the High Court should have exercised its inherent power.

16. For the reasons aforesaid, the impugned order dated 26.07.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 16825 of 2018 is set aside. FIR No. 28/2018 dated 21.02.2018 registered at Police Station – Nandganj, Ghazipur District of Uttar Pradesh and all further proceedings on its basis are quashed. The appeal is accordingly allowed.

....., J.
(C.T. Ravikumar)

....., J.
(Rajesh Bindal)

New Delhi;
October 16, 2024