



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4485 of 2024

(In the matter of an application under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023)

Manoj Kumar Munda

....

Petitioner(s)

-versus-

State of Odisha & Anr.

....

Opposite Party(s)

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner(s) : *Mr. Arun Kumar Acharya, Adv.*

For Opposite Party(s) : *Ms. J. Sahoo, ASC*
Mr. K. A. Guru, Adv.
For O.P No.2

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-04.02.2025

DATE OF JUDGMENT: -14.02.2025

Dr. S.K. Panigrahi, J.

1. In this Criminal Miscellaneous Petition, the Petitioner is challenging the initiation of criminal proceedings in Bolangir Town PS Case No. 191 of 2021 (corresponding to OR Case No. 426 of 2021) registered in the Court of the learned SDJM, Bolangir. The charges include offenses under Sections 376(2)(a), 376(2)(i), 376(2)(n), 294, 506, and 34 of the IPC.



I. FACTS AS PRESENTED BY THE PETITIONER:

2. Opp. Party No. 2 (the prosecutrix) filed a written complaint alleging that she met the Petitioner in 2012 while both were pursuing a computer course in Sambalpur. They developed a close friendship that eventually led the Petitioner to fall in love with her. Admittedly, their families were aware of their relationship.
3. After the Petitioner secured a job as a Sub-Inspector of Police, he maintained a physical relationship with her, allegedly, under the false promise of marriage. She claimed that the relationship was against her will, and when she complained to the Petitioner's family, they ignored her.
4. She further alleged that she was tortured by the Petitioner and his family. Furthermore, she attempted suicide and was treated at Titilagarh Government Hospital.
5. In 2019, she stayed with the Petitioner in Bhubaneswar and Titilagarh, where they continued their physical relationship. She alleged that the Petitioner failed to register their marriage as promised and administered "unwanted 72" contraceptive pills to prevent her pregnancy.
6. Interestingly, in 2023, the prosecutrix filed a Civil Proceeding (CP No. 169 of 2023) in the Court of the learned Judge, Family Court, Sambalpur, seeking a declaration that she is the legally married wife of the Petitioner and also an injunction to prevent him from marrying anyone else.



7. In the civil suit, she claimed that, on 03.02.2021, she and the Petitioner had solemnized their marriage at Samaleswari Temple, Sambalpur, and exchanged garlands, vermilion, and mangalsutra. She also alleged that they applied for marriage registration under the Special Marriage Act, but the Petitioner failed to appear for the registration on 18.03.2021.
8. After the FIR was registered, the prosecutrix's statement was recorded under Sections 161 and 164 of the Cr.P.C., and she was medically examined.
9. The Petitioner highlights that the prosecutrix's allegations in the FIR and the Civil Proceeding are inconsistent. In the FIR, she did not mention the marriage at Samaleswari Temple, but in the civil suit, she claimed to be the Petitioner's legally married wife.

II. PETITIONER'S SUBMISSIONS:

10. The Petitioner contends that the relationship between him and the prosecutrix was consensual. The prosecutrix is a grown-up, mature, and intelligent woman who understood the consequences of her actions. She voluntarily maintained the relationship despite alleged objections from the Petitioner's family.
11. The Petitioner argues that the prosecutrix's claim of a false promise of marriage is baseless. The relationship was based on mutual consent, and the prosecutrix continued the relationship even after being allegedly tortured by the Petitioner's family.
12. The prosecutrix's allegations in the FIR and the Civil Proceeding are contradictory. In the FIR, she did not mention the marriage at



Samaleswari Temple, but in the civil suit, she claimed to be the Petitioner's legally married wife. This inconsistency raises doubts about her credibility.

13. The Petitioner submits that there is no evidence to substantiate the prosecutrix's claims regarding her alleged admission to Titilagarh Government Hospital following a suicide attempt. Additionally, there is no record of any complaint lodged by her at Titilagarh Police Station, as she asserts. Furthermore, no medical or documentary proof has been presented to support the allegation that the Petitioner administered "Unwanted 72" pills to the prosecutrix.
14. The Petitioner had previously approached this Court under Section 438 Cr.P.C. for anticipatory bail, which was disposed of on 29.06.2021. In its order, the Court *prima facie* observed that the prosecutrix was a consenting party to the relationship and that her primary grievance stemmed from the Petitioner's refusal to marry her, rather than any act of coercion. The Court further noted that the relationship between the parties was consensual and had continued for approximately nine years, thereby casting doubt on the allegations of rape under a false promise of marriage.

III. OPPOSITE PARTIES' SUBMISSION:

15. Learned counsel for the Opposite Parties vehemently refuted the contentions advanced by the Petitioner, asserting that, given the gravity of the offenses alleged, a full-fledged trial is imperative.
16. He contends that the allegations warrant a thorough judicial examination, and that quashing the proceedings at this stage would



preclude the prosecution from establishing its case through due process of law.

IV. COURT'S ANALYSIS AND REASONING:

17. Heard Learned Counsel for the parties and perused the materials placed before this Court.
18. This case involves a long-term consensual relationship between the Petitioner and the prosecutrix, which began in 2012 and lasted nearly nine years. The prosecutrix claims that the Petitioner engaged in a physical relationship with her based on a false promise of marriage. However, in a civil case, she later stated that she was already married to him. This contradiction, along with the lack of evidence of coercion or deception at the start of the relationship, is central to the dispute. The key legal question is whether the Petitioner's failure to marry the prosecutrix invalidates her consent under Section 375 OF IPC or if this is simply a failed personal relationship that does not amount to a criminal offense.
19. At this juncture, the first and foremost consideration before this Court is whether it possesses the jurisdiction to quash the proceedings in question. This would necessitate a careful and purposive interpretation of Section 482 of the Cr.P.C.
20. It is a well-settled principle that Section 482 of the Cr.P.C. serves as an overriding provision, preserving the inherent powers of the Court to uphold the ends of justice. The jurisdiction conferred under this provision is of an extraordinary nature and must be exercised with utmost caution and circumspection. While the Court is vested with



wide discretion in determining whether to invoke such powers, it must be mindful that indiscriminate interference at the threshold of criminal proceedings may unduly pre-empt the prosecution from discharging its duty of conducting a fair investigation and presenting evidence.

21. To this effect, the Supreme Court in the case of ***Pramod Suryabhan Pawar v. The State of Maharashtra***¹, observed as follows:-

“Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence.”

22. In view of the diverse and multifaceted nature of cases that come before the High Courts, any rigid formulation of principles governing the exercise of extraordinary jurisdiction would serve only to fetter judicial discretion, rendering it impotent in the face of unforeseen injustices. Recognizing this necessity, the Supreme Court, in ***State of Haryana v. Bhajan Lal***,² undertook a comprehensive analysis of the circumstances under which the inherent powers of the judiciary may be justly invoked. The decision, far from prescribing an exhaustive

¹ AIR 2019 SUPREME COURT 4010

² 1992 AIR 604.



rule, set forth illustrative instances where the quashing of proceedings would be not only permissible but imperative to prevent an abuse of process. Among these, certain principles find direct relevance to the matter at hand and shall be duly considered in the course of this adjudication:-

“102. (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).

...

(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.”

23. The foregoing precedent leaves no room for doubt that in determining whether to invoke its jurisdiction under Section 482, the Court is not called upon to weigh the truth of the allegations or to engage in an evaluation of competing evidence. Confined to the four corners of the FIR, the inquiry is narrow: whether, on its face, the allegations disclose the commission of a cognizable offence? In this regard, the reasoning articulated in *Dhruvaram Murlidhar Sonar v. State of*



*Maharashtra*³ assumes particular significance, illuminating the precise contours within which this Court's extraordinary powers may be exercised. The relevant excerpts are produced below:

"13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

24. In the case before this court, the allegations leveled against the Petitioner are of grave import, implicating Sections 376(2)(a), 376(2)(i), 376(2)(n), 294, 506, and 34 of the IPC, provisions that speak to offenses of sexual assault, criminal intimidation, and common intention. Section 376, in its various sub-clauses, prescribes the punishment for rape, as delineated under Section 375. It sets forth the essential ingredients constituting the offense. In the factual constellation before us, particular attention must be directed toward the second such description, taken in conjunction with Section 90, which governs the vitiation of consent. The relevant excerpts are produced below:

"375. Rape – A man is said to commit "rape" if he –

...

under the circumstances falling under any of the following seven descriptions-

Firstly ...

Secondly. – Without her consent.

³ AIR 2019 SUPREME COURT 327.



...

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

“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; or...”

25. Upon careful perusal of the provisions outlined, the submissions made, and the case records, one incontrovertible truth emerges; the fulcrum upon which the adjudication of this case rests is “consent”. In the jurisprudence of sexual offences, the absence or presence of consent is not merely a factual consideration but the very essence of criminal culpability. The law mandates that the prosecution must establish, beyond reasonable doubt, that consent was either absent or vitiated by coercion, deception, or incapacity. Thus, in the final analysis, the outcome of this case shall turn solely on this cardinal question: was there free, voluntary, and unequivocal consent?
26. The annals of jurisprudence are replete with deliberations on the concept of consent, a principle that has been scrutinized, refined, and expounded upon in countless judicial pronouncements. Within the



framework of Section 375 of the IPC, consent is not a mere nod of acquiescence, nor the absence of resistance, but an active and reasoned understanding of the circumstances, the nature of the act, and its attendant consequences. In *Dhruvaram Sonar* (supra), the Supreme Court observed

“15. ... 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.”

27. This provision was further substantiated and succinctly articulated in *Pramod Suryabhan Pawar* (supra) wherein the Supreme Court held as follows:

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

28. Indeed, this Court, drawing upon the wisdom of the aforementioned precedents, had an occasion to consider this very issue in *G. Achyut Kumar v. State of Odisha*.⁴ Therein, the concept of consent and the

⁴ 2020 SCC OnLine Ori 417.



agency of a woman in asserting it stood at the forefront of deliberation. The relevant excerpts are produced below:

“15. The intention of the law makers is clear on this issue. The rape laws should not be used to regulate intimate relationships, especially in cases where women have agency and are entering a relationship by choice. It is also equally disturbing, many of the complaints come from socially disadvantaged and poor segment of the society, rural areas, who are often lured into sex by men on false promises of marriage and then dumped as soon as they get pregnant. The rape law often fails to capture their plight. Nonetheless, it radiates from the above discussion that the law is well settled that consent obtained on a false promise to marry is not a valid consent. Hence, the automatic extension of provisions of Section 90 of I.P.C. to determine the effect of a consent under Section 375 of I.P.C. deserves a serious relook. The law holding that false promise to marriage amounts to rape appears to be erroneous. The authoritative commentary on Criminal Law by Glanville William corroborates this proposition of law. (Glanville Williams, Criminal Law, Second Edition, Universal Law Publishing, at page 559-560.) Since the framers of law have specifically provided the circumstances when ‘consent’ amounts to ‘no consent’ in terms of Section 375 of I.P.C., hence consent for the sexual act on the pretext of marriage is not one of the circumstances mentioned under Section 375 of I.P.C.”

29. Applying the weight of precedent to the facts at hand, one truth emerges with unmistakable clarity; the prosecutrix’s consent was not vitiated by any misconception of fact. The law does not extend its protection to every broken promise nor does it impose criminality upon every failed relationship. The Petitioner and the prosecutrix entered into a relationship in 2012, when both were competent,



consenting adults, capable of making their own choices, of exercising their own will, and of shaping their own futures. That the relationship did not culminate in marriage may be a source of personal grievance, but the failure of love is not a crime, nor does the law transform disappointment into deception.

30. The most pressing issue that demands recognition is the urgent need to disentangle the constructs of sex and marriage, both in our legal system and in the social consciousness that shapes it. The concept of sexual autonomy, a woman's right to make independent and uncoerced decisions about her body, sexuality, and relationships, has been a site of continuous contestation within feminist philosophy.
31. Judith Butler, one of the most influential post-structuralist feminist thinkers, offers a critical interrogation of gender norms, performativity, and power structures, providing a radical framework for understanding sexual autonomy beyond the rigid binaries of sex, gender, and societal morality. In her work, *Gender Trouble: Feminism and the Subversion of Identity*,⁵ she has challenged the idea that gender and sexuality are innate or biologically determined. Instead, she argues that gender is a series of repeated acts, gestures, and behaviors that are culturally and socially constructed. This performative nature of gender extends to sexuality, which is also shaped by societal norms and power structures. One of Butler's key arguments is that heterosexual norms are artificially constructed and sustained through repetitive acts of gender performance:

⁵ Butler, J. (1990). *Gender trouble: Feminism and the subversion of identity*, Routledge



“Gender is an identity tenuously constituted in time, instituted in an exterior space through a stylized repetition of acts.” (Gender Trouble, p. 179)

32. Marriage, in a patriarchal society, has been reduced to a mere performative act, reinforcing the notion that female sexuality must be bound to male commitment. It is a legal construct, a deliberate compact between two individuals who elect to bind their futures together under the sanction of law. It is not the inexorable destination of passion, nor the predetermined consequence of intimacy. To conflate the two is to imprison human relationships within archaic expectations, to deny individuals, especially women, their right to autonomy, to choice, to the pursuit of desire unshackled by social decree.
33. Marriage is a choice, not inevitability. It is a legal recognition, not a moral recompense for physical union. It is an agreement, not atonement. To treat it otherwise is to strip individuals of their right to define their relationships on their own terms, to reduce love to a binding transaction, and to transform desire into a liability.
34. Feminist philosophy has long waged battle against the tyranny of expectation, the insidious notion that a woman's sexual agency is valid only when tethered to marriage. Simone de Beauvoir, a renowned French existentialist philosopher, feminist theorist, and writer, in her seminal work *The Second Sex*,⁶ unmasked the historical subjugation embedded in this expectation:

⁶ de Beauvoir, S. (2015). *The second sex*, Vintage Classics.



“The destiny that society traditionally offers women is marriage. Even today, most women are, were, or plan to be married, or they suffer from not being so. Marriage is the reference by which the single woman is defined, whether she is frustrated by, disgusted at, or even indifferent to this institution.” (The Second Sex, p. 502)

35. It is this fiction of destiny that the law must resist. The presumption that a woman engages in intimacy only as a prelude to marriage, that her consent to one act is but a silent pledge to another, is a vestige of patriarchal thought, not a principle of justice. The law cannot lend itself to such a perversion of choice, where failed relationships become grounds for legal redress, and disappointment is cloaked in the language of deception.
36. The legal system, by criminalizing sex under a “false promise of marriage,” upholds this performative construct, one that assumes that women engage in sexual relationships only as a prelude to matrimony, rather than as autonomous agents of their own desires.
37. In its pursuit of justice, the law must not become an instrument of moral policing. It must acknowledge that sexual agency is not a promise, nor is it a contract that mandates a predetermined outcome. To assume otherwise is to deny women the full measure of their autonomy, desire, and choice, reducing them to mere bearers of honour, rather than as individuals possessing an intrinsic right to their own bodies and decisions.
38. Society, for far too long, has treated sex as a transaction, where the woman’s participation is conditioned upon the promise of marriage, and her agency is recognized only in so far as it aligns with this



expectation. But the law must not succumb to such anachronistic notions. The ability of a woman to engage in intimacy on her own terms, free from coercion, from expectation, and from the weight of archaic social contracts, must be protected, not punished.

39. It is in this light that the automatic criminalization of failed relationships under the guise of “false promise of marriage” must be scrutinized. The assumption that every physical relationship between a man and a woman carries the implicit condition of matrimony is not a principle of law but a vestige of control. It is a proposition that denies women the very agency the law purports to protect.
40. The law must be a shield, not a shackle. It must recognize that sexual autonomy is a right, not a bargain, and that the exercise of this right is not a betrayal of virtue, not an invitation for legal persecution. If the law is to serve justice, it must evolve, not in deference to tradition, but in allegiance to the fundamental truth that a woman’s body, her choices, and her future are hers alone to define.
41. Yet, the realities of society cannot be ignored, nor can the law afford to be blind to the conditions in which it operates. In the vast expanse of this nation, there exist women reared in conservatism, sheltered from the world, their choices shaped not by unfettered will but by the narrow confines of tradition. For them, consent may not always be an act of true volition, but rather a submission to circumstance, to pressure, to the unspoken weight of expectation.
42. Thus, this reasoning must not be wielded as a sword where it was meant to be a shield. It must not become a tool of exploitation,



allowing men to feign love, deceive the trusting, and abandon them to dishonor. The law must tread with vigilance and make sure that principle does not become pretext for abuse.

43. The intervention of the court in this particular case was imperative to shield the criminal justice system from being wielded as an instrument of vengeance for the collapse of a personal relationship. The pivotal question turned upon the consent of the prosecutrix and whether it had been tainted by fraud or coercion. The inconsistencies in her narrative where she charged the petitioner with rape on the pretext of a false promise of marriage in the FIR while in the civil proceeding she asserted that she was already his legally wedded wife cast a shadow upon the veracity of her allegations. The fact that the relationship lasted nearly nine years clearly showed that it was voluntary, making the invocation of Section 376 of the IPC questionable. Quashing the criminal proceedings is necessary to protect the integrity of the law and prevent it from being used to litigate personal disappointments or moral conflicts. The justice system is meant to address genuine crimes, not to serve as a battleground for failed relationships.
44. Accordingly, the holding in this case is confined to its own facts, and the judgment must not be read as a universal license. Each case must be weighed on its own merits, with the Court ever mindful that justice, to be just, must be both principled and compassionate.



V. CONCLUSION:

45. In light of the legal precedents, the concept of consent, and the principles of sexual autonomy, this Court finds that continuation of criminal proceedings against the Petitioner would constitute an abuse of process. The allegations, even if taken at face value, do not disclose the commission of a cognizable offense. Therefore, invoking the extraordinary jurisdiction under Section 482 Cr.P.C., this Court deems it just and proper to quash the impugned proceedings.
46. Accordingly, this Criminal Miscellaneous Petition is allowed, and the impugned proceedings are hereby quashed.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 14th February, 2025/*