

**Sunil Patil Vs. State By**

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**Court :** Karnataka

**Decided On :** Jun-11-2024

**Judge :** M.Nagaprasanna

**Appeal No. :** CRL.P 6913/2022

**Appellant :** Sunil Patil

**Respondent :** State By

**Judgement :**

- 1 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF JUNE, 2024 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA CRIMINAL PETITION No.6913 OF 2022 BETWEEN: SUNIL PATIL S/O R.B.PATIL AGED ABOUT40YEARS, R/AT NO.340, 7TH MAIN ROAD6H CROSS, RPC LAYOUT VIJAYANAGARA BENGALURU NORTH - 560 040. PETITIONER (BY SRI VENKATESH P DALWAI, ADVOCATE) AND:

1. STATE BY ANNAPOORNESHWARI NAGAR P.S., REPRESENTED BY STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BENGALURU - 1.

2. RANJITHA D/O SRI SOMASHEKAR AGE:

27. YEARS OCC: NOT KNOWN ADD: NO.366, 7TH MAIN ITI LAYOUT, MALATHAHALLI - 2 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 BENGALURU - 560 056. RESPONDENTS (BY SRI THEJESH P., HCGP FOR R-1; SRI BALU P., ADVOCATE FOR R-2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH FIR BEARING CR.NO.183/2022 REGISTERED BY RESPONDENT NO.1 ANNAPOORNESHWARI NAGAR ON 11/07/2022 PRODUCED AT ANNEXURE-A FOR THE OFFENCE P/U/S 417, 376, 323, 504 OF IPC. THIS CRIMINAL PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

#### ORDER

The petitioner-sole accused calls in question registration of a crime in Crime No.183 of 2022 registered for offences punishable under Sections 376, 417, 323 and 504 of the IPC.

2. Heard Sri Venkatesh P. Dalwai, learned counsel appearing for petitioner and Sri Thejesh P., learned High Court Government Pleader appearing for respondent No.1.

3. The learned counsel appearing for the 2nd respondent/complainant has remained absent and as a last chance, the matter was directed to be listed today. The learned counsel remains absent even today.

4. Facts in brief, germane, are as follows: - 3 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 The 2nd respondent is the complainant. The petitioner and the 2nd respondent befriended each other. The complainant is said to have been working in a Company by name Aegis at the International Tech Park Limited. The petitioner also is said to be an employee in a company in the International Tech Park Limited. The friendship flows into a physical relationship and the said relationship lasts for more than 5 years and throughout the period, the petitioner is said to have indulged in sexual activities

with the complainant. A complaint comes to be registered by the complainant against the petitioner on 11-07-2022, which becomes a crime in Crime No.183 of 2022, alleging that the petitioner has indulged in all the said activities on the promise of marriage and has breached the promise of marriage. Therefore, he has committed offences punishable under Sections 376, 417, 504 and 506 of the IPC. The registration of the crime has driven the petitioner to this Court in the subject petition.

5. This Court, on the score that the relationship between the petitioner and the complainant was purely consensual which lasted for about 5 years and therefore, it would not - 4 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 amount to an offence of rape, granted an interim order of stay of further investigation against the petitioner.

6. Learned counsel for the petitioner submits that the relationship between the two or all the acts that have happened between the two, are all consensual. He would seek to emphasize upon a fact that the complainant during the same period was in relationship with another man, one Kamalesh Choudhary, against whom the complainant on 05-02-2020 had registered a complaint alleging that he also had indulged in sexual acts on the promise of marriage. Learned counsel for the petitioner therefore, would submit that the complainant is habitual in registering repeated crimes on different men. He would therefore, seek quashment of the impugned proceedings as all the acts alleged are purely consensual.

7. Learned High Court Government Pleader, on the other hand, would accept that the relationship between the petitioner and the complainant was purely consensual and the acts that are alleged are also consensual, except the fact that as narrated in the complaint, on 08-07-2022, the petitioner has - 5 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 beaten the complainant, the beating has lead to injury and the injury is depicted to be grievous in the wound certificate. He would therefore contend that the petitioner, in the least, should face investigation for the offences under Sections 323, 417 and 504 of the IPC.

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

9. The afore-narrated facts are not in dispute. The petitioner and the complainant befriending each other is a matter of record as they were employees in different Companies in the International Tech Park Limited. The relationship, according to the complainant was from 2015 through, till the date of registration of the crime. Therefore, it is close to 7 years. Since the issue has now sprung from the complaint, I deem it appropriate to notice the complaint. The complaint reads as follows: (cid:3): (cid:8)(cid:10) (cid:11)(cid:13)(cid:10) (cid:16) (cid:19)(cid:19) (cid:22)(cid:24)(cid:27)(cid:28)(cid:29) (cid:30)(cid:31) (cid:19) ! !(cid:29) (cid:28)&(cid:22)(cid:29) ( )\* - . . \*\*\*\*\* - 6 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 0 ! 23(cid:31) (cid:3)456 (cid:8)(cid:10) (cid:11)(cid:13)(cid:10) 78 04 23(cid:8) 7856 (cid:22)(cid:22)(cid:29)890. 0 20150 (cid:3)56 .(cid:13).<(cid:10). 56 >?. (cid:8)56 A )(cid:22)U, (cid:8)(cid:10) (cid:11)(cid:13)(cid:10) DE(cid:22)(cid:29) ! GH I KD YZ )[\ (cid:27)(cid:28)(cid:29) (cid:30)(cid:31) (cid:19) YZ )[\ ]\*Abc(cid:27)(cid:28)(cid:29) PzU (cid:19)

2024. KHC:20421 CRL.P No.6913 of 2022 relationship was between 2015 and 2022 i.e., 7 years and all acts during the said period were all consensual.

10. During the same time, alleging identical offences, the very complainant registers another complaint against one Kamalesh Choudhary. The complaint becomes a crime in Crime No.400/2020. The police after investigation file a charge sheet. The summary of the charge sheet in Crime No.400/2020 against Kamalesh Choudhary, reads as follows: Q-1 gg LnJ P iqwzU, zgt n PA A-4g g J1 DgAi evAi ig 05 U P zP AAzs gvg.Avg Q-1 v Dg zs P Aiz dUVz F Pgt Q-1 gg l v vz Q-2 gg evAi Ez AUg Ug igv ouAi gU g P U quAigg A.301g Vgvg, Dzg DgAi Q-1 gg Vg Ai wg Az Q-1 gjU CgP AiU ir v evAi gU JAz CZ UAz Aiwz, DU Q-1 gg DgAi iv PzU, DgAi v PUAz Q-g1 gg - ir Q 1 gg vnU Pa v evAi zP APP Pj JAz rwz. VgU AP 17-11-2019 gAz Q-1 v Q-2 gg AigU zs gw ig 12-00 UAmAi Aiz DgAi Ai V vnz, DU Q-2 gg Ai V vUzU, J1 DgAi Ai MU V Q-2 gg Az gU Q V aP QPAq Q-1 gg EZAi gzV t zjPAi Qgv DzjAz Aq PA Pg DgAi gz zgt n. - 8 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 The summary of the charge sheet in the case of Kamalesh Choudhary is also narrative of the fact that the complainant had physical relationship with Kamalesh Choudhary and had threatened him. The charge sheet is filed against Kamalesh Choudhary based upon a complaint registered by her. It becomes necessary and interesting to notice the complaint. The complaint reads as follows: U P JA vg PqAz Pz 5 U Az 2015 g jZAI Dv. Avg facebook e iq gA irz Avg caf U DUU m iqwz. m DUz PAAi ZgU U Zawz. jZAI DV ig 2 wAUU P Aii Asq DV z irP JAz z zzU J ZU Ev, tl dUzU 3 jAz 6 wAU ivqwg. Avg Dv s ir gwz E Az U iq JAz j wz. zq Az z Zg ivqzV wz. DU Pq Mz, CU F AZAi z DVz U D Zg wg. Ez vg v dU DUv 5 U Pzz. C dU ir zj C PgPwz Pz 2019 g Ag wU igv P g U gAv PgPAq dU g irz DvU U q z DU JAz wz DU egzAi AiiAiig e v VAI JAz E Cz zUAz Aiv qVz Avg PAi wga rz qz v Pz rz Jzr P qz. Avg z nU vz UAz Aiiiz Pz Ez.. Cg Zg wz CU Az. CAi Pq U qz. Avg Aiw DvU vg aQv qzPAq. Avg CAz t DvU 17/11/2020 P aQvU V aQv qzPAq Cz e Pq DV U Az. Cz gw P U PrzPAq Az. Cz v zj C Az Nr z Vz gA U Az ivrz, C ev v Eg qUg Az V AUAwzg PrAi rz. UAz PV Pgz Dzg Dv zj Pz g dU : g Dv. Eg eg zsAi dU iqwz vPt P UAq g z q gA V Q 2 JzU UnAiiV rz Avg n m - 9 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 C P Jw AvV q JAzg Pz ev AVP QAI irAi I. J rPAqg q. Avg Dv m J QPAq q m Jz Pz Az PvPAq Dv CvZg iqU C gVU P U Qz. FU Aiig wAii z irPv JAz z JAz V vUz v gv JAz gl z vPt UAz MU Az Kv JAz Pz Cv Ez K . Avg MAz wAU P z D PU Dz z SAvg ivq m iqwz. Avg P v vz CP Pq zj g irz q JAz zjP Pwz evU C zUAz Aiwz. z Az zjP Pwz P Ag P U Qzg Pq z U Pg ir ivqAv rwz. z PAAiAi P irParz. E Dz Avg P.Dg.gA ouU V zg rz. N rz zAv jz. If the allegation in the complaint made against Kamalesh Choudhary is juxtaposed to the subject complaint, it becomes unmistakably clear that it is verbatim similar. The manner of narration is identical. Another factor that would become clear is that the complainant was sailing in two boats at the same time. Therefore, the offence alleged is the one punishable under Section 376 of the IPC, on such consensual acts on the specious plea that it was on promise of marriage and later, the promise of marriage has been breached, are all on the face of it false. It was a relationship, a consensual relationship. The complainant appears to be in the habit of indulging in such acts.-. 10 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 11. It becomes apposite to refer to the judgment of the Apex Court in the case of SHAMBHU KARWAR v. STATE OF UTTARPRADESH AND ANOTHER reported in 2022 SCC OnLine SC1032 wherein it has held as follows: 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.

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.-. 11 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under Section 482 of Cr PC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under Section 376 IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482 of Cr PC on a completely misconceived basis.

15. We, accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 5 October 2018 in application u/s 482 No 33999 of 2018. The application under Section 482 of Cr PC shall accordingly stand allowed. The Case Crime No 11 of 2018 registered at Police Station Rasra, District Ballia, charge-sheet dated 23 April 2018 in the aforementioned case and the order dated 24 May 2018 in Criminal Case No 785 of 2018 in the Court of the Addl. Chief Judicial Magistrate (First), Ballia taking cognizance of the charge-sheet shall accordingly stand quashed. (Emphasis supplied) If the facts obtaining in the case at hand is considered on the bedrock of the principles enunciated by the Apex Court, the offence of rape is loosely laid against the petitioner. As observed hereinabove, if further investigation is permitted to continue against the present petitioner as is continuing against Kamalesh Choudhary as afore-quoted, it would be permitting the complainant to sail in two different complaints at the same time. Therefore, the offence of rape could not have been laid against the petitioner. It needs to be obliterated.-. 12 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 12. What remains are three other offences i.e., Sections 323, 417 and 504 of the IPC. Section 417 of the IPC is also loosely laid as it is an offshoot of the allegation that it is on false promise of marriage or the sexual relationship on account of promise of marriage and its later breach. Such acts would not amount to cheating as obtaining under Section 417 of the IPC, is by now a well settled principle of law. Therefore, laying of the said offence against the petitioner is also unsustainable. The remaining are the offences punishable under Sections 323 and 504 of the IPC. They are non-cognizable offences. The version of the complainant would not have been believed if there would not have been a wound certificate. The complainant narrates the incident of assault by the petitioner upon her. The assault leads to examination of the complainant on 11-07-2022 wherein a wound certificate is drawn by the Doctor. The wound certificate reads as follows: WOUND CERTIFICATE Sl. No:

18. 22 Name of Hospital: Fortis Nagarabhavi Name: Ranjitha UHID NO: EMR1166732 Sex: Female Date of admission: NIL - 13 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 Age:

27. years Date of discharge: NIL Address: Mallathahalli, Nagarabhavi, Bangalore  
Brought by: Self Identification Marks: i) Black mole over dorsum of left hand  
History: Alleged history of assault by her fianc on 8/7/22 at around 4 am at her residence. Details of injuries: Above person was examined by me on 11-7-22 at 9.35 am and found the following injuries:

1. Multiple bruises, varying sizes from 4 x 5 cm to 2 x 3 cm, present at places over left leg, upper back, left arm and over abdomen. Investigation: X ray-left leg- no fracture Opinion: i. The Injury No 1 is Grievous

(Emphasis added)

A perusal of the wound certificate would indicate that there has been multiple bruises on the body of the complainant. The bruises are on account of assault by the accused, the petitioner. Therefore, while the offence under Section 376 of the IPC or 417 of the IPC cannot be made out, the offence under Sections 323 and 504 of the IPC are prima - 14 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 facie met. It is always open for the petitioner to avail of such remedy as is available in law if, the investigation leads to filing of the charge sheet against the petitioner. I am permitting investigation into the offences of assault under Section 323 of the IPC and intentional insult under Section 504 of the IPC, while obliterating the offences under Sections 376 and 417 of the IPC, on the score that any amount of consensus or a consensual relationship between the accused and the complainant will not become a license to the accused to assault a woman.

13. For the aforesaid reasons, the following:

**ORDER**

(i) Criminal Petition is allowed in part. (ii) The FIR registered in Crime No.183 of 2022 for the offences punishable under Sections 376 and 417 of the IPC is quashed. The crime registered for the offences punishable under Sections 323 and 504 of the IPC are sustained.-. 15 - NC:

2024. KHC:20421 CRL.P No.6913 of 2022 (iii) It is for the prosecution to follow all the nuances that are necessary to be followed for registration of a crime for non-cognizable offence and proceed further. (iv) In the event, the police would file a charge sheet, it is open for the petitioner to avail remedy of discharge before the appropriate Court, at which point in time, the observations made in the course of the order would not come in the way or influence the concerned Court, in answering the application for discharge on its merit. Consequently, I.A.No.1 of 2024 stands disposed. Sd/- JUDGE BKP List No.:

1. SI No.:

4.

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