IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 28TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.4761 OF 2022

BETWEEN:

MALLIKARJUN DESAI GOUDAR

... PETITIONER

(BY SRI CHETAN DESAI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
   BY CHANDRA LAYOUT POLICE STATION
   BENGALURU
   REPRESENTED BY THE
   STATE PUBLIC PROSECUTOR
   HIGH COURT BUILDING
   BENGALURU – 560 001.

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... RESPONDENTS

(BY SRI K.S.ABHIJITH, HCGP FOR R1;
SMT. VEENA J. KAMATH, ADVOCATE A/W
MS. LEKHA G.D., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE CHARGE SHEET FILED BY THE RESPONDENT 1- POLICE IN S.C. NO.664/2022 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376, 376(2)(N), 354, 323, 406, 504, 506 READ WITH 34 OF INDIAN PENAL CODE, PENDING ON THE FILE OF LIII ADDITIONAL CC & SJ AT BENGALURU AND CONSEQUENT PROCEEDINGS PURSUANT THERETO, AS AGAINST THE ACCUSED/PETITIONER HEREIN.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.02.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in S.C.No.664 of 2022 arising out of Crime No.54 of 2021 registered for offences punishable under Sections 376, 376(2)(n), 354, 323, 406, 504, 506 r/w 34 of the IPC pending before the LIII Additional City Civil and Sessions Judge, Bengaluru.

2. *Shorn* of unnecessary details, facts in brief, are as follows:-

The 2nd respondent is the complainant and the petitioner is the accused. The two became acquaintances. The acquaintance turned into relationship and the relationship into sexual relationship. This is said to have gone on for a long period. The allegation is that on the pretext of marriage, the petitioner had sexual intercourse with the 2nd respondent/complainant and has later breached the promise of marriage and, therefore, the contention is that consent of the complainant was obtained by inducement on false promise of marriage. On the said alegation, the 2nd respondent registers a crime in Crime No.54 of 2021 for the afore-quoted offences. The Police, after investigation, file a charge sheet in the matter and the case is now registered as S.C.No.664 of 2022 and pending before the learned Sessions Judge. Filing of charge sheet by the Police after investigation thereto is what drives the petitioner to this Court in the subject petition.

3. Heard Sri Chetan Desai, learned counsel appearing for the petitioner; Sri Kiran S. Javali, learned State Public Prosecutor

representing respondent No.1 and Smt. Veena J.Kamath along with Ms. Lekha G.D., learned counsel appearing for respondent No.2.

4. The learned counsel appearing for the petitioner would contend with vehemence that it is not one or two, but for five years the petitioner and respondent No.2/complainant were in love, wanted to get married, but in view of caste equations not meeting, the marriage could not take place despite hectic efforts on the part of the petitioner. It is then the complainant turns around and brands the relationship of the petitioner with the 2nd respondent to be on the false pretext of marriage and alleges that the petitioner had sexual intercourse on several occasions on that pretext and, therefore, it amounts to rape. He would contend that it would not amount to rape by any stretch of imagination as it was consensual.

5. On the other hand, the learned counsel Smt. Veena J.Kamath would vehemently refute the submissions by taking this Court through the complaint, Section 164 CrPC statement and summary of the charge sheet to contend that, if consent is obtained by false promise or false pretext that the accused would marry the complainant, it would amount to rape, as consent is not given by

free will. The learned counsel seeks to place reliance upon several judgments which point at consent being taken on false pretext of marriage and seeks to make a distinction with regard to promise of marriage and false promise of marriage. She would submit that it is a matter of trial for the petitioner to come out clean as it requires evidence to establish whether it was a sexual intercourse between the two, on promise of marriage or on a false promise of marriage.

6. The learned State Public Prosecutor Sri Kiran S. Javali representing the respondent/State would also vehemently oppose the petition to contend that it is a matter of trial for the petitioner to come out clean. The Police have filed a charge sheet for the aforesaid offences and the contents of the charge sheet clearly reveal that sexual intercourse had taken place on account of false promise of marriage.

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

8. The afore-narrated facts are not in dispute. The complainant was the friend of another, who was the friend of the petitioner, which was the link for the complainant befriending the petitioner. The relationship between the petitioner and the 2nd respondent grew with friendship, metamorphosed into relationship and paved way to have a sexual relationship. It went on for several years. This is a matter of record, as the complainant herself in the complaint registered, so narrates the entire history of relationship between the petitioner and the complainant. Since the entire issue now springs from registration of the complaint, it becomes germane to notice the complaint itself. The complaint so registered against the petitioner on 10-03-2021 reads as follows:-

"…. …. ….

"ಸುಮಾರು 12 ವರ್ಷಗಳ ಹಿಂದೆ ಚಂದ್ರಲೇಔಟ್‌ನಲ್ಲಿ ವಾಸವಿರುವ ವೈಶಾಲಿ ಎಂಬುವರು ನನಗೆ ಪರಿಚಯವಾಗಿ ಸ್ನೇಹಿತೆಯಾಗಿದ್ದಳು. ನಂತರ ಅವಳ ಮೂಲಕ ಅವಳು ತಮ್ಮ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಎಂಬುವನು ಪರಿಚಯವಾಗಿ ಸ್ನೇಹಿತನಾಗಿದ್ದನು. ನಾವಿಬ್ಬರು ಕಳೆದ ಸುಮಾರು 5 ವರ್ಷಗಳಿಂದ ಪರಸ್ಪರ ಒಬ್ಬರನ್ನೊಬ್ಬರು ಪ್ರೀತಿಸುತ್ತಿದ್ದೆವು. ನಾನು ಆಗಾಗ ಚಂದ್ರಲೇಔಟ್ 2ನೇ ಕ್ರಾಸ್, ನಂ.74, 2ನೇ ಮಹಡಿಯಲ್ಲಿರುವ ಅವರ ಮನೆಗೆ ಹೋಗಿ ಬರುತ್ತಿದ್ದೇನು. ವೈಶಾಲಿ ಮತ್ತು ಮಲ್ಲಿಕಾರ್ಜುನ ರವರು ಸಹ ಆಗಾಗ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ಹೋಗುತ್ತಿದ್ದರು. ಮಲ್ಲಿಕಾರ್ಜುನ್‌ರವರ ಅಣ್ಣ ವಿನಾಯಕ ಹಾಗೂ ವೈಶಾಲಿ ರವರ ಗಂಡನಾದ ರೋಮಲ್ ನೆಪೋಲಿಯನ್ ರವರು ನನಗೆ ಪರಿಚಯವಾದರು.

2018ರ ಮಾರ್ಚ್ ತಿಂಗಳಿನಲ್ಲಿ ಒಂದು ದಿನ ಮಲ್ಲಿಕಾರ್ಜುನ್‌ರವರು ನನಗೆ ತನ್ನ ಮನೆಗೆ ಬರುವಂತೆ ಕರೆದಿದ್ದು, ನಾನು ಅಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 1 ಗಂಟೆಗೆ ಮೇಲ್ಕಂಡ ಅವರ ಮನೆಗೆ ಹೋದಾಗ ಅವರ ಮನೆಯವರು ಯಾರು ಇರಲಿಲ್ಲ. ಮಲ್ಲಿಕಾರ್ಜುನ್ ಒಬ್ಬನೇ ಮನೆಯಲ್ಲಿದ್ದನು. ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ನನ್ನನ್ನು ತನ್ನ ಬೆಡ್ ರೂಂಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಬಲವಂತವಾಗಿ ನನ್ನ ಜೊತೆಗೆ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಲು ಬಂದಿದ್ದು, ನಾನು ಅವನಿಗೆ ಎಷ್ಟು ಬೇಡ ಬೇಡ ಎಂದು ಕೇಳಿಕೊಂಡರು ಕೇಳದೇ ನಾವಿಬ್ಬರು ಪ್ರೀತಿ ಮಾಡುತ್ತಿದ್ದೇವೆ, ಮುಂದೆ ಇಬ್ಬರೂ ಮದುವೆಯಾಗುತ್ತೇವೆ.

ಎನೂ ಆಗುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿ ನನ್ನ ಜೊತೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಮಾಡಿದನು. ನನಗೆ ಭಯವಾಗಿ ಈ ವಿಚಾರವನ್ನು ನನ್ನ ಹಾಗೂ ನನ್ನ ಮನೆಯವರಿಗೆ ಹೇಳುತ್ತೇನೆ ಎಂದು ಹೇಳಿದೆನು. ಅದಕ್ಕೆ ಅವನು ನಾನು ನಿನ್ನನ್ನು ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ. ಮೋಸ ಮಾಡುವುದಿಲ್ಲ ಈ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ಹೇಳಬೇಡ, ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ನಾನು ನಿನ್ನನ್ನು ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವುದಿಲ್ಲ ಎಂದು ಹೆದರಿಸಿದನು ಮತ್ತು ಕೊಲೆ ಬೆದರಿಕೆ ಹಾಕಿದನು. ಹೀಗಾಗಿ ನಾನು ಈ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ಹೇಳಿರಲಿಲ್ಲ.

ನಂತರ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ಅವರ ಮನೆಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ನನ್ನನ್ನು ಅವರ ಮನೆಗೆ ಬರುವಂತೆ ಕರೆಯುತ್ತಿದ್ದನು. ನಾನು ಅವರ ಮನೆಗೆ ಹೋದಾಗ ಅವನು ನಾನು ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುವ ಹುಡುಗ ಏನೂ ಆಗುವುದಿಲ್ಲ ಎಂದು ಮತ್ತಷ್ಟೆ ಮಾತುಗಳನ್ನು ಹೇಳಿ ಪುಸಲಾಯಿಸಿ ನನ್ನ ಜೊತೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಮಾಡುತ್ತಿದ್ದನು. ಸುಮಾರು 05 ಬಾರಿ ಇದೇ ರೀತಿ ನನ್ನ ಜೊತೆಯಲ್ಲಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಿರುತ್ತಾನೆ. ಕೊನೆಯದಾಗಿ ದಿನಾಂಕ 10/01/2021 ರಂದು ರಾತ್ರಿ 10–30ಕ್ಕೆ ಅವರ ಮನೆಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ನನ್ನನ್ನು ಅವರ ಮನೆಗೆ ಕರೆಸಿಕೊಂಡು ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಿರುತ್ತಾನೆ. ಅವನು ನನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತಾನೆ ಎಂದು ನಾನು ನನ್ನ ಮೇಲೆ ನಡೆದ ಅತ್ಯಾಚಾರದ ವಿಷಯವನ್ನು ಯಾರಿಗೂ ಹೇಳಲು ಹೋಗಲಿಲ್ಲ.

ಅಲ್ಲದೇ ಅವನು ತಾನು ಕೆಎಎಸ್ ಮಾಡಬೇಕ್ ಇದ್ದು ಕೆಎಎಸ್ ಮಾಡಿದ ನಂತರ ಮದುವೆಯಾಗುವುದಾಗಿ ಹೇಳಿದ್ದು, ಅದಕ್ಕಾಗಿ ನಾನು ಸೂರು ನೀಡದೇ ಸುಮ್ಮನಿದ್ದೇನು.

ಮಲ್ಲಿಕಾರ್ಜುನ್ ಮತ್ತು ವಿನಾಯಕ ರವರು ತಾವು ಬಿಸಿನೆಸ್ ಮಾಡಬೇಕೆಂದು ಹೇಳಿ ನನ್ನ ಬಳಿ ಹಣ ಕೇಳಿದ್ದು, ನಾನು ಹೆಚ್.ಡಿ.ಎಫ್.ಸಿ ಬ್ಯಾಂಕಿನಲ್ಲಿ ಒಮ್ಮೆ 4ಲಕ್ಷ ರೂ ಹಾಗೂ ಮತ್ತೆ 5 ಲಕ್ಷ ರೂ ಪರ್ಸನಲ್ ಲೋನ್ ಪಡೆದು ವಿವಿಧ ದಿನಾಂಕಗಳಂದು ಅವರಿಗೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ನಂತರ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರ ಮತ್ತೊಂದು ಬಿಸಿನೆಸ್‌ಗಾಗಿ 6 ಲಕ್ಷ ರೂ.ಗಳನ್ನು ಕೊಟ್ಟಿದ್ದು, ನನ್ನ ಪರಿಚಯಸ್ಥರಾದ ಗಿರೀಶ್‌ರವರಿಂದ 2 ಲಕ್ಷ ರೂ.ಗಳನ್ನು ಕೈ ಸಾಲವಾಗಿ ಕೊಡಿಸಿರುತ್ತೇನೆ. ಅಲ್ಲದೆ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ಆಗಾಗ ಸುಮಾರು 3 ಲಕ್ಷ ರೂ ಹಣವನ್ನು ನನ್ನಿಂದ ಹಂತ ಹಂತವಾಗಿ ಪಡೆಕೊಂಡಿರುತ್ತಾರೆ.

ನಾನು ಮತು ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ಪ್ರೀತಿಸುತ್ತಿರುವ ವಿಚಾರ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರ ತಾಯಿ ಶಕುಂತಲಾ, ಅವರ ಅಣ್ಣ ವಿನಾಯಕ ಅಕ್ಕ ವೈಶಾಲಿ, ವೈಶಾಲಿ ರವರ ಗಂಡ ರೋಮೆಲ್ ರವರಿಗೆ ಗೊತ್ತಿತ್ತು. ನವೆಂಬರ್ 2020ರಲ್ಲಿ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಅವರ ಅಣ್ಣ ವಿನಾಯಕ್ ಹಾಗೂ ರೋಮೆಲ್ ರವರು ತಮಗೆ ಹಣದ ಅವಶ್ಯಕತೆ ಇರುವುದಾಗಿ ಹೇಳಿ, ಯಶವಂತಪುರ ಹೋಬಳಿ ಕೊಡಿಗೆಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ರೋಮೆಲ್ ರವರಿಗೆ ಸೇರಿದ ಒಂದು ಸೈಟ್ ಇದೆ ಖಾತಾ ನಂ.158, ಸೈಟ್ ನಂ.3, 60x40 ಅಡಿ ವಿಸ್ತೀರ್ಣದ ಸೈಟ್ ಅನ್ನು ನಿನಗೆ ಮಾರಾಟ ಮಾಡುವ ಬಗ್ಗೆ ಅಗ್ರಿಮೆಂಟ್ ಮಾಡಿಕೊಡುತ್ತೇವೆ. ಆಗ ಬ್ಯಾಂಕಿನಿಂದ ಲೋನ್ ಸಿಗುತ್ತದೆ ನಿನ್ನ ಹೆಸರಿನಲ್ಲಿ ಲೋನ್ ಪಡೆದು ನಮಗೆ ಕೊಡು, ನಾವು ಇ.ಎಂ.ಐ ಕಟ್ಟಿಕೊಂಡು ಹೋಗುತ್ತೇವೆ ಕೆಲವು ತಿಂಗಳ ನಂತರ ನಾವು ನಿನಗೆ ಹಣವನ್ನು ವಾಪಸ್ ಕೊಟ್ಟು ನಮ್ಮ ಸೈಟ್ ಅನ್ನು ವಾಪಸ್ ರಿಜಿಸ್ಟ್ರೇಷನ್ ಮಾಡಿಸಿಕೊಳ್ಳುತ್ತೇವೆ. ಎಂದು ಹೇಳಿ ನಂಬಿಸಿದ್ದು, ನಾನು ಎಂ.ಜಿ.ರಸ್ತೆಯ ಜಿ.ಐ.ಸಿ ಹೌಸಿಂಗ್ ಬ್ಯಾಂಕಿನಲ್ಲಿ 32 ಲಕ್ಷ ರೂ.ಗಳನ್ನು ಲೋನ್ ಪಡೆದು ಅವರಿಂದ ಸೈಟು ಖರೀದಿಸಿದ್ದು, ರೋಮೆಲ್ ರವರು ಬ್ಯಾಂಕ್ ಮೂಲಕ 32 ಲಕ್ಷ ರೂ ಲೋನ್ ಹಣವನ್ನು ಪಡೆದಿದ್ದು, ಇದುವರೆವಿಗೂ ಅವರು ಇ.ಎಂ.ಐ ಹಣವನ್ನು ಕಟ್ಟಿರುವುದಿಲ್ಲ ನಾನೇ ಪ್ರತಿ ತಿಂಗಳು 27,500/– ರೂಗಳನ್ನು ಇ.ಎಂ.ಐ ಕಟ್ಟುತ್ತಿದ್ದೇನೆ. ಅಲ್ಲದೇ ನನ್ನ ಐಸಿಐಸಿಐ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ: 141701532486 ರಿಂದ 16 ಲಕ್ಷ ರೂ ಹಣವನ್ನು ರೋಮೆಲ್ ರವರ

ಐಸಿಐಸಿಐ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ: 029701512771ಗೆ ಹಾಕಿದ್ದು ನಂತರ ಈ ಹಣವನ್ನು ವಾಪಸ್ ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಆದರೆ ಲೋನ್ ಮೂಲಕ ಪಡೆದ ಹಣವನ್ನು ಕೊಡದೇ, ಇ.ಎಂ.ಐ ಅನ್ನು ಕಟ್ಟದೇ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಮೋಸದಿಂದ ಲೋನ್ ತೆಗೆಸಿ ಹಣವನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ.

ನಾನು ನನ್ನ ಹಣವನ್ನು ವಾಪಸ್ ಕೇಳಿದಕ್ಕೆ ಮಲ್ಲಿಕಾರ್ಜುನ್, ವಿನಾಯಕ ಹಾಗೂ ರೋಮೆಲ್ ಹಾಗೂ ವೈಶಾಲಿ ರವರು ನನಗೆ ಹಣ ಕೊಡನೇ ನನ್ನ ಜೊತೆಗೆ ಗಲಾಟೆ ಮಾಡಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ನನ್ನ ಮತ್ತು ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರ ನಡುವೆ ನಡೆದ ವಿಚಾರವನ್ನೆಲ್ಲ ನಮ್ಮ ಮನೆಯವರಿಗೆ ತಿಳಿಸಿರುತ್ತೇನೆ.

ದಿನಾಂಕ: 09–03–2021ರಂದು ರಾತ್ರಿ 8–30 ಗಂಟೆಗೆ ನಾನು ಮತ್ತು ನಮ್ಮ ಮನೆಯವರು ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರ ಮನೆಯ ಒಳಗೆ ಹೋಗಿ ನ್ಯಾಯ ಕೇಳಿದಾಗ ವೈಶಾಲಿ ರವರು ನೀನು ಸೂಳೆ, ನಿನ್ನಂತಹವಳನ್ನು ಯಾರೂ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತಾರೆ. ಯಾವುದಾದರೂ ಹಾಳು ಬಾವಿಗೆ ಬಿದ್ದು ಸಾಯಿ, ನೀನು ನನ್ನ ತಮ್ಮನನ್ನು ಮದುವೆಯಾಗಲು ಬಂದರೆ ನಿನ್ನನ್ನು ಸಾಯಿಸಿ ಬಿಡುತ್ತೇನೆ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ಧಗಳಿಂದ ಬೈದು ಕೊಲೆ ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ. ವೈಶಾಲಿ ಮತ್ತು ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ಕೈಗಳಿಂದ ನನ್ನ ಮೈಕೈಗೆ ಹೊಡೆದಿರುತ್ತಾರೆ.

ನಂತರ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರು ನನ್ನನ್ನು ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವುದಾಗಿ ಹೇಳಿ ನನ್ನ ಕೊರಳಿಗೆ ತಾಳಿಯನ್ನು ಕಟ್ಟಿದ್ದು, ಸ್ವಲ್ಪ ಸಮಯದಲ್ಲಿಯೇ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಮತ್ತು ಅವರ ಮನೆಯವರು ಮತ್ತೆ ನನಗೆ ಬೈದು ಹೊಡೆದು ಮನೆಯಿಂದ ಆಚೆ ತಳ್ಳಿರುತ್ತಾರೆ.

ನನ್ನ ಮೇಲೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ನಡೆಸಿ, ಅನಂತರ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವುದಾಗಿ ಹೇಳಿ ಹಲವು ಬಾರಿ ನನ್ನ ಮೇಲೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಕ್ರಿಯೆ ನಡೆಸಿ ನನ್ನಿಂದ ಹಣ ಪಡೆದು ವಂಚಿಸಿರುವ ಮಲ್ಲಿಕಾರ್ಜುನ ಹಾಗೂ ನನ್ನಿಂದ ಮೋಸದಿಂದ ಹಣ ಪಡೆದು ವಂಚಿಸಿರುವ ಮಲ್ಲಿಕಾರ್ಜುನ್ ರವರ ಅಣ್ಣ ವಿನಾಯಕ ರೊಮೆಲ್ ನನಗೆ ಬೈದು ಬೆದರಿಕೆ ಹಾಕಿರುವ ವೈಶಾಲಿ ರವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.

ಷರಾವನ್ನು ಮೊದಲ ಪುಟದಲ್ಲಿ ಬರೆದಿರುತ್ತೇನೆ."

(Emphasis added)

The subject of the complaint is that the petitioner on several occasions has had forceful sexual intercourse with the complainant and has had financial transactions luring the complainant on the pretext of marriage. The 2nd paragraph of the complaint indicates that the petitioner and the complainant were in love for 5 years and they had known each other for 12 years. The further narration is

that on several occasions she has had sex with the petitioner on the promise of marriage by the petitioner. But the promise had remained as promise only. She also narrates certain financial transaction between the two. The crux of the complaint appears to be several financial transactions between the two. Statement of the complainant was recorded under Section 164 of the Cr.P.C. before the learned Magistrate. The statement so recorded forms the entire fulcrum of the allegations against the petitioner, therefore, I deem it appropriate to quote the statement rendered by the complainant, it reads as follows:

> *"ನಾನು ನನ್ನ ಕುಟುಂಬದ ಜೊತೆಗೆ ಸುಮಾರು 15 ವರ್ಷದಿಂದ ಚಂದ್ರಾಲೇಔಟ್‌ನಲ್ಲಿ ವಾಸ ಇರುತ್ತೇನೆ. ನನಗೆ ಸುಮಾರು 12 ವರ್ಷಗಳ ಹಿಂದೆ ಚಂದ್ರಾಲೇಔಟ್ ನಲ್ಲಿ ವಾಸವಾಗಿದ್ದ ವೈಶಾಲಿ ಎಂಬುವವರು ಪರಿಚಯವಾಗಿ ಸ್ನೇಹಿತೆಯಾಗಿದ್ದೆವು. ಸುಮಾರು 4–5 ವರ್ಷದಿಂದ ನಾವಿಬ್ಬರು ಪ್ರೀತಿಸುತ್ತಿದ್ದೆವು. ನಾನು ಆಗಾಗ ಅವರ ಮನೆಗೆ ಹೋಗಿ ಬರುತ್ತಿದ್ದೆ. ವೈಶಾಲಿ ಮತ್ತು ಅವರ ತಮ್ಮ ಮಲ್ಲಿಕಾರ್ಜುನ್ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ಹೋಗುತ್ತಿದ್ದರು. ಮಲ್ಲಿಕಾರ್ಜುನ್ ಅವರ ಅಣ್ಣ ವಿನಾಯಕ, ಅವರ ತಾಯಿ ಶಕುಂತಲಾ ಹಾಗೂ ವೈಶಾಲಿ ಅವರ ಗಂಡ ರೋಮಲ್ ನೆಪೋಲಿಯನ್ ಎಂಬುವವರ ಪರಿಚಯವಾಗಿತ್ತು. ಸದರಿ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಕೆಎಎಸ್ ಪರೀಕ್ಷಾ ತೆಗೆದುಕೊಳ್ಳುತ್ತಿದ್ದ. ಆ ಸಮಯದಲ್ಲಿ ನಾನು ಅವನಿಗೆ ಪರೀಕ್ಷೆಗೆ ತಯಾರಿಗೆ ಸಹಾಯ ಮಾಡುತ್ತಿದ್ದೆ. ನಾವಿಬ್ಬರೂ ಕೂಡಿ ಫೀನಿಕ್ಸ್ ಎಂಬ ಸಿಇಟಿ ಮತ್ತು ನೀಟ್ ತರಬೇತಿ ಕೇಂದ್ರವನ್ನು ಸ್ಥಾಪಿಸಲು ಓಡಾಡುತ್ತಿದ್ದೆವು.*
>
> *ಅದೇ ವಿಚಾರಕ್ಕೆ ಒಂದು ದಿನ ಮಾರ್ಚ್ – 2018ರಲ್ಲಿ ಒಂದು ಮನೆಗೆ ಬರಲು ಕರೆದನು. ಅದರಂತೆ ನಾನು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 1.00 ಗಂಟೆಗೆ ಹೋದಾಗ ಅವರ ಮನೆಯಲ್ಲಿ ಯಾರು ಇರಲಿಲ್ಲ. ಮಲ್ಲಕಾರ್ಜುನ್ ಒಬ್ಬನೇ ಮನೆಯಲ್ಲಿ ಇದ್ದನು. ಸದರಿ ಪ್ರಾಜೆಕ್ಟ್ ಬಗ್ಗೆ ಮಾತನಾಡುತ್ತಿದ್ದಾಗ ಆತನು ಹತ್ತಿರ ಬಂದು ಕುಳಿತುಕೊಳ್ಳಲು ಬಂದನು. ಸಾಮಾನ್ಯವಾಗಿ ಹೊರಗೆ ಭೇಟಿಯಾದಾಗ ದೂರದಲ್ಲೇ ನಿಂತು ಮಾತನಾಡುತ್ತಿದ್ದ ಆದರೆ ಆ ದಿನ ಮನೆಯ ಬಾಗಿಲನ್ನು ಹಾಕಿ ನನ್ನ ಹತ್ತಿರ ಬಂದು ಕುಳಿತುಕೊಳ್ಳಲು ಬಂದು ನಾನು ಕೇಳಿದಾಗ ನಾವಿಬ್ಬರು ಪ್ರೀತಿಸುತ್ತಿದ್ದೆವೆ ಮದುವೆಯಾಗುತ್ತಿದ್ದೇವೆ ಎಂದು ಹೇಳಿದ. ನಂತರ ನನ್ನನ್ನು ಎಷ್ಟು ಬೇಡ ಎಂದರು ಬಲವಂತವಾಗಿ ನನ್ನನ್ನು ಅವನು ಬಲವಂತವಾಗಿ ಅವನ ರೂಮಿಗೆ ಎಳೆದುಕೊಂಡು ಹೋಗಿ ನನ್ನ ಜೊತೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಮಾಡಿದ. ನಾನು ಬೇಡ ಎಂದು ಕೇಳಿಕೊಂಡರು ಅವನು ಕೇಳದೇ ನಾವಿಬ್ಬರು ಪ್ರೀತಿ ಮಾಡುತ್ತಿದ್ದೇವೆ ಮುಂದು ಇಬ್ಬರು ಮದುವೆಯಾಗುತ್ತಿದ್ದೇವೆ ಏನೂ ಆಗುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿ ನನ್ನ ಜೊತೆ ಲೈಂಗಿಕ ಸಂಭೋಗ*

ಮಾಡಿರುತ್ತಾರೆ. ಆಗ ನಾನು ಸದರಿ ವಿಚಾರವನ್ನು ಮನೆಯವರಿಗೆ ಹೇಳುತ್ತೇನೆ ಎಂದು ಹೇಳಿದ್ದಕ್ಕೆ ನಿನಗೆ ಮೋಸ ಮಾಡುವುದಿಲ್ಲ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ ಯಾರಿಗೂ ಹೇಳಬೇಡ ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುವುದಿಲ್ಲ ಎಂದು ಹೆದರಿಸಿದ. ಈಗ ನಾನು ಕೆಎಎಸ್ ಪರೀಕ್ಷೆ ಬರೆಯುತ್ತಿದ್ದೇನೆ ಈಗ ನಾನು ವಿಚಾರ ಹೇಳಿದರೆ ತೊಂದರೆ ಆಗುತ್ತದೆ, ಕೆಎಎಸ್ ಆದ ನಂತರ ಮದುವೆಯಾಗುತ್ತೇನೆಂದು ಹೇಳಿದ ಅಲ್ಲದೇ ನಮ್ಮ ತಂದೆಗೆ ಸಹಿತ ಬೈಪಾಸ್ ಸರ್ಜರಿ ಆಗಿತ್ತು. ಸದರಿ ವಿಚಾರವನ್ನು ತಿಳಿಸಿದರೆ ಅವರಿಗೂ ತೊಂದರೆ ಆಗುತ್ತದೆಂದು ನಾನು ಯಾರಿಗೂ ಹೇಳಲಿಲ್ಲ.

ನಾನು ಕೆಎಎಸ್ ಮಾಡುವವರಿಗೂ ನಮ್ಮ ಸಂಬಂಧವನ್ನು ಹೀಗೆ ಮುಂದುವರೆಸೋಣ ಎಂದು ಹೇಳಿದ. ಅಲ್ಲದೇ ಸದರಿ ಫೀನಿಕ್ಸ್ ಪ್ರಾಜೆಕ್ಟ್‌ಗೆ ತುಂಬಾ ಹಣ ಖರ್ಚು ಮಾಡಿದೆ. ಅಲ್ಲದೇ ಅವನ ಖರ್ಚಿಗೂ ಸಹಿತ ನನ್ನ ಹತ್ತಿರ ಹಣ ಪಡೆದುಕೊಳ್ಳುತ್ತಿದ್ದ. ನನ್ನೊಂದಿಗೆ ಆತನು ತುಂಬಾ ಆತ್ಮೀಯನಾಗಿದ್ದು ನಾವಿಬ್ಬರು ಗಂಡ ಹೆಂಡತಿ ಎಂಬ ಭಾವನೆ ಬರುವಂತೆ ಆತ್ಮೀಯವಾಗಿ ನಡೆದುಕೊಳ್ಳುತ್ತಿದ್ದೆ. ಅವನ ನಡತೆಯಿಂದ ಆತನನ್ನು ಸಂಪೂರ್ಣವಾಗಿ ನಂಬಿದ್ದೆ. ನಂತರ ಸದರಿ ಫಿನೀಕ್ಸ್‌ನ್ನು ಕೊರೋನ ಬಂದ ನಂತರ ನಿಲ್ಲಿಸಿದೆವು. ನಾನು ಮನೆಯಿಂದಲೇ ವರ್ಕ್ ಫ್ರಮ್ ಹೋಂ ಮಾಡುತ್ತಿದ್ದೆ. ನಂತರ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಮನೆಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ಸುಮಾರು 4–5 ಬಾರಿ ನನ್ನನ್ನು ಕರೆಸಿಕೊಂಡು ನನಗೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಮಾಡುತ್ತಿದ್ದ.

ದಿ:10.01.2021 ರ ರಾತ್ರಿ 10.30 ಗಂಟೆಗೆ ಅವರ ಮನೆಗೆ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ನನ್ನನ್ನು ಕರೆಸಿಕೊಂಡು ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಿರುತ್ತಾನೆ. ಅವನು ನನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತೇನೆಂದು ನಂಬಿಸಿ ಅತ್ಯಾಚಾರ ಮಾಡಿರುತ್ತಾನೆ. ಅಲ್ಲದೇ ಕೆಎಎಸ್ ಮಾಡಬೇಕು, ಕೆಎಎಸ್ ಮಾಡಿದ ನಂತರ ಮದುವೆಯಾಗುತ್ತೇನೆಂದು ಹೇಳಿದ. 2019ರಲ್ಲಿ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಅವರ ಅಣ್ಣ ವಿನಾಯಕ್ ಬಿಸಿನೆಸ್ ಮಾಡಬೇಕೆಂದು ಹೇಳಿ ಹಣ ಕೇಳಿದ. ನಾನು ಆಗ ಎಚ್‌ಡಿಎಫ್‌ಸಿ ಬ್ಯಾಂಕ್ನಲ್ಲಿ ಪರ್ಸನಲ್ ಲೋನ್ ಪಡೆದು ರೂ.4 ಲಕ್ಷ ಗಳನ್ನು, ನಂತರ ಎಚ್‌ಡಿಎಫ್‌ಸಿ ಬ್ಯಾಂಕ್ನಲ್ಲಿ ಸಾಲ ಪಡೆದು ರೂ.5 ಲಕ್ಷ, ಐಸಿಐಸಿಐ ಬ್ಯಾಂಕ್‌ನಿಂದ ಸಾಲ ಪಡೆದು ರೂ.2 ಲಕ್ಷ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ನಂತರ ಫಿನಿಕ್ಸ್ ಸೆಂಟರ್ ಕ್ಲೋಸ್ ಆದ ಕಾರಣ ನನಗೆ ಪರಿಚಯ ಇದ್ದ ಸ್ಕಿಲ್ ಡೆವಲೆಪ್ ಮೆಂಟ್ ಟ್ರೇಡಿಂಗ್ ಸೆಂಟರನ್ನು ಫ್ರಾಂಚೈಸ್ ತೆಗೆದುಕೊಳ್ಳಿ ಎಂದು ಹೇಳಿದರು. ಸದರಿ ಬಿಸಿನೆಸ್ಸು ಮಲ್ಲಿಕಾರ್ಜುನ್ ಹೆಸರಿಗೆ ರೂ.6 ಲಕ್ಷ ಪಾವತಿ ಮಾಡಿ ರಿಜಿಸ್ಟ್ರೇಷನ್ ಮಾಡಿಸಿರುತ್ತೇನೆ. ನಂತರ ನನ್ನ ಪರಿಚಯಸ್ಥರಾದ ಗಿರೀಶ್ ಅವರಿಂದ ರೂ.2 ಲಕ್ಷಗಳನ್ನು ಕೈ ಸಾಲ ಪಡೆದು ಮಲ್ಲಿಕಾರ್ಜುನ್ ಗೆ ಕೊಟ್ಟಿರುತ್ತೇನೆ. ನಂತರ ಆಗಾಗ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಸುಮಾರು ರೂ.3 ಲಕ್ಷ ಹಣವನ್ನು ಹಂತ ಹಂತವಾಗಿ ಪಡೆದಿರುತ್ತಾನೆ.

ನಾನು ಮತ್ತು ಮಲ್ಲಿಕಾರ್ಜುನ್ ಪ್ರೀತಿಸುತ್ತಿದ್ದ ವಿಚಾರ ಅವರ ತಾಯಿ ಶಕುಂತಲಾ, ಅವರ ಅಣ್ಣ ವಿನಾಯಕ, ಅಕ್ಕ ವೈಶಾಲಿ ಹಾಗೂ ಅವರ ಗಂಡ ರೋಮಲ್ ಅವರಿಗೆ ಗೊತ್ತಿತ್ತು. ನಂತರ 2020ರ ನವೆಂಬರ್‌ನಲ್ಲಿ ಅವರ ಅಣ್ಣ ವಿನಾಯಕ್ ಮತ್ತು ರೋಮಲ್ ಗೆ ಕೈಸಾಲ ತೀರಿಸುವ ಹಣದ ಅವಶ್ಯಕತೆ ಇರುವುದಾಗಿ ಯಶವಂತಪುರದಲ್ಲಿರುವ ಕೋಡಿಗೆಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಒಂದು ನಿವೇಶನ ರೋಮಲ್ ಅವರ ಹೆಸರಿಗೆ ಇದ್ದು ಅದನ್ನು ನಿನ್ನ ಹೆಸರಿಗೆ ಮಾಡಿಕೊಡುತ್ತೇವೆ ಆಗ ನಿನ್ನ ಹೆಸರಿಗೆ ಲೋನ್ ಸಿಗುತ್ತದೆ, ನಿನ್ನ ಹೆಸರಿನಲ್ಲಿ ಲೋನ್ ತೆಗೆದುಕೊಡು ನಾವು ಕಟ್ಟಿಕೊಂಡು ಹೋಗುತ್ತೇವೆ ಎಂದು ಹೇಳಿದರು. ಸ್ವಲ್ಪ ದಿನ ನಂತರ ನಿನ್ನ ಹಣ ವಾಪಸ್ ಕೊಟ್ಟು ಸೈಟನ್ನು ವಾವಸ್ ರಿಜಿಸ್ಟ್ರೇಶನ್ ಮಾಡಿಸಿಕೊಳ್ಳುತ್ತೇವೆಂದು ಹೇಳಿದರು ಅವರ ತಾಯಿ ಮತ್ತು ಅಕ್ಕ ಈ ವಿಚಾರವಾಗಿ ಕೇಳಿಕೊಂಡರು. ಆದ್ದರಿಂದ ನಾನು ಎಂ.ಜಿ.ರಸ್ತೆಯ ಜಿಐಸಿ ಹೌಸಿಂಗ್ ಫೈನಾನ್ಸ್ ಬ್ಯಾಂಕ್ನಲ್ಲಿ ರೂ.32 ಲಕ್ಷ ಲೋನ್ ಪಡೆದು ಅದರಿಂದ ಸೈಟ್ ಖರೀದಿಸಿದ್ದು ಬ್ಯಾಂಕ್ ಮೂಲಕ ರೋಮಲ್ ಅವರ ಖಾತೆಗೆ ಲೋನ್ ಹಣವನ್ನು ಕೊಟ್ಟಿರುತ್ತೇನೆ. ಆದರೆ ಅವರು ಇಎಂಐ ಕಟ್ಟಿರುವುದಿಲ್ಲ. ನಾನೇ ಪ್ರತಿ ತಿಂಗಳು ರೂ.27,500/– ಕಟ್ಟುತ್ತಿದೇನೆ. ಅಲ್ಲದೇ ಹಿಂದೆ ಪಡೆದಿದ್ದ ಪರ್ಸನಲ್ ಲೋನ್ ಸಲುವಾಗಿ ರೂ.20,000/– ಪ್ರತಿ ತಿಂಗಳು ಕಂತನ್ನು ಪಾವತಿ ಮಾಡುತ್ತಿದ್ದೇನೆ. ನನಗೆ ನಂಬಿಸಿ ಮೋಸ ಮಾಡಿ

ಲೋನ್ ಮೂಲಕ ಹಣ ಪಡೆದು ಇಎಂಐ ಕಟ್ಟದೇ ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ನನಗೆ ಮೋಸ ಮಾಡಿದ್ದಾನೆ. ನಂತರ ಸದರಿ ಸೈಟ್ ಬಗ್ಗೆ ವಿಚಾರಿಸಿದಾಗ ಕೆಐಡಿಬಿಗೆ ಸ್ವಾಧೀನವಾಗಿದೆ ಎಂದು ಗೊತ್ತಾಗಿದೆ.

ನಂತರ ಡಿಸೆಂಬರ್ 2020ರಲ್ಲಿ ಅವರ ಅಣ್ಣ ವಿನಾಯಕ್ ರವರಿಗೆ ಬೈನ್ ಟ್ಯೂಮರ್ ಆಗಿ ಓಡಾಡುತ್ತಿದ್ದೆವು. ಆ ಸಮಯದಲ್ಲಿ ಆಸ್ಪತ್ರೆ ಖರ್ಚಿಗೆ ಸುಮಾರು ರೂ.50 ಸಾವಿರ ತನಕ ಖರ್ಚು ಮಾಡಿರುತ್ತೇನೆ. ನಂತರ ಸಡನ್ ಆಗಿ ಮಲ್ಲಿಕಾರ್ಜುನ್ ನನಗೆ ಫೆಬ್ರವರಿ 15ನೇ ತಾರೀಖು ನಿಶ್ಚಿತಾರ್ಥ ಫಿಕ್ಸ್ ಮಾಡಿದ್ದಾರೆಂದು ಹೇಳಿದ. ನಂತರ ನಾನು ಏಕೆ ಈ ರೀತಿ ಹೇಳುತ್ತಿದ್ದೀಯಾ ಇಷ್ಟು ದಿನ ನನ್ನನ್ನು ಹೆಂಡತಿ ಎಂದು ನಂಬಿಸಿ ಈಗ ಈ ವಿಚಾರವನ್ನು ಹೇಳುತ್ತಿದ್ದೀಯ ಎಂದು ಕೇಳಿದಾಗ ನಮ್ಮಿಬ್ಬರಿಗು ಬೇರೆ ಬೇರೆ ಜಾತಿ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಒಪ್ಪುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿದ. ನಂತರ ನಾನು ನಡೆದ ವಿಚಾರವನ್ನು ನಮ್ಮ ಮನೆಯವರಿಗೆ ಹೇಳಿದೆ. ನನಗೆ ಏಕೆ ಈ ರೀತಿ ಮೋಸ ಮಾಡುತ್ತಿದ್ದೀಯ ಎಂದು ನಾನು ತುಂಬಾ ಕೇಳಿಕೊಂಡೆ ಆದರೆ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಅದಕ್ಕೆ ಒಪ್ಪಲು ತಯಾರಿರಲಿಲ್ಲ. ನಂತರ ನಾನು ವಿಚಾರವನ್ನು ನನ್ನ ತಾಯಿಗೆ ತಿಳಿಸಿ ನ್ಯಾಯಾ ಕೇಳಲು ಅವರ ಮನೆಗೆ ಹೋದೆವು. ನಂತರ ಅವರ ಮನೆಗೆ ಹೋದಾಗ ನಾನು ಅವರ ತಂದೆ ತಾಯಿಗೆ ನಡೆದ ವಿಚಾರವನ್ನು ಹೇಳಿದೆ. ಮೊದಲೇ ಏಕೆ ಹೇಳಲಿಲ್ಲ ಎಂದು ಹೇಳಿದರು. ಅಲ್ಲದೇ ನಿಮ್ಮದು ಕೀಳು ಜಾತಿ ಎಂದು ನಿಂದಿಸಿ ನಮ್ಮ ಮಗನಿಗೆ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳಲಾಗುವುದಿಲ್ಲ, ಈ ರೀತಿ ಬಂದು ಕೇಳಿಕೊಳ್ಳಲು ನಿನಗೆ ನಾಚಿಗೆ ಆಗುವುದಿಲ್ಲ ಎಂದು ನನ್ನನ್ನು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದರು. ಅವರ ಅಣ್ಣನು ಸಹ ನನಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದರು. ನನಗೆ ಸ್ನೇಹಿತೆಯಾಗಿದ್ದ ವೈಶಾಲಿ ಸಹಿತ ನೀನು ನಮ್ಮ ಮನೆಗೆ ಸೂಟ್ ಆಗುವುದಿಲ್ಲ ನೀನು ಒಬ್ಬ ಸೂಳೆ ಎಂದು ನನ್ನನ್ನು ತುಂಬಾ ಕೆಟ್ಟದಾಗಿ ಬೈದಳು. ನಂತರ ನಮ್ಮ ತಾಯಿ ಸಹಿತ ಬೇಡಿಕೊಂಡರು ಒಪ್ಪಲಿಲ್ಲ.

ನಂತರ ನಾನು ಮಾನಸಿಕವಾಗಿ ನೊಂದು ಡಿಪ್ರೆಶನ್‌ಗೆ ಹೋದೆ ಆಗ ನಮ್ಮ ಮನೆಯ ಸಂಬಂಧಿಕರಿಗೆಲ್ಲಾ ವಿಚಾರ ಗೊತ್ತಾಯಿತು. ನಂತರ ಅವರೆಲ್ಲಾ ಸೇರಿ ಹೋಗಿ ಅವರನ್ನು ಕೇಳೋಣ ಎಂದು ಹೇಳಿದರು. ದಿ:09.03.2021 ಮಧ್ಯಾಹ್ನ ನಾನು ಮತ್ತು ನಮ್ಮ ಮನೆಯವರು ಅವರ ಮನೆಯ ಹತ್ತಿರ ಹೋಗಿ ನ್ಯಾಯ ಕೇಳುವಾಗ ಅವರ ತಂದೆ ತಾಯಿ ಒಪ್ಪಲಿಲ್ಲ ನಾನು ತಪ್ಪು ಮಾಡಿದ್ದೇನೆ ನನ್ನನ್ನು ಕ್ಷಮಿಸಿಬಿಡಿ ಎಂದು ಹೇಳುತ್ತಿದ್ದನೇ ವಿನಃ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ ಎಂದು ಹೇಳಲಿಲ್ಲಾ. ನನ್ನ ಸ್ನೇಹಿತೆ ವೈಶಾಲಿ ಸಹ ನೀನು ಸೂಳೆ ನಿನ್ನನ್ನು ಯಾರು ಮದುವೆಯಾಗುತ್ತಾರೆ ನೀನು ನನ್ನ ತಮ್ಮನ ತಂಟೆಗೆ ಬಂದರೆ ನಾನು ನಿನ್ನನ್ನು ಸಾಯಿಸಿಬಿಡುತ್ತೇನೆ ಎಂದು ಹೇಳಿದಳು. ನಾನು ಮತ್ತು ನಮ್ಮ ಕುಟುಂಬದವರು ಸಂಜೆಯ ತನಕ ಅಲ್ಲೇ ಇದ್ದೆವು. ನಂತರ ನಾವು ಅವರ ಜೊತೆ ಮಾತನಾಡಿ ಪ್ರಯೋಜನ ಇಲ್ಲ ಎಂದು ಪೋಲಿಸ್ ದೂರು ಕೊಡೋಣ ಎಂದು ಹೊರಟೆವು. ಆಗ ಅವರ ತಂದೆ ಸಡನ್ ಆಗಿ ಮಾತನಾಡೋಣ ಕುಳಿತುಕೊಳ್ಳಿ ಪೊಲಿಸ್ ದೂರು ಏನು ಬೇಡ ಎಂದು ಹೇಳಿ ನಂತರ ಹೂವಿನ ಹಾರ, ತಾಳಿ ತರಿಸಿ ರಾತ್ರಿ ಸುಮಾರು 8.30 / 9.00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಅವರ ಮನೆಯಲ್ಲಿ ನನಗೆ ಮತ್ತು ಮಲ್ಲಿಕಾರ್ಜುನ್‌ಗೆ ಹಾರ ಬದಲಾಯಿಸಿ ಅವರ ಮನೆಯಲ್ಲಿ ತಾಳಿ ಕಟ್ಟಲು ಹೇಳಿದರು. ಮಲ್ಲಿಕಾರ್ಜುನ್ ನನ್ನ ಕೊರಳಿಗೆ ತಾಳಿಯನ್ನು ಕಟ್ಟಿದ. ಅದು ನನ್ನ ಇಚ್ಛೆಗೆ ವಿರುದ್ಧವಾಗಿ ಹಾಗೂ ಬಲವಂತವಾಗಿ ಮನೆಯಲ್ಲಿಯೇ ಅವರ ತಂದೆ ತಾಳಿ ಕಟ್ಟಿಸಿದರು. ಅವರು ಕಾನೂನಿನ ಶಿಕ್ಷೆಯಿಂದ ಪಾರಾಗಲು ಅವರು ಈ ರೀತಿ ಮಾಡಿದರು. ಆದರೆ ನನಗೆ ರೀತಿ ಮದುವೆಯಾಗಲು ಇಷ್ಟವಿರಲಿಲ್ಲ. ನನಗೆ ಕಾನೂನು ಬದ್ದವಾಗಿ ಹಾಗೂ ಗುರುಹಿರಿಯರ ಮುಂದೆ ಶಾಸ್ತ್ರೋಕ್ತವಾಗಿ ಮದುವೆಯಾಗಲು ನನಗೆ ಇಷ್ಟ ಇತ್ತು. ಆಗ ಅವರ ತಂದೆ ಆಕೆ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಇರುತ್ತಾಳೆ ನೀವು ಬೇಕಾದಾಗ ಬಂದು ನೋಡಿಕೊಂಡು ಹೋಗಿ ಎಂದು ಹೇಳಿ ಕಳುಹಿಸಿ ಬಿಟ್ಟರು.

ಆ ದಿನ ರಾತ್ರಿ ನನ್ನನ್ನು ಅವರ ಮನೆಯ ಒಂದು ರೂಮಿನಲ್ಲಿ ಕೂಡಿ ಹಾಕಿ ನನಗೆ ಕೆಟ್ಟ ಶಬ್ದಗಳಿಂದ ಬೈದು ನನಗೆ ಹಿಂಸೆ ಮಾಡಿದರು. ಅಲ್ಲದೇ ಅವರ ತಾಯಿ ಬರೀ ತಾಳಿ ಕಟ್ಟಿದ ಮಾತ್ರಕ್ಕೆ ಮದುವೆಯಾಗುವುದಿಲ್ಲ ನೀನು ಯೋಚನೆ ಮಾಡಬೇಡ ಮಗ ಮಲ್ಲಿಕಾರ್ಜುನ್ ಗೆ ಹೇಳಿದರು. ಸದರಿ ಮಲ್ಲಿಕಾರ್ಜುನ್ ನನ್ನ ಜೀವನ ಹಾಳಾಗಿ ಹೋಯಿತು ಎಂದು ಕಿರುಚಾಡುತ್ತಿದ್ದ. ಈ ಹಿಂದೆ ನನ್ನ ಜೊತೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ನಡೆಸಿ ನಂಬಿಸಿ ನನ್ನಿಂದ ಹಣ ಪಡೆದು ಅಲ್ಲದೇ ನೀನು ನಾನು ಗಂಡ

ಹೆಂಡತಿ ಎಂದು ನಂಬಿಸಿ ಅಷ್ಟು ವರ್ಷ ನನ್ನ ಜೊತೆ ನನ್ನ ಗಂಡನಂತೆ ಇದ್ದು ಆ ದಿನ ನಿನ್ನಿಂದ ನನ್ನ ಜೀವನ ಹಾಳಾಗಿ ಹೋಯಿತು ಎಂದು ಹೇಳಿದ. ನಂತರ ಮರುದಿನ ಬೆಳಿಗ್ಗೆ ಅವರ ಸ್ನೇಹಿತ ಕುಮಾರ್ ಎಂಬುವವನು ಬಂದು ನನ್ನ ಕತ್ತಿಗೆ ಕೈ ಹಾಕಿ ತಾಳಿಯನ್ನು ಕೀಳಲು ಪ್ರಯತ್ನಿಸಿದ. ಆದರೆ ತಾಳಿ ಬರಲಿಲ್ಲ ಅದಕ್ಕೆ ನಾನು ವಿರೋಧಿಸಿದೆ ನಂತರ ನನಗೆ ತುಂಬಾ ಭಯವಾಗಿ ನಾನು ನನ್ನ ಅಣ್ಣನಿಗೆ ಫೋನ್ ಮಾಡಿದೆ ಅವರು ಬರುವುದು ತಡವಾಯಿತು. ಅಷ್ಟರಲ್ಲಿ ಇವರು ಮನೆಯವರೆಲ್ಲಾ ಕೂಡಿ ಬಾಗಿಲು ಬಡಿದು ನೀನು ನಮ್ಮ ವಿರುದ್ಧ ಹೇಳಿ ಪೋಲಿಸ್ ಗೆ ಫೋನ್ ಮಾಡುತ್ತೀದ್ದೀಯ ಎಂದು ನಿನ್ನನ್ನು ಸಾಯಿಸಿ ಬಿಡುತ್ತೇವೆಂದು ಹೇಳಿ ಗಲಾಟೆ ಜೋರು ಮಾಡಿದರು. ಅಷ್ಟರಲ್ಲಿ ಪೋಲಿಸರು ಬಂದು ನನ್ನನ್ನು ಕರೆದುಕೊಂಡು ಬಂದರು. ನಂತರ ಪೋಲಿಸರಿಗೆ ನಡೆದ ವಿಚಾರವನ್ನು ಹೇಳಿ ಪೋಲಿಸ್ ದೂರು ದಾಖಲಿಸಿದ್ದೇನೆ. ಆದ್ದರಿಂದ ನನಗೆ ನಂಬಿಸಿ ಮೋಸ ಮಾಡಿ ಆರ್ಥಿಕವಾಗಿ ದೈಹಿಕವಾಗಿ ನನ್ನನ್ನು ದುರುಪಯೋಗಪಡಿಸಿಕೊಂಡು ನನ್ನನ್ನು ವಂಚಿಸಿದ ಅವರೆಲ್ಲರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಪ್ರಾರ್ಥನೆ."

(Emphasis added)

The narration in the complaint and the statement under Section 164 of the Cr.P.C., if read in juxtaposition, what would unmistakably emerge is, the petitioner and the complainant were in love and have had intercourse on several occasions for years. The statement clearly records that the petitioner had made hectic efforts to get married to the complainant. The family of both the petitioner and the complainant were known to each other. Talks of marriage did take place, but failed. The failure was on account of consensus not being arrived due to caste equations. Though the complaint and the statement narrates that the petitioner has had sexual intercourse with the complainant, initially forcibly, but the said force cannot be seen to continue for five long years. The narration would clearly indicate that the relationship between the petitioner and the 2nd respondent was consensual. If it is

consensual, it cannot be alleged that it would become an ingredient of rape under Section 375 of the IPC, for it to become punishable under Section 376 of the IPC. The Police on the basis of the aforesaid statement and investigation, have filed a charge sheet in the matter. Column No.17 of the charge sheet, which forms its summary, reads as follows:

"ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯ ಅಂಕಣ 12ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಎ1 ಮಲ್ಲಿಕಾರ್ಜುನ ದೇಸಾಯಿ ಗೌಡರ್, ಎ2 ವಿನಾಯಕ ದೇಸಾಯಿ ಗೌಡರ್, ಎ3 ರೋಮೆಲ್ ನೆಪೋಲಿಯನ್, ಎ4 ಶ್ರೀಮತಿ. ವೈಶಾಲಿ ರವರು ಬೆಂಗಳೂರು ನಗರ ಚಂದ್ರಾಲೇಔಟ್ ಪೊಲೀಸ್ ಠಾಣೆಯ ಸರಹದ್ದಾದ ಚಂದ್ರಲೇಔಟ್, 2ನೇ ಕ್ರಾಸ್, ಪಾಕಶಾಲೆ ಹೋಟೆಲ್ ಎದುರು, ಮನೆ ನಂ.74ರ 2ನೇ ಮಹಡಿಯ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಎ1 ಆರೋಪಿ ಮತ್ತು ಸಾಕ್ಷಿ–1 ಸ್ಫೂರ್ತಿರವರು ಕಳೆದ ಸುಮಾರು 5 ವರ್ಷಗಳಿಂದ ಪರಸ್ಪರ ಪ್ರೀತಿಸುತ್ತಿದ್ದು, ಈ ಕಾರಣದಿಂದ ಸಾಕ್ಷಿ–1 ರವರು ಎ1 ಆರೋಪಿಯ ಮೇಲ್ಕಂಡ ಮನೆಗೆ ಆಗಾಗ ಹೋಗಿ ಬರುತ್ತಿದ್ದು, ಎ1 ಆರೋಪಿಯು ಸಾಕ್ಷಿ–1 ರವರ ಜೊತೆಗೆ ಸೆಕ್ಸ್ ಮಾಡುವ ದುರುದ್ದೇಶದಿಂದ 2018ರ ಮಾರ್ಚ್ ತಿಂಗಳಿನಲ್ಲಿ ಒಂದು ದಿನ ಮಧ್ಯಾಹ್ನ 1–00 ಗಂಟೆಗೆ ತನ್ನ ಮನೆಯಲ್ಲಿ ಯಾರೂ ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಿ–1ರವರನ್ನು ಮೇಲ್ಕಂಡ ತನ್ನ ಮನೆಗೆ ಕರೆಸಿಕೊಂಡು ಸಾಕ್ಷಿ–1 ರವರನ್ನು ತನ್ನ ಬೆಡ್ ರೂಂಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಆಕೆಯ ಮೇಲೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿದ್ದು, ಸಾಕ್ಷಿ–1 ರವರು ಬೇಡ ಬೇಡ ಎಂದು ಎಷ್ಟು ಕೇಳಿಕೊಂಡರು ಸಹ ಕೇಳದೇ ನಾವಿಬ್ಬರೂ ಪ್ರೀತಿಸುತ್ತಿದ್ದೇವೆ, ಮುಂದೆ ಮದುವೆಯಾಗುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ಬಲವಂತಪಡಿಸಿ ಸಾಕ್ಷಿ–1 ರವರ ಮೇಲೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಭೋಗ ಕ್ರಿಯೆ ನಡೆಸಿದ್ದು, ಈ ವಿಚಾರವನ್ನು ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ನಿನ್ನನ್ನು ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವುದಿಲ್ಲ ಎಂದು ಹೆದರಿಸಿರುತ್ತಾನೆ. ನಂತರದ ದಿನಗಳಲ್ಲಿ ಎ1 ಆರೋಪಿಯು ತನ್ನ ಮನೆಯಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ಸುಮಾರು 5 ಬಾರಿ ಸಾಕ್ಷಿ–1ರವರನ್ನು ಮೇಲ್ಕಂಡ ತನ್ನ ಮನೆಗೆ ಕರೆಸಿಕೊಂಡು ನಾನು ನಿನ್ನನ್ನು ಮದುವೆಯಾಗುವ ಹುಡುಗ ಎಂದು ಹೇಳಿ ಸುಸಲಾಸಿ ಸಾಕ್ಷಿ–1 ರವರ ಜೊತೆಗೆ ಬಲವಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಿರುತ್ತಾನೆ.

ದಿನಾಂಕ:10/01/20215ರಂದು ರಾತ್ರಿ 10–30 ಗಂಟೆಗೆ ಎ1 ಆರೋಪಿಯು ತನ್ನ ಮನೆಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ಮತ್ತೆ ಸಾಕ್ಷಿ–1 ರವರನ್ನು ತನ್ನ ಮನೆಗೆ ಕರೆಸಿಕೊಂಡು ಸಾಕ್ಷಿ–1 ರವರ ಮೇಲೆ ಬಲಮಂತವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ ಮಾಡಿದ್ದು, ಆರೋಪಿಯು ತನ್ನನ್ನು ಮದುವೆಯಾಗುತ್ತಾನೆಂಬ ಕಾರಣದಿಂದ ಸಾಕ್ಷಿ–1 ರವರು ಮೇಲಿನ ಅತ್ಯಾಚಾರದ ವಿಚಾರವನ್ನು ಯಾರಿಗೂ ಹೇಳಿರುವುದಿಲ್ಲ.

ಎ1 ಆರೋಪಿಯು 2018 ರಿಂದ 2021ರವರೆಗೆ ತನಗೆ ಹಣದ ಅವಶ್ಯಕತೆ ಬಿದ್ದಾಗಲೆಲ್ಲಾ ಸಾಕ್ಷಿ–1ರವರಿಂದ ಹಣವನ್ನು ಕೇಳಿ ಪಡೆದುಕೊಂಡಿದ್ದು, ಎ2 ವಿನಾಯಕ ದೇಸಾಯಿ ಗೌಡರ್, ಎ3 ರೋಮೆಲ್ ನೆಪೋಲಿಯನ್ ರವರು ಸಹ ಸಾಕ್ಷಿ–1 ರವರಿಂದ ಆಗಾಗ ಹಣವನ್ನು ಕೇಳಿ

ಪಡೆದುಕೊಂಡಿದ್ದು, ಸಾಕ್ಷಿ–1ರವರು ತಾನು ಮದುವೆಯಾಗುವ ಹುಡುಗ ಹಾಗೂ ಹುಡುಗನ ಮನೆಯವರು ಎಂಬ ನಂಬಿಕೆಯಿಂದ ಎ1 ರಿಂದ ಎ3 ಆರೋಪಿತರು ಕೇಳಿದಾಗಲೆಲ್ಲಾ ತನ್ನ ಐ.ಸಿ.ಐ.ಸಿ.ಐ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ: 141701532486 ಹಾಗೂ ತನ್ನ ಹೆಚ್.ಡಿ.ಎಫ್.ಸಿ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ: 50100173029269 ಗಳಿಂದ ಎ1 ಆರೋಪಿಯ ಐ.ಸಿ.ಐ.ಸಿ.ಐ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ:026901545912 ಗೆ, ಎ–2 ಆರೋಪಿಯ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ:007801529926 ಗೆ ಹಾಗೂ ಎ–3 ಆರೋಪಿಯ ಬ್ಯಾಂಕ್ ಖಾತೆ ಸಂಖ್ಯೆ:029701512771 ಗೆ ಹಣವನ್ನು ವರ್ಗಾವಣೆ ಮಾಡಿದ್ದು ಆರೋಪಿತರು ಹಣವನ್ನು ಪಡೆದುಕೊಂಡು ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ವಾಪಸ್ ನೀಡದೇ ನಂಬಿಕೆ ದ್ರೋಹವನ್ನು ಎಸಗಿರುತ್ತಾರೆ.

ದಿನಾಂಕ: 15–02–2021ರಂದು ಎ1 ಆರೋಪಿಯು ಬೇರೊಂದು ಹುಡುಗಿಯ ಜೊತೆಗೆ ಎಂಗೇಜ್‌ಮೆಂಟ್ ಮಾಡಿಕೊಳ್ಳುತ್ತಿರುವ ವಿಚಾರ ತಿಳಿದ ಸಾಕ್ಷಿ–1ರವರು ಅಂದು ಎ1 ಆರೋಪಿಯ ಮನೆಗೆ ಹೋಗಿ ಈ ಬಗ್ಗೆ ಕೇಳಿದ್ದಕ್ಕೆ ಎ1 ರಿಂದ ಎ4 ಆರೋಪಿಗಳು ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು, ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿ ಕಳುಹಿಸಿರುತ್ತಾರೆ. ನಂತರ ಸಾಕ್ಷಿ–4 ಶ್ರೀಮತಿ. ಲಲಿತಮ್ಮ ರವರು ತನ್ನ ಮಗಳ ಮೇಲೆ ನಡೆದಿರುವ ಅತ್ಯಾಚಾರದ ವಿಷಯ ತಿಳಿದು ಸಾಕ್ಷಿ–1 ರವರೊಂದಿಗೆ ಮತ್ತೆ ಆರೋಪಿತರ ಮನೆಯ ಬಳಿ ಹೋಗಿ ಕೇಳಿದಾಗ ಎ1, ಎ2 ಮತ್ತು ಎ4 ವೈಶಾಲಿ ರವರು ಸಾಕ್ಷಿ–1 ಮತ್ತು 4 ರವರಿಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದಿದ್ದು, ಎ4 ವೈಶಾಲಿ ರವರು ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ನೀನೊಬ್ಬಳು ಸೂಳೆ ಎಂದು ನಿಂದಿಸಿರುತ್ತಾರೆ.

ದಿನಾಂಕ: 09/03/2021ರಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 3–00 ಗಂಟೆಗೆ ಸಾಕ್ಷಿ–1 ಸ್ಪೋರ್ತಿ, ಸಾಕ್ಷಿ–4 ಶ್ರೀಮತಿ. ಲಲಿತಮ್ಮ, ಸಾಕ್ಷಿ–5 ಶ್ರೀ ರಾಘವೇಂದ್ರಪ್ರಸಾದ್, ಸಾಕ್ಷಿ–6 ಶ್ರೀ ಲಕ್ಷ್ಮೀಕಾಂತ, ಸಾಕ್ಷಿ–7 ಶ್ರೀಮತಿ ಸ್ಮಿತಾ, ಸಾಕ್ಷಿ–8 ಶ್ರೀ ಬಾಲಸುಬ್ರಮಣ್ಯ, ಸಾಕ್ಷಿ–12 ಶ್ರೀ ಪ್ರದೀಪ್, ಸಾಕ್ಷಿ–13 ಶ್ರೀಮತಿ ಶಿಲ್ಪ ರವರು ಮೇಲ್ಕಂಡ ಆರೋಪಿತರ ಮನೆಯ ಬಳಿಗೆ ಹೋಗಿ ಸಂಜೆಯವರೆಗೆ ಅಲ್ಲಿಯೇ ಇದ್ದು ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ಆಗಿರುವ ಅನ್ಯಾಯದ ಬಗ್ಗೆ ಎ1 ಆರೋಪಿಯನ್ನು ಹಾಗೂ ಆತನ ಪೋಷಕರನ್ನು ಕೇಳಿದಾಗ ಅಂದು ರಾತ್ರಿ ಸುಮಾರು 8–30 ಗಂಟೆಯಲ್ಲಿ ಎ4 ವೈಶಾಲಿ ರವರು ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ನೀನು ಸೂಳೆ, ನಿನ್ನಂತಹವಳನ್ನು ಯಾರು ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತಾರೆ, ಯಾವುದಾದರೂ ಹಾಳು ಬಾವಿಗೆ ಬಿದ್ದು ಸಾಯಿ, ನೀನು ನನ್ನ ತಮ್ಮನನ್ನು ಮದುವೆಯಾಗಲು ಬಂದರೆ ನಿನ್ನನ್ನು ಸಾಯಿಸಿ ಬಿಡುತ್ತೇನೆ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು, ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿದ್ದು, ಎ1 ಮತ್ತು ಎ4 ಆರೋಪಿತರು ತಮ್ಮ ಕೈಗಳಿಂದ ಸಾಕ್ಷಿ–1 ರವರ ಮೈ ಕೈಗೆ ಹೊಡೆದು ನೋವುಂಟು ಮಾಡಿರುತ್ತಾರೆ, ಸಾಕ್ಷಿ–1 ರವರು ಪೊಲೀಸ್ ಕಂಪ್ಲೇಂಟ್ ಕೊಡುವುದಾಗಿ ಹೇಳಿದ್ದಕ್ಕೆ ಎ1 ಆರೋಪಿಯು ಪೊಲೀಸ್ ಕಂಪ್ಲೇಂಟ್ ಕೊಡದಂತೆ ತಡೆಯುವ ಉದ್ದೇಶದಿಂದ ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ಶಾಲಿಯನ್ನು ಕಟ್ಟಿಸಿದ್ದು ನಂತರ ಎ1, ಎ2, ಎ3 ಮತ್ತು ಎ4 ಆರೋಪಿತರು ಸೇರಿಕೊಂಡು ಮತ್ತೆ ಸಾಕ್ಷಿ–1 ರವರಿಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು, ಕೈಯಿಂದ ಹೊಡೆದು ತೀವ್ರ ನೋವುಂಟು ಮಾಡಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿದ್ದು ಎ1 ಆರೋಪಿಯು ಕಲಂ 376, 376(2)(ಎನ್), 354, 504, 506 ಐಪಿಸಿ ರೀತ್ಯ, ಎ2 ಮತ್ತು ಎ3 ಆರೋಪಿತರು ಕಲಂ 406, 504, 506 ಸಹಿತ 34 ಐಪಿಸಿ ರೀತ್ಯ ಹಾಗೂ ಎ4 ಆರೋಪಿತೆಯ ಕಲಂ 323, 504, 506 ಐಪಿಸಿ ರೀತ್ಯ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಎಸಗಿರುವುದರಿಂದ ಎ1 ರಿಂದ ಎ4 ಆರೋಪಿತರ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ರೀತ್ಯ ಈ ದೋಷಾರೋಪಣಾ ಪತ್ರ.

ನಿವೇದನೆ:

ಕೋವಿಡ್–19 ಕಾರಣದಿಂದ ಸಾಕ್ಷಿ–1 ರವರು ಚಿಕಿತ್ಸೆ ಪಡೆದಿರುವ ವಿಕ್ಟೋರಿಯಾ ಆಸ್ಪತ್ರೆಯಿಂದ ಗಾಯದ ಪ್ರಮಾಣ ಪತ್ರವನ್ನು ಹಾಗೂ ಆರೋಪಿತರ ಬ್ಯಾಂಕ್ ಖಾತೆಗಳಿಗೆ ಕೆ.ವೈ.ಸಿ. ದಾಖಲಾತಿಗಳನ್ನು ಸಂಗ್ರಹಿಸಲು ವಿಳಂಬವಾಗಿದ್ದು, ಸದರಿ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಗೂ ಹೆಚ್ಚಿನ

ಸಾಕ್ಷ್ಯಾಧಾರಗಳು ಲಭ್ಯವಾದಲ್ಲಿ ಅವುಗಳನ್ನು ಕಲಂ 173(8) ಸಿ.ಆರ್.ಪಿ.ಸಿ ಅಡಿಯಲ್ಲಿ ಮಾನ್ಯ ನ್ಯಾಯಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಳ್ಳಲಾಗುವುದು."

(Emphasis added)

On a coalesce of the complaint, the statement and the summary of the charge sheet, it becomes as clear that the relationship between the two was purely consensual as finding is that, the petitioner and the complainant have had sexual escapades, not once but on several occasions. The contention is that the consent of the petitioner is obtained on the false promise of marriage and therefore, it should be termed as a rape and become punishable under Section 376 of the IPC. The submission is unacceptable, as the consent of a woman on a promise to marry is always an enigma, apt it would be to refer to a judgment of a Division Bench of the High Court of Kerala in the case of ***RAMACHANDRA VS. STATE OF KERALA***[1]***.*** The Division Bench has held as follows:

> *"Understanding the 'consent' of a woman on a promise to marry:*
>
> ***6.*** *The consent of a woman on a promise to marry is an enigma for the prosecution to prove. Consent refers to the state of mind of both parties in an act. In a sexual act, if both have understood the nature of the sexual relationship, consent is implicit in such a relationship. While considering the relationship, the Court will have to weigh the position of the accused to control the woman. It is to be remembered*

[1] 2022 SCC Online Ker 1652

that the statutory provisions of the offence of rape as understood in the Penal Code, 1860, is not gender neutral. ***A woman, on a false promise of marrying and having sexual relationship with a man, with the consent of the latter obtained on such false promise, cannot be punished for rape. However, a man on a false promise of marrying a woman and having sexual relationship with the woman would lead to the prosecution's case of rape. The law, therefore, creates a fictitious assumption that the man is always in a position to dominate the will of the woman. The understanding of consent therefore, has to be related to the dominant and subordinate relationship in a sexual act.***

7. *Section 375 of the IPC states that a man is said to commit rape if he has had any form of sexual intercourse without the consent of a woman. Explanation 2 to Section 375 refers to the form of expression of 'consent'. It is appropriate to refer to explanation 2 which reads thus:*

> ***"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."*

8. There cannot be any room for doubt in this case as to the consent of PW1 for having sexual intercourse with the accused. PW1 referred to three incidents of sexual intercourse. First of such incidents happened in a lodge. She did not raise any complaint immediately thereafter. Again, she had sexual intercourse at the residence of the accused. The third incident happened at her own house where also, she did not raise any complaint. According to her, she was promised by the accused that he would marry her. She also deposed about proposing the marriage at the Manarcaud Temple. But no ceremonies were conducted to establish legal marriage. She approached the Chief

Judicial Magistrate, Kottayam, with a complaint. This was forwarded to the police for investigation. The police registered an FIR on 18/11/2014.

Consent on misconception of fact:

9. *Section 90 of IPC refers to a consent as not consent intended by any provisions of the Penal Code, 1860. Section 90 reads thus:*

> *"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*
>
> *Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*
>
> *Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."*

10. We shall now advert to some of the precedents before considering the point of guilt of the accused in this case. In Pramod Suryabhan Pawar v. State of Maharashtra [(2019) 9 SCC 608], the Apex Court distinguished sexual relationship based on false promise to marry and a breach of promise to marry. The Apex Court held that the offence of rape is not constituted when it was only a breach of promise to marry. The false promise of marriage is explained as a promise not given in good faith, with no intention of being adhered to at the time it was given. In Anurag Soni v. State of Chhattisgarh [(2019) 13 SCC 1] on a similar line, the Apex Court, noting that the accused had no intention to marry the prosecutrix, held that engaging in a physical relationship on the pretext of marriage, fell in the category of rape. In Deepak Gulati v. State of Haryana [(2013) 7 SCC 675] the

Hon'ble Supreme Court distinguished rape and consensual sex and held that "there is a clear distinction between rape and consensual sex and in a case like this, the Court must very carefully examine whether the accused had actually wanted to marry the victim or had mala fide motives and made a false promise to this effect only to satisfy his lust. As the latter falls within the ambit of cheating or deception." In Dhruvaram Murlidhar Sonar (Dr.) v. State of Maharashtra [2019 (1) KHC 403], the Apex Court held that if the accused had not made a promise with the sole intention to seduce the prosecutrix to indulge in sexual act, such an act would not amount to rape. In State of Uttar Pradesh v. Naushad [(2013) 16 SCC 651] again the Hon'ble Supreme Court held that the consent of the victim obtained by the accused by giving false promise of marrying her would amount to committing rape.

11. The false promise of marriage refers to the state of mind of the accused. The point of guilt is relatable to the state of mind of the accused at the time of committing the act of sex. If the accused had no real intention to marry, it can be easily concluded that the consent of the victim is a misconception of fact. The accused might have had intention to marry but he was not sure whether the marriage would take place or not. If the accused had not disclosed full information to the prosecutrix regarding the factors which would hamper or hinder the impending marriage with her, can the Court hold that sexual autonomy had been violated or not? Had the accused disclosed information about the chances of marriage, would she have consented? If there was no full disclosure of factors that could have a bearing on the consent of the woman, can we hold that such cases fall in the category of breach of promise? We need to discuss this in detail."

(Emphasis supplied)

The Division Bench of the High Court of Kerala was following the judgments rendered by the Apex Court, on the issue, rendered from time to time.

9. The consent in the case at hand is not once, twice or thrice; not for days or months; but for several years, five years precisely, as is narrated in the complaint as the two were in love. Therefore, for five long years, it cannot be said that the consent of a woman has been taken for having such instances, all along against her will. It is the length of the relationship and the acts in such period of such relationship between the two that takes away the rigor of ingredients of Section 375 of the IPC, for it to become an offence under Section 376 of the IPC.

10. On the aforesaid facts, it becomes germane to notice the judgments on the issue. The Apex Court has delineated the inter-play between the offence of rape and a consensual sexual relationship, both on the false promise of marriage and promise of marriage. Therefore, a deeper delving into the issue becomes unnecessary, suffice to quote the judgments of the Apex Court. The Apex Court in the case of ***PRAMOD SURYABHAN PAWAR v.***

STATE OF MAHARASHTRA[2] has drawn distinction between rape and consensual sexual relationships. While delineating inter-play between promise of marriage and allegation of rape, the Apex Court has held as follows:

> *"14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In* Anurag Soni *v.* State of Chhattisgarh [Anurag Soni *v.* State of Chhattisgarh, *(2019) 13 SCC 1 : 2019 SCC OnLine SC 509], this Court held:*
>
> > *"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."*
>
> *Similar observations were made by this Court in Deepak Gulati v. State of Haryana (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (Deepak Gulati):*
>
> > *"21. … There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;"*

[2] ***(2019) 9 SCC 608***

15. In Yedla Srinivasa Rao *v.* State of A.P. *(2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] the accused forcibly established sexual relations with the complainant. When she asked the accused why he had spoiled her life, he promised to marry her. On this premise, the accused repeatedly had sexual intercourse with the complainant. When the complainant became pregnant, the accused refused to marry her. When the matter was brought to the panchayat, the accused admitted to having had sexual intercourse with the complainant but subsequently absconded. Given this factual background, the Court observed:*

> *"10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent."*

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false

promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. *In* Deepak Gulati [Deepak Gulati *v.* State of Haryana, *(2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)*

> *"21. … There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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 misrepresentation made to her by the 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 so. Such cases must be treated differently.*
>
> ***
>
> *24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."*

(emphasis supplied)

17. In Uday *v.* State of Karnataka, *(2003) 4 SCC 46: 2003 SCC (Cri) 775]* ***the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors : (SCC p.58, para 25)***

> ***"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, are 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."

(emphasis supplied)

18. 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."

10. The Apex Court, a little later in the case of DHRUVARAM MURLIDHAR SONAR (supra), while following the earlier judgment of the Apex Court in the case of UDAY v. STATE OF KARNATAKA reported in (2003) 4 SCC 46 and DEELIP SINGH v. STATE OF BIHAR reported in (2005) 1 SCC 88, has held as follows:

> *"18. In* Uday *v.* State of Karnataka *(2003) 4 SCC 46 : 2003 SCC (Cri) 775, this Court was considering a case where the prosecutrix, aged about 19 years, had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to*

meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus : (SCC pp. 56-57, paras 21 & 23)

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

***

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was

consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

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

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

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

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she

was constrained to file the complaint after waiting for some time.

20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. *It was held thus:* (Deelip Singh *v.* State of Bihar, *(2005) 1 SCC 8 : 2005 SCC (Cri) 253], SCC p. 106, para 35)*

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

> *21. In* Deepak Gulati *v.* State of Haryana, *(2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], the Court has drawn a distinction between rape and consensual sex. This is a*

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

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23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false

promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do*. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.*

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. ***She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the***

> ***complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."***
>
> *(Emphasis supplied)*

The Apex Court in the afore-quoted judgment has considered the entire spectrum of law on the issue while following the judgment in the case of ***DHRUVARAM MURALIDHAR SONAR V. STATE OF MAHARASHTRA*** reported in ***(2019)18 SCC 191*** and had obliterated the proceedings *qua* the accused.

11. Later to the judgment so rendered by the Apex Court in the case of ***PRAMOD SURYABHAN PAWAR*** , the Apex Court in the case of ***SHAMBHU KARWAR v. STATE OF UTTARPRADESH AND ANOTHER***[3] has held as follows:

[3] 2022 SCC OnLine SC 1032

*"**7.** The parameters governing the exercise of the jurisdiction of Section 482 of CrPC are well-settled and have been reiterated in a consistent line of decisions of this Court. In Neeharika Infrastructure v. State of Maharashtra, a three Judge Bench of this Court which one of us was a part of (D.Y. Chandrachud J.), reiterated the parameters laid down in R.P. Kapur v. State of Punjab and State of Haryana v. Bhajan Lal and held that while the Courts ought to be cautious in exercising powers under Section 482, they do have the power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence. The Court does not enter into the merits of the allegations or trench upon the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence.*

***8.** In Bhajan Lal (supra) this Court formulated the parameters in terms of which the powers in Section 482 of CrPC may be exercised. While it is not necessary to revisit all these parameters again, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:*

> *"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."*

***9.** In Dhruvaram Murlidhar Sonar v. State of Maharashtra, a two Judge Bench of this Court while dealing with similar facts as the present case reiterated the parameters laid down in Bhajan Lal (supra) held that:*

> *"13. It is clear that for quashing the 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."***
>
> ***(emphasis supplied)***

10. *An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out 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.*
>
> *[…]*
>
> *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.*
>
> *xxx*
>
> ***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…"*

11. *In Pramod Suryabhan Pawar v. State of Maharashtra,[7] a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in Sonu @ Subhash Kumar v. State of Uttar Pradesh,[8] observed that:*

> *"12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action…*
>
> *[…]*
>
> *14. […] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled…*
>
> *[…]*
>
> ***16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act…***
>
> ***[…]***
>
> ***18. 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.

(emphasis supplied)

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.

> ***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 CrPC. 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 CrPC 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 CrPC 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)*

In yet another judgment the Apex Court in the case of ***MANDAR DEEPAK PAWAR V. STATE OF MAHARASHTRA AND ANOTHER***[4] has held as follows:

> *"The appellant and respondent No.2 were undisputedly in a consensual relationship from 2009 to 2011 (or 2013 as stated by the respondent No.2). It is the say of the respondent No.2 that the consensual physical relationship was on an assurance of marriage by the appellant. The complaint has been filed only in 2016 after three years, pursuant whereto FIR dated 16-12-2016 was registered.*
>
> *On hearing learned counsel for parties, we find ex facie the registration of FIR in the present case is abuse of the criminal process.*

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[4] ***Criminal Appeal No.442 of 2022 decided on 27th July 2022***

The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.

The facts are so glaring as set out aforesaid by us that we have no hesitation in quashing the FIR darted 16.12.2016 and bringing the proceedings to a close. Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled "Pramod Suryabhan Pawar v. State of Maharashtra & another" where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.

The Criminal appeal is accordingly allowed.

Impugned judgment is set aside the proceedings in pursuance to FIR dated 16-12-2016 stands quashed, leaving parties to tear their own costs".

(Emphasis supplied)

The afore-quoted were all cases where the relationship between the accused and the prosecutrix was consensual and the allegation was that of offence punishable under Section 376 of the IPC for rape. If the afore-narrated facts are considered on the bedrock of

elucidation by the Apex Court and the judgment of the High Court of Kerala as afore-quoted, it becomes a case where this Court has to step in exercise its jurisdiction under Section 482 of the Cr.P.C., to obliterate the crime registered against the petitioner for the offence of rape under Section 376 of the IPC, failing which, it would become an abuse of the process of law.

12. Insofar as the judgments relied on by the learned counsel for the 2nd respondent seeking to distinguish the afore-quoted judgments are concerned, they would all tumble down, as they are heavily goaded against the submissions made by the learned counsel for the 2nd respondent. Insofar as the judgments in the cases of ***YEDLA SRINIVASA RAO v. STATE OF A.P.***[5]***; STATE OF UTTAR PRADESH v. NAUSHAD***[6] and ***ANURAG SONI v. STATE OF CHHATTISGARH***[7] are concerned they were all rendered on the facts obtaining in the cases therein and a distinction being made that it was a false promise of marriage and not mere promise of marriage or its breach. Therefore, those judgments are distinguishable without much *ado,* on the facts obtaining in the

[5] ***(2006) 11 SCC 615***
[6] ***(2013) 16 SCC 651***
[7] ***(2019) 13 SCC 1***

cases therein and would not become applicable to the facts obtaining in the case at hand. In the considered view of this Court, the issue stands covered, on all its fours, to the judgments of the Apex Court and the High Court of Kerala, as quoted hereinabove, and not as noted hereinabove, as relied on by the learned counsel for the 2nd respondent. This Court though, would appreciate the sincere effort of the learned counsel for the 2nd respondent to distinguish every judgment by putting up vehement opposition, but in the light of facts being so glaring and the law in favour of the petitioner, permitting further proceedings or continuance of trial would undoubtedly lead to miscarriage of justice *qua* the offence punishable under Section 376 of the IPC.

13. There are other offences alleged against the petitioner. They are offences punishable under Sections 354, 323, 406, 504, 506 of the IPC. Section 354 would get subsumed to the reasons rendered for obliterating the offence under Section 376 of the IPC. Therefore, invocation of Section 354 also requires to be obliterated. Section 406 which deals with criminal breach of trust has its ingredients in Section 405. The ingredients of Section 405 mandate

that there should be a property entrusted from the hands of the victim to the accused and the accused should have used the said property with dishonest intention towards his or her own purpose. There is neither an allegation of the kind nor any ingredient for the said offence. Financial transactions have taken place between the two but that by itself would not become an ingredient of criminal breach of trust. Therefore, the said offence also is to be obliterated. What remains is offences punishable under Sections 323, 504 and 506 of the IPC. The complaint, statement under Section 164 CrPC and summary of the charge sheet clearly indicate the offences punishable under Sections 323, and 506 of the IPC. Therefore, these offences are required to be sustained and offence under Section 504 of the IPC as well requires to be quashed.

14. For the aforesaid reasons, the following:

O R D E R

(i) The Criminal Petition is allowed in part.

(ii) The charge sheet insofar as offences punishable under Sections 376, 376(2)(n), 354, 406 and 504 of the IPC are concerned stand quashed.

(iii) The charge sheet insofar as the offences punishable under Sections 323 and 506 r/w 34 of the IPC are concerned they stand sustained. Further proceedings against the petitioner shall continue before the appropriate Court in tune with the subject order.

(iv) It is made clear that the observations made in the course of the order are concerning the petitioner only and will not enure to the benefit of any other accused, if the proceedings are pending against any other accused as on date.

Consequently, I.A.No.2 of 2022 also stands disposed.

Sd/-
JUDGE

bkp
CT:MJ