A.F.R.

Reserved On : 18.04.2025

Delivered On : 06.05.2025

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 11862 of 2025

Applicant :- Imran Khan @ Ashok Ratna
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Saiyad Iqbal Ahmed,Sharique Ahmed
Counsel for Opposite Party :- Manish Kumar Tripathi,G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Sharique Ahmed, learned counsel for the applicant, Sri Manish Kumar Tripathi, learned counsel for opposite party no.2 and Sri Ramesh Kumar, learned A.G.A. for State.

2. The present application has been filed to quash the entire proceedings of Criminal Case No. 525 of 2023 (State Vs. Imran Khan @ Ashok Ratna), arising out of case crime no. 41 of 2023, under Sections 498-A, 323, 504, 506, 377 I.P.C. and 3/4 Dowry Prohibition Act, Police Station-Shivkuti, District-Prayagraj, pending in the court of learned Additional Chief Judicial Magistrate, Prayagraj, Aligarh, including the charge sheet dated 28.06.2023 and summoning/cognizance order dated 10.08.2023.

3. Facts giving rise to the controversy are that the opposite party No.2 has lodged an F.I.R. against the applicant on 23.02.2023 in case crime No. 41 of 2023 under Section 498-

A, 323, 504, 506, 377 I.P.C. and 3/4 Dowry Prohibition Act. Police, after investigation, submitted charge-sheet against the applicant on 28.06.2023 under Section 498A, 323, 504, 506, 377 I.P.C. and 3/4 Dowry Prohibition Act, whereupon cognizance has also been taken by the learned Magistrate on 10.08.2023, which is under challenge in the present case.

4. The learned counsel for the applicant has submitted that impugned proceeding is malicious and illegal on the following ground:-

i. Though the last date of the incident, as mentioned in the F.I.R. is of the year 2019, but the F.I.R. was lodged on 23.02.2023 that is after a considerable delay. In support of his contention, counsel for the applicant has relied upon the judgment of the Apex Court in the case of **Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and Others** in **Criminal Appeal No. 2588 of 2024** wherein the Apex Court quashed the proceeding on the ground that F.I.R. was lodged after a delay of 39 days without any explanation, and F.I.R. itself does not mention the date or time of the committal of offence.

ii. Submission of learned counsel for the applicant submits that no offence under Section 377 I.P.C. is made out as applicant and opposite party No.1 are husband and wife. In support of his contention learned counsel for applicant has relied upon Judgments of Madhya Pradesh High Court in the case of **Manish Sahu v. The State of Madhya Pradesh in Misc. Criminal Case No.8388 of 2023** as well as in **Shashank Harsh Vs. State of Madhya Pradesh, Station House Officer** in **Misc. Criminal Case No.40044 of 2023,**

wherein Single Judge Bench of Madhya Pradesh High Court observed that when the wife was residing with her husband and during the subsistence of their marriage, if there is an allegation of committing unnatural sex, then the offence under Section 377 I.P.C. will not be made out unless the wife is below 18 years old.

iii. It is further submitted by learned counsel for the applicant that opposite party No.2 refused her medical examination, which would be fatal for her case. In support of this submission, learned counsel for the applicant has also relied upon the Apex Court's judgement in **State of Himachal Pradesh Vs. Rajesh Kumar** in **Criminal Appeal No. 2097 of 2014** wherein conviction was set aside by the High Court which was also affirmed by the Supreme Court on the ground that if the prosecutrix never co-operated with the medical staff, that will adversely affect the criminality of her version of the event.

iv. It is further submitted by learned counsel for the applicant that all the independent witnesses did not support the version of the opposite party No.2, as mentioned in her F.I.R. and from her statement recorded under Sections 161 and 164 Cr.P.C., no offence of demand of dowry is made out.

v. Counsel for the applicant further submitted that during the investigation conducted in pursuance of F.I.R. lodged by the police department against the applicant and opposite party No.2, opposite party No.2 herself stated that she was aware of earlier marriage and subsequent after the divorce of the applicant, she willingly got married to the applicant.

5. Per contra, learned counsel for opposite party No.2 vehemently opposed the above submission of learned counsel for the applicant and submitted that there is no proof that at the time of getting married to the opposite party No.2, the applicant was legally divorced with his earlier wife and the affidavit given during the investigation in pursuance of F.I.R. lodged by the police department against the applicant, was given under the pressure of the applicant as she wanted to save her marriage. It is further submitted by the learned counsel for opposite party No.2 that, from the bare perusal of the F.I.R. as well as statement recorded under Sections 161 and 164 Cr.P.C. Prima facie offence is made out against the applicant, which is sufficient for the trial. Therefore, no ground for quashing is made out.

6. Learned AGA also opposed the prayer of the applicant and adopted the argument of learned counsel for opposite party no.2.

7. After hearing the submission of learned counsel for the parties and on perusal of the record, the legal question for determination arises is whether carnal intercourse by the husband with his wife against her wishes will amount to an offence u/s 377 IPC. For determination of this question, it would be appropriate to mention Section 377 IPC, which is being quoted as under :

*"**Section 377. Unnatural offences.-** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

8. Though, from a bare perusal of Section 377 IPC, it appears that carnal intercourse with man, woman, or animal will itself amount to offence, but the validity of this section was considered by the Supreme Court in the case of **Navtej Singh Johar vs. Union of India through Secretary Ministry of Law & Justice** reported in **2018 (10) SCC 1**, wherein the Apex Court observed that consensual intercourse between two adults would not be an offence u/s 377 IPC, and to that extent, Section 377 IPC was declared *ultra vires* to Articles 14, 15, 19 and 21 of the Constitution of India. However, the Apex Court further observed that carnal intercourse without consent between two adults or with any animal or minor will still remain an offence u/s 377 IPC. Two words in Section 377 IPC are important. One is 'carnal' and another is 'against the order of nature' (unnatural).

9. The meaning of the word 'carnal' as per black law dictionary is "means of the body, relating to the body, fleshy or sexual" and the word 'carnal' defined as per New International Webster's Comprehensive Dictionary is *"(i) pertaining to the fleshly nature or the bodily appetites; (ii) sensual, sexual; (iii) pertaining to the flesh or to the body; not spiritual; hence worldly."*

10. Therefore, from the perusal of the definition of carnal, it appears that it is different from the sexual intercourse which relates only penile vaginal intercourse. Word unnatural or against the order of nature has not been defined in the IPC.

11. The courts in the case of **Khanu Vs. Emperor** reported in **1924 SCC OnLine Sind JC 49** as well as **Khandu Vs. Emperor** reported in **1933 SCC Online Lah 601** had interpreted the term “carnal” to refer to acts which fall

outside penile-vaginal intercourse and were not for the purpose of procreation.

12. Earlier, it was considered that sexual intercourse for the procreation is natural and all other intercourse are unnatural or against the order of nature, but subsequently, it was accepted in world, including India, that above definition of natural sex is no longer valid definition. In the case of **Navtej Singh Johar (supra)**, the Apex Court observed that carnal sex between the member of LGBTQIA+ community, though they are in the minority, is a natural orientation of sex.

13. Before amendment in Section 375 IPC, only the sexual intercourse by a man with a woman against her wish was offence as rape, except in case where a woman is the wife of a man and above 15 years. Section 375 IPC existing prior to the amendment of 2013 is being quoted as under:

"6. The pre-amended definition of "rape" as given under Section 375 of IPC reads as under:—
"375. Rape.- A man is said to commit "rape"
who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—
First.- Against her will.
Secondly.- Without her consent.
Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
Sixthly.- With or without her consent, when she is under sixteen years of age.
Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

14. After the amendment of definition of 'rape' in IPC by the Act No.13 of 2013, several sexual acts were also included in

the definition of rape. The amended definition of rape, as per amended Section 375 IPC, is being quoted as under:

"7. The definition of "rape" was amended by Act No. 13 of 2013 and the amended definition of "rape" as defined under Section 375 of IPC reads as under:—

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

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purposes of this section, "vagina" shall also include labia majora.

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.

Exception 1.- A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

15. From a perusal of the amended definition of rape, it is clear that earlier sexual act, which was considered unnatural as per Section 377 IPC, was also included in the definition of rape, if the same is committed against the will of a woman

by a man. Therefore, as per the amended definition, if there is penile penetration into the vagina of a woman or insertion of any object or part of the body not being the penis into the vagina or anus as well as applying mouth to the vagina, anus and urethra of a woman, that would come within the definition of rape, if same is committed without her consent. But the exception (ii) does not create an offence of rape if any of the above sexual acts is committed by a man with his own wife, if she is more than 18 years.

16. The High Court of Madhya Pradesh at Jabalpur High Court in the case of **Manish Sahu's case (supra)**, has observed that act of unnatural sex by a man with his own wife is not covered in the definition of rape, in view of exception (ii) of the amended definition of rape. Therefore, the same will also not be an offence u/s 377 IPC, if same is committed with his own wife. Paragraph nos.17 and 18 of **Manish Sahu's case (supra)** is being quoted as under:

*"**17.** Thus the consent of both the parties is necessary for taking the act out of the purview of Section 377 of IPC. However, this Court after considering the amended definition of "rape" as defined under Section 375 of IPC has already come to a conclusion that if a wife is residing with her husband during the subsistence of a valid marriage, then any sexual intercourse or sexual act by a man with his own wife not below the age of fifteen years will not be rape. Therefore, in view of the amended definition of "rape" under Section 375 of IPC by which the insertion of penis in the anus of a woman has also been included in the definition of "rape" and any sexual intercourse or sexual act by the husband with her wife not below the age of fifteen years is not a rape, then under these circumstances, absence of consent of wife for unnatural act loses its importance. Marital rape has not been recognized so far.*

***18.** Under these circumstances, this Court is of considered opinion that the allegations made in the FIR would not make out an offence under Section 377 of IPC. My view is fortified by a judgment passed by Co-ordinate Bench of this Court in the case of Umang Singhar v. State of Madhya Pradesh, Through Station House Officer, 2023 SCC OnLine MP 3221."*

17. This issue was again considered by the Madhya Pradesh High Court in a Single Judge Bench judgement in

Shashank Harsh's case (supra) wherein the single judge bench of Madhya Pradesh High Court observed that the unnatural sex committed by a man with his own wife, who is above 18 years is no more a rape as per Section 375 IPC, therefore, same cannot be an offence u/s 377 IPC as there is repugnancy regarding the offence u/s 375 IPC as well as u/s 377 IPC then later enactment, which was enacted in 2013 will prevail over the definition of Section 377 IPC. Paragraph no.15 of the above judgement is being quoted as under:

*"**15**. In view of the aforesaid discussions, this Court is of the considered opinion that in the case at hand since the respondent no. 2/wife was residing with her husband during the subsistence of their marriage and as per amended definition of "rape" under Section 375 of IPC by which insertion of penis in the mouth of a woman has also been included in the definition of "rape" and any sexual intercourse or act, by the husband with his wife not below the age of fifteen years is not a rape, therefore, consent is immaterial In these circumstances the allegations made in the FIR does not constitute offence under Section 377 of IPC against the petitioner no. 1. Accordingly, the petitioner no. 1 is discharged from offence under Section 377 of IPC."*

18. The sole reasoning in the above judgements of Madhya Pradesh High Court declaring unnatural sex by a man with his wife even against her consent not an offence u/s 377 IPC, is that the same has not been punishable as rape u/s 375 IPC.

19. This Court respectfully disagrees with the above reasoning of Madhya Pradesh High Court for the reason that a wife may be above 18 years but as an individual identity she has a choice for sexual orientation that has to be protected, and merely because she is a wife of a man, her fundamental right not to give consent against the unnatural sex cannot be taken away. A woman despite being a wife also has individual right to particular sexual orientation and dignity.

20. Apex Court in the case of **Navtej Singh Johar (supra)** has observed that dignity is regarded as inseparable facet of human personality and same is also an important aspect of right to life under Article 21 of the Constitution of India. Paragraph no.139 of **Navtej Singh Johar (supra)** is being quoted as under:

"***139***. *The fundamental idea of dignity is regarded as an inseparable facet of human personality. Dignity has been duly recognised as an important aspect of the right to life under Article 21 of the Constitution. In the international sphere, the right to live with dignity had been identified as a human right way back in 1948 with the introduction of the Universal Declaration of Human Rights. The constitutional courts of our country have solemnly dealt with the task of assuring and preserving the right to dignity of each and every individual whenever the occasion arises, for without the right to live with dignity, all other fundamental rights may not realise their complete meaning.*"

21. In the case of **K. S. Puttaswamy & Another v. Union Of India & Others** reported in **2017 (10) SCC 1,** a nine-Judge Bench of the Apex Court, very clearly observed that privacy is concomitant of the right of individual to exercise control over their personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in the human being. They exist equally in the individual, irrespective of class or strata, gender or orientation. It was further observed that privacy is a right which protect the inner sphere of the individual from interference from state and non-state actors and allows individual to make autonomous life choices and further observed that privacy is constitutionally protected right on the part of guarantee of life and personal liberty in Article 21 of the Constitution of India. Paragraph nos.42, 320, 322 and 323 of **K. S. Puttaswamy's** case **(supra)** are being quoted as under:

*"**42**. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are*

natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Locke had in his Second Treatise of Government observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve. The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a "natural liberty". There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual.

***320**. We now proceed to examine as to whether these components meet the required parameters in the instant case.*

***322**. In our preceding discussion, we have already pointed out above that the Aadhaar Act serves the legitimate State aim. That, in fact, provides answer to this component as well. Some additions to the said discussion is as follows.*

***323**. It is a matter of common knowledge that various welfare schemes for marginalised section of the society have been floated by the successive Governments from time to time in last few decades. These include giving ration at reasonable cost through ration shops (keeping in view Right to Food), according certain benefits to those who are below poverty line with the issuance of BPL cards, LPG connections and LPG cylinders at minimal costs, old age and other kinds of pensions to deserving persons, scholarships, employment to unemployed under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Mgnrega) Scheme. There is an emergence of socio-economic rights, not only in India but in many other countries world-wide. There is, thus, recognisation of civil and political rights on the one hand and emergence of socio-economic rights on the other hand. The boundaries between civil and political rights review as well as socio-economic rights review are rapidly crumbling. This rights jurisprudence created in India is a telling example."*

22. Apex Court in the case of **Navtej Singh Johar (supra)** also considered natural and unnatural intercourse in paragraph no.418 and same is being quoted as under:

*"**418**. If it is difficult to locate any intelligible differentia between indeterminate terms such as "natural" and "unnatural", then it is even more problematic to say that a classification between individuals who supposedly engage in "natural" intercourse and those who engage in "carnal intercourse against the order of nature" can be legally valid."*

23. The Apex Court in the case of **Navtej Singh Johar (supra)** considered the amendment in the definition of rape u/s 375 IPC in the year 2013. In that judgement, the Apex Court was considering the validity of Section 377 IPC so far as the consensual carnal intercourse with a person of the LGBTQIA+ community is concerned and, after a detailed discussion, observed that though carnal intercourse like oral sex or anal sex may be unnatural for a major part of the society, but still, it is a natural orientation of minority group of the LGBTQIA+ community. Therefore, same cannot be an offence if intercourse is wilful, but further observed that if the carnal intercourse is non-consensual, then same is still an offence u/s 377 IPC.

24. The Apex Court also observed that Section 377 IPC, unlike Section 375 IPC, is a gender neutral provision as it uses the word 'whoever' and finally, the Apex Court observed that punishment for consensual sexual activity between two adults, be them a homosexual, heterosexual and lesbian, cannot be regarded as constitutional. However, if any act of carnal intercourse between the individuals is done without the consent of anyone of them, then the same would be punishable u/s 377 IPC. Paragraph no.267 of judgement of **Navtej Singh Johar (supra)** is being quoted as under:

*"**267**. Thus analysed, Section 377 IPC, so far as it penalises any consensual sexual activity between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) and lesbians (woman and a woman), cannot be regarded as constitutional. However, if anyone, by which we mean both a man and a woman, engages in any kind of sexual activity with an animal, the said aspect of Section 377 IPC is constitutional and it shall remain a penal offence under Section 377 IPC. **Any act of the description covered under Section 377 IPC done between the individuals without the consent of any one of them would invite penal liability under Section 377 IPC."***

25. Given the above analysis, it is clear that carnal sex, other than penile-vaginal intercourse is not a natural orientation of sex for the majority of women, therefore the same cannot be done by the husband, even with his wife without her consent. Therefore, this court holds that unnatural sexual intercourse by a man with his own wife without her consent, even if she is above 18 years, would be punishable u/s 377 IPC though that may not be rape as per Section 375 IPC.

26. In view of the above discussion, the submission of learned counsel for the applicant that no offence u/s 377 IPC is made out against the applicant is misconceived because the unnatural intercourse committed by the applicant upon the opposite party no.2 was against her will.

27. From the perusal of the statement of opposite party no.2 recorded u/s 161 and 164 Cr.P.C., there is specific allegation of cruelty and also the harassment against the husband for demand of dowry, as well as committing unnatural carnal sex upon his wife against her wishes. Therefore, the contention of learned counsel for the applicant that no offence u/s 498A and 377 IPC and Section 3/4 D.P. Act, is made out, is misconceived. As far as the other contention of the learned counsel for the applicant that opposite party no.2 was aware about the earlier marriage of the applicant is concerned, the same is not relevant for the present controversy and also being disputed question of fact can be decided during trial, but cannot be a ground to quash the impugned proceeding.

28. So far as the submission of learned counsel for the applicant that there is delay in lodging the FIR is also misconceived because from the perusal of FIR, as well as the statements, it is clear that there was a continuous harassment of opposite party no.2 on the part of the applicant. Therefore, the judgement of **Shivendra Pratap Singh Thakur's case (supra)** relied upon by learned counsel for the applicant is not applicable in the present case.

29. Another submission of learned counsel for the applicant is that as the opposite party no.2 has refused to conduct her medical examination, therefore, the impugned proceeding deserves to be quashed is also misconceived, as unnatural intercourse was committed by the applicant with the opposite party no.2 against her wishes, and after a few days, an FIR was lodged. There is other material in the case diary, which substantiates the allegation of the opposite party no.2. Therefore, even if medical examination of opposite party no.2 was not conducted that cannot be a ground to quash the impugned proceeding.

30. The submission of learned counsel for the applicant that the independent witness did not support the version of opposite party no.2 as mentioned in the FIR and there is no specific demand of dowry in the statement of opposite party no.2 recorded u/s 161 Cr.P.C. and 164 Cr.P.C. is also misconceived because the Apex Court in the case of **Aluri Venkata Ramana Vs. Aluri Thirupathi Rao and Others, SLP (Criminal) No.9243 of 2024** has observed that to attract the offence u/s 498A IPC, specific demand of dowry is not necessary, and cruelty committed by the husband is

itself sufficient to attract the ingredients of Section-498A IPC. Even otherwise from the perusal of the statements of Section 161 Cr.P.C. and 164 Cr.P.C., offence mentioned in chargesheet are made out. Therefore, judgement of **State of Himachal Pradesh's case (supra)** is not applicable in the present case.

31. In view of the above, this court is of the view that no ground for quashing is made out, therefore, present application is **rejected**.

32. However, the applicant is at liberty to apply for bail before the court below.

Order Date :- 6.5.2025
Karan/S.Chaurasia