

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

**CRIMINAL APPEAL NO.3831 OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO. 11642/2019)**

PRADEEP KUMAR KESARWANI

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

O R D E R

1. Leave granted.

2. It has been brought to our notice that the respondent no.2 declined to accept the notice issued by this Court. This is what the office report also indicates.

3. This appeal arises from the order passed by the High Court of Judicature at Allahabad dated 12.09.2019 in Application under Section 482 No.-12607 of 2016 by which

the petition filed by the appellant herein seeking to quash the summoning order dated 25.08.2015 passed by the Additional Chief Judicial Magistrate, Court No.8, Allahabad came to be dismissed.

4. The facts giving rise to this appeal may be summarised as under:-

(I) The respondent no.2 herein-the original complainant/victim lodged a private complaint in the Court of Additional Chief Judicial Magistrate, Allahabad on 11.08.2014 for the offence alleged to have been committed sometime in 2010. The complaint came to be lodged for the offence punishable under Sections 323, 504, 376, 452, 377 and 120B of the Indian Penal Code, 1860 (for short, "the IPC") respectively and Section 3(1)(10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short, "the Atrocities Act").

(II) At the time of filing of the complaint the same was was labelled as an application under Section 156(3) of the Criminal Procedure

Code, 1973 (for short "the CrPC"). The complaint reads thus:-

1. That the applicant is a resident of above address and is a poor student of Scheduled Caste. The respondent No.1 Pradeep Kumar Kesharwani got the applicant enticed under a conspiracy with his influence and raped her and got a video clip made due to which he continued raping her.

2. That the applicant had been studying in the Allahabad University, Allahabad since 2010 and at the same time she was preparing for SSC from Krishna Coaching Institute. In the said Coaching Centre the respondent No.1 was also taking coaching, and he developed friendship with me. Thereafter he started coming to my room also and all of a sudden he tried to outrage my modesty one day and even on my objecting he did not stop and he tore my clothes and raped me. When I started weeping and said that I will lodge complaint in the police then he said by showing video clipping that if you will make complaint in the police then I will upload this nude photograph on internet and then whole of the world will see this.

3. That the applicant got very disturbed and could not understand what to do. Then he said that he will marry me and is accepting me as wife from today but I should not disclose about the incident to anyone.

4. That the applicant accepted the same with heavy heart and seeing no way, I thought that when the respondent no. 1 has raped me then why I should not marry him and then being compelled I started living with him as wife and the crooked

Pradeep continued raping and not only this he even committed rape in unnatural manner.

5. In the meantime I got pregnant in the Year 2011. Then I asked him that now you are going to become a father, so marry me otherwise I cannot show my face to the people. With this talk the respondent no.1 got annoyed and started me abusing filthily that I will not marry now. This is not time for marriage and even after my resistance he gave me medicine of abortion due to which my child got aborted.

6. That in the year 2011 the respondent no.1 Pradeep Kesharwani got a job in a private company N.J. Wealth Advisor Company in district Faridabad and he joined there and he used to come to me in a week or two. In the meantime my parents started searching a match for me for my marriage, then I got perplexed but with courage I told them the entire story then my parents got very annoyed with me and they started me rebuking but after considering the matter seriously, they consented for marriage with the respondent no. 1.

7. That when I asked the respondent no. 1 to get married with me he asked me to come to his office at Faridabad to talk on this issue. Then I along with my guardian went on 21.07.2010. But in a preplanned manner the respondent nos. 1 had already called respondent no. 2 & 3 and 2 and other unknown persons there. All these persons started abusing us filthily of our sisters and mothers with casteist remarks. They abused me that XXXXXXXXXXXX XXXXXXXXXXXXhamari jaati viradari se tumhari shaadi na ho sakti. Tum apni shaadi kahin aur kar lo'.

8. That the applicant dialed the police

control room of District Faridabad on 100 number and sought assistance, then police reached there and saved us and they took both parties to the police station.

9. That hearing both sides at the police station, the SHO, Old Cantt District Faridabad and many other policemen present there said that if Kesharwani will not marry the applicant then it will be an offence and the respondent no. 2 & 3 will also be liable for the said offence/crime. After this the respondent no. 1 agreed for the marriage but later on he backed out from the said decision and now he does not want to marry me, which is against the justice.

10. That I made a complaint to the SHO Shivkuti and SSP Women Commission, U.P. as also to the Chairman, SC ST Commission, U.P. through registered letter on 28.07.2014 but no any action has been taken against the respondents. Therefore, it is in the interest of justice to register case against the respondents.

5. The Magistrate, instead of ordering police investigation under Section 156(3) of the CrPC as prayed for by the complainant thought fit to take cognizance upon the complaint, however, postponed the issuance of process as a magisterial inquiry was initiated under Section 202 of the CrPC. On completion of the magisterial inquiry the Magistrate

proceeded to issue process for the offence of rape punishable under Section 376 of the IPC.

6. The order passed by the Additional Chief Judicial Magistrate in Criminal Case No. 655/2014 reads thus:-

"Respondent No. 1 Pradeep Kumar Kesarwani is summoned for trial under Section 376 IPC. Summons be issued against the accused. The records be produced for appearance on 12.10.2015. The complainant may pursue the case as required."

7. The appellant herein being dissatisfied with the order passed by the Additional Chief Judicial Magistrate, referred to above, challenged the same before the High Court invoking Section 482 of the CrPC. The High Court declined to interfere with the summoning order and accordingly rejected the Section 482 application filed by the appellant herein.

8. In such circumstances, referred to above, the appellant is here before this Court with the present appeal.

9. Mr. Rahul Kaushik, the learned senior counsel appearing for the appellant would submit that the complaint lodged by the respondent no.2 was nothing but a gross abuse of the process of law. He laid much stress on the fact that the complaint is bereft of material particulars.

10. According to him, very vague allegations have been levelled. He would submit that for something which happened in 2010, the complaint came to be lodged after a period of four years in 2014. He submitted that in fact the appellant was in a consensual relationship with the complainant. Something went wrong and they decided to part ways. However, the respondent no.2 ultimately thought of levelling false allegations of the offence punishable under Section 376 of the IPC.

11. In such circumstances, referred to above, the learned counsel appearing for the appellant would pray

that there being merit in his appeal, the same may be allowed and the criminal proceedings be quashed.

12. On the other hand, the learned counsel appearing for the State would submit that since cognizance has been taken on a private complaint, the State has no role to play in the matter.

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the Additional Chief Judicial Magistrate committed an error in passing the summoning order. The High Court too overlooked the relevant aspects of the matter while rejecting the Section 482 application. It is very apparent on a plain reading of the complaint, more particularly, considering the nature of the allegations that the same doesn't inspire any confidence. There is no good explanation offered, why it took four years for the respondent no.2 to file a complaint.

14. Not only the appellant was dragged into the criminal proceedings but even the parents of the appellant were arrayed as accused. Various other offences have been alleged. This itself makes the entire case doubtful. None of the allegations levelled in the complaint are substantiated by any other independent evidence on record.

15. As stated above, the complaint fails to disclose the date of the incident including the place of the incident, etc.

16. It is by now well settled that summoning any person on the basis of a frivolous or vexatious complaint is something very serious. This would tarnish the image of the person against whom false, frivolous and vexatious allegations are levelled.

17. The duty of the court in cases where an accused seeks quashing of an FIR or proceedings on the ground

that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance was delineated by this Court in Mohammad Wajid v. State of U.P., reported as 2023 SCC OnLine SC 951. We may refer to the following observations:

"34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall

circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

(Emphasis supplied)

18. There is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the Court must very carefully examine whether the accused 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 in the ambit of cheating or deception.

19. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of *Deepak Gulati Vs. State of Haryana* reported in 2013 Criminal Law Journal 2990. This Court made the following observations:

"18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. 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 had made a false promise to this effect only to satisfy his lust, as the latter falls within an ambit of cheating or deception. 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 mis-representation 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at 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, 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)

20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the

prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar & Ors. v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]

21. The fact that the complainant thought fit not to even accept the notice issued by this Court is one additional ground that she was not at all serious right from day one i.e. since the time she decided to lodge the

complaint.

22. We need not say anything further in the matter as we are of the view that continuation of the criminal proceedings against the appellant would be nothing but gross abuse of the process of law.

23. In such circumstances, the High Court should have exercised its inherent powers under Section 482 of the Code for quashing of the criminal proceedings.

24. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside. The proceedings of Criminal Case No.655/2014 pending in the Court of Additional Chief Judicial Magistrate are hereby quashed.

25. Pending application(s), if any, stands disposed of.

.....J.
[J.B.PARDIWALA]

.....J.
[SANDEEP MEHTA]

New Delhi
02nd September, 2025.

ITEM NO.36

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.11642/2019

[Arising out of impugned final judgment and order dated 12-09-2019 in A482 No. 12607/2016 passed by the High Court of Judicature at Allahabad]

PRADEEP KUMAR KESARWANI

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(IA No. 189299/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 189302/2019 - EXEMPTION FROM FILING O.T., IA No. 198135/2019 - EXEMPTION FROM FILING O.T., IA No. 198133/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 02-09-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) :

Mr. Rahul Kaushik, Sr. Adv.
Mr. Bibek Tripathi, Adv.
Mr. Y. Lokesh, Adv.
Mr. Sudhakar Tiwari, Adv.
Mr. Ajay Kumar Shrivastav, Adv.
Mr. Mohit Kumar Gupta, Adv.
Mr. Akshat Srivastava, AOR

For Respondent(s) :

Mr. Adarsh Upadhyay, AOR
Ms. Pooja Singh, Adv.

Ms. Pallavi Kumari, Adv.
Mr. Shashank Pachauri, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order, which is placed on the file.
3. The relevant part of the signed order is as under:-

"this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside. The proceedings of Criminal Case No.655/2014 pending in the Court of Additional Chief Judicial Magistrate are hereby quashed."
4. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)