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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 21496 OF 2024

Mr A.B.C.

...Petitioner

Versus

1. State of Maharashtra

2. Sr Inspector of Police, Kapurbawadi

Police Station, Thane, in FIR No.709/2024.

3. Miss. X.Y.Z.

...Respondents

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Mr Manoj Mohite, Senior Advocate with Mr. Ayush Pasbola
with Ms. Sakshi Agarwal and Ms. Mrunal Bhide i/b Mr.
Bipin J. Joshi, for Petitioner.

Ms Mankunwar M. Deshmukh, Additional PP for State-
Respondent.

Mr Aadesh V. Konde Deshmukh with Shri. Hrishikesh Avhad
with Shri. Nagesh Khedkar with Shri Yogesh Sukale, for
Respondent No. 3.

Ms Chitra Chaudhary, API, Kapurbawadi Police Station,
Thane, Present in Court.

CORAM:

M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON:

25 February 2025

PRONOUNCED ON

28 February 2025

JUDGEMENT: - Per MS Sonak, J

1. Heard learned Counsel for the parties.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.

3. This matter was allotted to this Bench by the Hon'ble the Chief Justice vide order dated 12 February 2025. Upon being apprised of this order on 21 February 2025, the matter was directed to be placed for hearing on 24 February 2025 at 2.30 pm. Arguments were heard on 24 and 25 February 2025, and upon conclusion, the matter was reserved for judgment and orders.

4. By instituting this Petition under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure (CrPC), 1973, the Petitioner challenges the First Information Report (FIR) No. 709 of 2024, registered at Kapurbawadi Police Station, Thane (Exhibit C) on 16 August 2024, and the consequent charge sheet dated 14 October 2024 (Exhibit L), alleging that the Petitioner committed an offence punishable under Section 376 of the Indian Penal Code, 1860 (IPC).

5. At the outset, we direct the Registry to redact the names of the Petitioner and the third respondent [Complainant] from this Court's records. The case papers containing the names can be kept in a sealed cover, but the names must be removed from records accessible to others. The privacy concerns of the Complainant and the Petitioner are important and must be protected to the extent possible.

6. The Petitioner, who has been divorced since 2002, has settled in the United States of America (USA) for several years

and is, in fact, a citizen of the USA. The Complainant is a Canadian resident. She claims to have been living separately from her husband since 2021 and pleaded that proceedings for divorce by mutual consent were pending in the Indian Courts. Judgment and decree dated 11 January 2024 ultimately granted such a divorce.

7. The impugned FIR alleges that on 24 November 2022, the Petitioner had forcible sex with the Complainant in the latter's flat at Thane on the promise of eventual marriage. This was after the Petitioner and the Complainant were introduced to each other on the dating app, "*Bumble*", and met at Thane. After this, the Petitioner and the Complainant returned to the USA and Canada, respectively. Between January 2023 and October 2023, the Petitioner and the Complainant met each other on several occasions in Canada and the USA and engaged in multiple sexual activities.

8. On 21 February 2024, the Complainant complained to the Jersey City Police Department (USA), alleging sexual assault by indulging in unprotected sex on the assurance of eventual marriage. The complaint was investigated but closed by the Jersey City Police Department on 19 March 2024. On 25 June 2024, the Complainant filed an Online complaint with the Kapurbawadi Police Station, Thane, regarding the incident of 24 November 2022 at Thane. This was followed by the impugned FIR dated 16 August 2024 alleging that the Petitioner had committed an offence punishable under Section 376 of the IPC.

9. This petition was instituted on 19 October 2024, following the issuance of a Look Out Circular (LOC) against

the petitioner on 09 October 2024. Upon initiating this petition, the Petitioner was informed that the impugned charge sheet had been filed on 14 October 2024. Consequently, this petition was amended, inter alia, to contest the impugned charge sheet.

10. Mr Manoj Mohite, the learned Senior Advocate for the Petitioner, emphasised that the impugned FIR and charge sheet concerned only the alleged incident of 24 November 2022. He submitted that the parties had never met on that date, and even the Complainant applied to change it to 25 November 2022. Mr Mohite, however, submitted that the Petitioner, at this stage, did not wish to make much of this error.

11. Mr Mohite referred to the Online complaint dated 25 June 2024 and pointed out that there was no specific reference to the incident of 24 November 2022 therein, and the date and time of the incident were vaguely referred to “*as between 20.12.2022 to 21.02.2024*”. He pointed out that there was no allegation of forcible sex, either with or without the promise of marriage. He referred to the narration of events by the Complainant in this Online complaint, which included frequent consensual sexual encounters, chats, etc., entirely contradicting the allegations in the impugned FIR or the charge sheet. He submitted that the Complainant’s first complaint is significant in such matters and not the subsequent complaints, in which improvements are typically made.

12. Mr Mohite submitted that there were no allegations of false or dishonest marriage promises. He also submitted that

the Complainant was married to her previous husband on the date of the alleged incident and throughout the period during which the parties met and had sexual encounters. She obtained a divorce only on 11 January 2024, which was also never communicated to the Petitioner.

13. Mr Mohite submitted that even the statements in the complaint and other material placed on record by the Complainant showed that the petitioner had proposed and was pursuing the marriage proposal. Still, the Complainant turned down the proposal on the grounds of age difference, etc. He submitted that allegations by married ladies regarding consent for sexual relations based on false promises of marriage have been evaluated cautiously by the Courts in India. Relying on some of these decisions, Mr Mohite submitted that a case was made to quash the impugned FIR and the charge sheet.

14. Mr Mohite noted that the Petitioner was 58 years old, and the Complainant was 44 years old at the time of the alleged incident. He highlighted that both are highly qualified and well-established financially and socially. He referred to the various email exchanges and other materials neatly presented in the records by the Complainant. Based on all this, he contended that the elements of an offence punishable under Section 376 of the Indian Penal Code, 1860, were not established.

15. Mr Mohite submitted that the allegations in the FIR did not prima facie constitute an offence or establish a case against the Petitioner. He pointed out that the allegations in the FIR or complaint were absurd and inherently improbable, based on which no case was made for registering the impugned FIR or proceeding against the Petitioner.

16. Mr Mohite submitted that notices were issued on behalf of the Complainant, demanding compensation, etc. He submitted that after the attempt to involve the Petitioner in criminal proceedings in the USA failed, the impugned FIR was filed belatedly with an ulterior motive of wreaking vengeance or to spite the Petitioner and settled personal grudges. He submitted that the Court was duty-bound to consider the attendant circumstances in such cases. Based on the attendant circumstances that he referred to, Mr Mohite submitted that the impugned FIR and the impugned charge sheet deserve to be quashed as initiating the continuance of any criminal proceedings would amount to abuse of the judicial process.

17. Mr Mohite relied upon the following judgments in support of his contentions: i) **Pramod Suryabhan Pawar Vs State of Maharashtra & anr¹**; ii) **Sameer Amrut Kondekar Vs State of Maharashtra & anr²**; iii) **Veerendra Yadav Vs The State of Madhya Pradesh³** iv) **Prashant Bharati Vs State (NCT of**

¹ (2019) 9 SCC 608

² 2023 SCC Online Bom 765

³ Order dt.10/02/2025 in Misc. Cri.Case No.48783 of 2024

Delhi)⁴, v) XXXX Vs State of Madhya Pradesh & anr⁵, vi) Salib @ Shalu @ Salim Vs State of U P & ors⁶, vii) Naim Ahamed Vs State (NCT of Delhi)⁷, and viii) Mukesh & ors Vs The State of Uttar Pradesh & ors⁸

18. At the outset, Mr Aadesh V Konde-Deshmukh, learned Counsel for the Complainant, submitted that the Complainant and her husband had parted ways and resided separately since 2021. He stated that the Complainant and the Petitioner had met on the Bumble Dating App on 16 November 2022. He referred to specific chat conversations on page 198 of the paper book. He argued that from these conversations, it was clear that the Complainant was seeking only a marriage partner and was not interested in casual sex.

19. Mr Aadesh Konde-Deshmukh submitted that on 25 November 2025, the Petitioner and the Complainant met at Thane in the Complainant's house because the Petitioner insisted on keeping his belongings in the Complainant's house. He submitted that on this date, the parties established physical relations, and it was on this date that the Petitioner told the Complainant that he had clear intentions of marrying her.

⁴ (2013) 9 SCC 293

⁵ (2024) 3 SCC 496

⁶ Judgment dt. 08/08/2023 passed by Hon'ble SC in Cri.Appeal No.2344/2023

⁷ (2013) 15 SCC 385

⁸ Order dt. 29/11/2024 passed by Hon'ble SC in SPL(Cri) No.12354/2024

20. Mr Aadesh Konde-Deshmukh submitted that from January 2023 to October 2023, the Petitioner maintained unprotected physical relations with the Complainant against her wish. As a result, the Complainant missed her period and had to rush to the hospital in Toronto to test for pregnancy. He pointed out that the Complainant had a bad obstetric history, with at least four miscarriages and an ectopic pregnancy with her previous husband.

21. Mr Aadesh Konde-Deshmukh submitted that the Petitioner continued to make marriage promises but shirked from actual marriage. He pointed out that the Complainant's complaint to the Jersey City Police was closed because the USA police believed that the Petitioner's fraud might not be provable beyond a reasonable doubt. He submitted that the closure of this complaint was entirely irrelevant, and the impugned FIR was based on the incident of 25 November 2022 in Thane, India.

22. Mr Aadesh Konde-Deshmukh relied on this Court's judgment of the Coordinate Bench in **Pramod Dhanji Purabiya Vs. State of Maharashtra and anr**⁹ and submitted that the Coordinate Bench had refused to quash the FIR and charge-sheet in similar facts.

23. For all the above reasons, Mr Aadesh Konde-Deshmukh submitted that this Petition may be dismissed.

⁹

Judgment dt. 02/08/2024 in Writ Petition No.4399 of 2022

24. Ms M M Deshmukh, Additional Public Prosecutor, submitted that the impugned FIR contained allegations that the Petitioner had sexual intercourse with the Complainant against her wish. She submitted that these allegations were sufficient to sustain the impugned FIR and charge sheet because even an uncorroborated statement of the victim was sufficient to secure conviction in such matters. The learned Addl. PP submitted that even though the Complainant was a married woman, the Petitioner maintained sexual relations with her on the promise that he would marry her. She submitted that this would vitiate the consent and render the sexual act a rape.

25. The learned Addl PP submitted that the Petitioner refused to cooperate with the investigating authorities. The notices and summons were ignored. As a result, the LOC had to be issued. The charge sheet is filed using Section 299 of the CrPC. She submitted that since the Petitioner has shown scant regard for the laws of this country, the Petition, at his behest, for exercising discretionary jurisdiction under Article 226 of the Constitution or Section 482 of the CrPC may not be entertained.

26. For all the above reasons, Ms M M Deshmukh, the learned Addl. PP submitted that this Petition may be dismissed.

27. The rival contentions now fall for our determination.

28. This is a Petition under Article 226 of the Constitution, read with Section 482 of the CrPC, seeking the quashing of the impugned FIR. The Hon'ble Supreme Court has laid down the parameters for quashing an FIR in the case of **State of Haryana and others vs. Bhajan Lal and others**¹⁰.

29. The parameters relevant for the present matter from out of those set out in paragraph 102 of *Bhajan Lal (supra)* are as follows: -

(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)

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4)

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6)

(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."*

¹⁰ 1992 SCC (Cri) 426

30. Since, in the present case, the Petitioner has alleged that the impugned proceedings are manifestly frivolous or vexatious or instituted with an ulterior motive for wreaking vengeance, a reference needs to be made to the observations in paragraph 26 of the decision of the Hon'ble Supreme Court in the case *Salib @ Kalu @ Salim (supra)*. Paragraph 26 reads as follows: -

26. 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.

31. Thus, in the present case, given the Petitioner's allegation that the impugned proceedings are instituted with ulterior motives for wreaking personal vengeance, etc., it will not be sufficient for this Court to look to the averments made in the FIR/complaint alone to ascertain whether necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous and vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the case record over and above the averments and, if need be, with due care and circumspection, tried to read between the lines. The Hon'ble Supreme Court has clarified that while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution, it need not restrict itself only to the stage of a case but is empowered to consider the overall circumstances leading to initiation/registration of the case as well as the materials collected during investigation.

32. Before filing the impugned FIR with the Kapurbawadi Police Station, Thane, on 16 August 2024, the Complainant complained with the Jersey City Police Department, USA, on 21 February 2024 and lodged an online complaint with the Kapurbawadi Police Station, Thane, on 25 June 2024.

33. The complaint dated 21 February 2024 with the Jersey City Police Department, USA, and the investigation report therein are at Exhibit-A (pages 28 to 36 of the paper book in this Petition). In that complaint, the Complainant stated that she met the Petitioner on the Bumble Dating App in December 2022. She also talked about their multiple sexual encounters in USA and Canada. However, there was no reference to the incident of 24 or 25 November 2022 at Thane, which is the basis of the impugned FIR/charge sheet. The supplementary investigation report records that the Complainant's complaint was closed due to “*insufficient evidence*”.

34. The online complaint dated 25 June 2024 to the Kapurbawadi Police Station, Thane, is at Exhibit-B (pages 37 to 39 of the paper book). In this online complaint, the incident details are set out in paragraph/column 5, which reads as follows: -

“5. Incident Details (घटना का

- | | |
|--|--|
| a) Place of Incident (घटना का | Toronto, Jersey City, Mumbai |
| b) Type of Incident | Sexual abuse with false promise of marriage, sexual molestation. |
| c) Is Date/time of incident known (क्या घटना कि दिनांक / समय ज्ञात | yes |
| d) Date & Time of Incident | (घटना कि दिनांक और |
| From 20/12/2022 10:10 Hrs To 21/02/2024 00:07 Hrs” | |

35. Paragraph/column 6 of the online complaint concerning the complaint details does not specifically mention the incident of 24 or 25 November 2022. Thus, neither the

complaint dated 21 February 2024 to the Jersey City Police Department, USA, nor the online complaint dated 26 June 2024 to the Kapurbawadi Police Station, Thane, mentions the 24 or 25 November 2022 incident, which is now the subject of the impugned FIR and chargesheet.

36. The complaint to the Jersey City Police Department, USA, mainly concerns multiple sexual encounters in the USA and Canada from June to September 2023. The online complaint to the Kapurbawadi Police Station, Thane, dated 25 June 2024, describes the date and time of the incident as **“From 20/12/2022 10:10 Hrs To 21/02/2024 00:07 Hrs.”** The complaint also states that the Complainant met the Petitioner *“for the first time at Thane, Mumbai, in December 2022.”*

37. Mr Mohite did point out that the complaint to the Jersey City Police Department, USA, was closed on 19 March 2024. Within three months of that closure, the Complainant submitted an online complaint dated 25 June 2024 to the Kapurbawadi Police Station in Thane, alleging that the petitioner had engaged in sexual relations with her against her will or based on a promise of marriage on 24/25 November 2022.

38. Mr Mohite also pointed out that in the complaint dated 21 February 2024 with the Jersey City Police Department, USA, the Complainant stated that she would not file any criminal or civil charges against the Petitioner. However, as a victim, *“she has a right to seek financial compensation to*

whatever he is willing to offer however nothing was established. She stated that they then could go there separate ways. She stated it was her legal right to do so”.

39. The Complainant then followed up her online complaint dated 25 June 2024 with the Kapurbawadi Police Station, Thane, by lodging the impugned FIR bearing No. 709 of 2024 on 16 August 2024, alleging that the Petitioner had committed an offence punishable under Section 376 of the IPC on 24 November 2022 at her flat at Lodha, Amara in Thane. At some later point, she sought to correct the incident date to 25 November 2022. Mr Mohite clarified that the Petitioner did not wish to make much capital regarding this date change. However, there was unimpeachable evidence that the Petitioner and the Complainant never met on 24 November 2022.

40. The impugned FIR is at Exhibit -C (pages 40 to 45 of the paper book). The FIR contents are on pages 44A to 44D. Since they are in the Marathi language, Mr Mohite placed an English translation on record. Neither Mr Aadesh Konde-Deshmukh nor the learned Additional PP objected to the translation or submitted that there was any variation between the Marathi text and the English translation. Even we did not find any reasonable grounds to question the accuracy of the translation.

41. Since in matters of this nature, we are required to focus on the allegations made in the FIR or the complaint and evaluate if such allegations, even if they are taken at their face

value and accepted in their entirety, do not prima facie constitute any offence or make out the case against the accused, we deem it appropriate to transcribe the FIR contents (after redacting names to the extent possible to protect the privacy of all concerned) for the convenience of reference.

“ENGLISH TRANSLATION OF CONTENTS OF FIR
NO.709 OF KAPURBAVDI POLICE STATION THANE.

1. Dr. XYZ, age 44 years, occupation-Doctor, presently staying at -----Montreal, Canada, pin code -----, address in India, -----, Lodha Amara, Kolsheth Road, Thane, Mobile No.-----, Indian Mobile No.-----, email ID: -----.

I have been staying alone at the above address since last six months, and before this I was staying at Toronto Canada for about three years. I am "-----" doctor and I have been staying at Canada because of my job. My mother LD aged 68 years, brother P aged 30 years, sister-in-law A aged 23 years, their daughter age 6 months, are staying at our native place -----. I was married in the year 2006 to BK according to customary rites but there has been difference of opinion between us and therefore we are staying separately since the year 2021 and thereafter our petition for divorce is pending before the Court.

In or about October/November 2022, I had come to India on leave for the marriage of my brother. During my stay at -----, I came in contact with one person by name [Petitioner], age 58 years, resident of -----, Jersey City USA 07307 on "Bumble" dating application and we were chatting with each other. We were also talking to each other on phone ----- and we were sending mails on ----- At that time [Petitioner] had told me that his divorce was through about three years back, and showed his divorce papers to me. At that time I had also told him that my divorce case is pending at the Court. At that time he proposed to marry me but

because we had not met personally I had refused his proposal. Thereafter also he expressed his wish to meet me while I was at Thane and he was at Pune and he came to meet at Thane. First time we met at Hotel Utsav, next to Viviana Mall Thane for dinner. At that time [Petitioner] had shown me his divorce papers, pay slips, Tax receipts, and USA passport. At that time he proposed to marry me but because there was big age difference between his age and my age, I had refused his proposal but we continued to talk to each other as friends. Even then [Petitioner] went on proposing marriage to me by saying that, "we both are divorcees, both are intelligent, and experts in our respective fields, and that makes us good couple. For your sake I have plenty of acquaintances who can help you. By saying so he pretended to take care of me. Due to this I also was thinking of marriage to him.

On 24.11.2022 [Petitioner] emailed to me to see Bhedia movie at Viviana Mall. I had told him that I will come to see movie with him. At that time Petitioner was at Pune. He came to my flat at Lodha Amara and he brought his baggage and he kept his bag at my flat.

Thereafter on 24.11.2022 we went to see Bhedia movie in the noon, and dined at Utsav Hotel, and thereafter [Petitioner] came with me to my flat to take his luggage. **At that time [Petitioner] stated that we are going to marry and by saying so, he had forcible relationship with me even though I was refusing for that.** Thereafter [Petitioner] returned to USA. Thereafter also we continued to talk, chat and send messages to each other on emails.

I returned to Canada on 4th January 2023. Thereafter [Petitioner] came to Canada and we were having physical relationship. Thereafter I used to go to USA for my work and at that time Per [Petitioner] told me that he would marry me and made me meet his mother, and friends. At that time I stayed in his flat, and at that time also we had physical relationship from time to time. At that time when I asked him about our marriage, he used to avoid answering the same and used to say that we live in relationship like the culture of Canada and USA, and thereafter we marry and because of such proposal there used to be fights between us. During that time one of the known

person of [Petitioner] had called me for job interview. But because of our fights, [Petitioner] was angry on me and threatened me by saying, "how you will get a job at USA". Thereafter because there were fights between me and [Petitioner], and because he refused to marry me we stopped talking and chatting with each other. I was hoping that one day or the other [Petitioner] will marry me and in that hope I did not complain against him till date. However, I had complained against [Petitioner] at USA and the inquiry in that complaint is still pending and therefore there was delay in filing the complaint. **Hence on 24.11.2022 at -----, Lodha Amara, Kolsheth Road Thane, [Petitioner] tempted me on the promise marriage had physical relationship with me forcibly and cheated me by not marrying me.** Hence my complaint is against Petitioner age 58 years, resident of -----, Jersey City USA 07307 as per law.

My aforesaid statement is typed in Marathi and I have read the print of the same and the same is as per what I have stated and is true and correct.

Sd/-

Signature of the Complainant.

Sd/-

Signature of the officer in charge."

42. Before we discuss whether the impugned FIR and the impugned charge sheet deserve to be quashed given the parameters in the case of **Bhajan Lal** (supra), we note that the Petitioner's educational and professional profile is at Exhibit-I (pages 55 and 56 of the paper book). Suffice to record that the Petitioner, aged 58 years, is a Master of Business Administration (MBA) Finance Major, Rutgers University, 2009, B.Tech (B.S.), Electrical Engineering, Indian Institute of Technology (IIT), Bombay, 1987. He is a Senior Technologist/Program Manager/Data Scientist/ Solutions

Architect/Advance Analytics Professional with extensive experience in corporate and entrepreneurial environments from Cloud (AWS), Financial Services (Citigroup, 8 years), Media/Ad industry, Pharma, Telecom, Publishing etc industries. He has experience working with Amazon, Kindle, AWS, Dentsu Aegis Network, New York, Dot Star Inc (Corp to Corp Consulting), Depository Trust & Clearing Corp (DTCC), etc.

43. The educational and professional profile of the Complainant, aged 44 years, is at Exhibit-J (pages 57 to 64 of the paper book). The Complainant is a Doctor, MD from GS Medical College and KEM Hospital Mumbai, Master in Family Medicine from CMC Vellore, MBA top scorer, Clinical trial management from Johns Hopkins University, Baltimore, USA, PG in Regulatory Affairs and Quality Operations (RAQC) from Prestigious Seneca College, Canada, Master's in English literature from Mumbai University with Distinction. She is a Lean Six Sigma Green Belt certified professional. Her professional experience as a consultant, medical editor, advisor, writer, senior medico marketing manager in oncology, head of concepts and sales, associate director of Medsign marketing, etc., is extraordinary, to say the least. The profile lists her publications in national and international journals, therapeutic experience, educational credentials/ certifications, and awards. This profile provided by the Complainant herself understandably runs into about seven pages, from pages 57 to 64 of the paper book.

44. Thus, there is no dispute that the Petitioner was 58 years old and the Complainant was 44 years old in November 2022. There is also no dispute about Petitioner's and Complainant's extraordinary educational and professional qualifications. There is also no dispute that by November 2022, the Petitioner was already divorced. The Complainant claimed that she was separated from her husband, and a Petition for divorce by mutual consent was pending in the Indian Courts. Mr Aadesh Konde-Deshmukh submitted that the divorce decree was ultimately granted on 11 January 2024. Clearly, in November 2022, the Complainant's marriage with her previous husband subsisted, though she claimed she was living separately from her husband.

45. The Petitioner and the Complainant had multiple sexual encounters between January and October 2023 when they visited each other in the USA and Canada, where they lived. These sexual encounters, after the incident of 24/25 November 2022 at Thane, are not the subject matter of the impugned FIR or charge sheet, as was clarified even by Mr Konde Deshmukh and the Addl. PP. The impugned FIR was lodged almost 14 to 15 months after the incident, and between the time lag, the Petitioner and the Complainant had multiple sexual encounters. The complaints to the Jersey Town Police USA or even the online complaint to the police in Thane did not specifically refer to the incident of 24/25 November 2022. The Complainant, on one or two occasions, declared that she was not interested in criminally prosecuting

the Petitioner but that it was her right to receive compensation from the Petitioner for the treatment meted out to her.

46. The complaints suggest that the Petitioner not only proposed marriage but also pursued the proposal by providing all details about himself and introducing the Complainant to his mother and elder brother [family]. The complaints suggest how, initially, the Complainant was hesitant due to the age difference and not knowing much about the Petitioner. The complaints do not even allege that the marriage proposals were false or were made without any intention to honour the same or made only to secure consent for the sexual encounter at Thane on 24/25 November 2022. The complaints also do not say that the Complainant consented to sex on 24/25 November 2022, falling for the promise of marriage.

47. While a complaint is not expected to be an encyclopaedia of alleged delinquencies, it should disclose the essential ingredients of the alleged offence. Though delays in such cases are liberally construed, some explanation is still called for, particularly where the Complainant admits to multiple sexual encounters in the USA and Canada during the time lag between the date of the alleged offending encounter, i.e., 24/24 November 2022, and the impugned FIR dated 16 August 2024. The parties' conduct as is reasonably borne out from the complaints and other material supplied by the Complainant is also not entirely irrelevant.

48. Given the allegations made in the impugned FIR, all the above factors are relevant. These factors do not emerge from the petitioner's defence, which is irrelevant at this stage, but from the complaints made by the Complainant and other material emanating from the Complainant. Therefore, by remaining well within the jurisdictional limits spelt out in *Bhajan Lal [Supra]* and further explained in *Salib@Shalu [Supra]*, we are entitled to consider these factors to decide whether a case is made out for quashing the impugned FIR and the charge sheet.

49. The impugned FIR accepts that the Petitioner and the Complainant met each other (initially, digitally) on or due to the Bumble dating app. Mr Aadesh Konde-Deshmukh drew our attention to chat/conversation, a truncated transcription at page 198 of the paper book. He explained that the dating app provided only the Complainant's messages but not the Petitioner's messages or responses. He, however, submitted that from the context, it was evident that the Complainant was looking for a marriage partner and had no other intentions like casual sex, etc. The chats/conversations on page 198 are neither here nor there; not much can be said about such conversations. Even assuming Mr Aadesh Konde-Deshmukh's inference is correct, nothing much turns on the same.

50. The impugned FIR states that the Petitioner proposed marriage during chats/conversations on the Bumble dating

app. However, the Complainant refused the proposal as she had not met the Petitioner personally. The impugned FIR states that even thereafter, the Petitioner proposed marriage but *“because there was big age difference between his age and my age, I had refused this proposal but we continued to talk to each other as friends”*.

51. The FIR records that the Petitioner had shown his divorce papers, pay slips, tax receipts and USA passport to the Complainant. The FIR records that despite the Complainant refusing the marriage proposals, the Petitioner went on proposing marriage by saying that *“we both are divorcees, both are intelligent, and experts in our respective fields and that makes us good couple. For your sake I have plenty of acquaintances who can help you. By saying so he pretended to take care of me. Due to this I also was thinking of marriage to him”*.

52. The FIR then states that on 24 November 2022, the Petitioner emailed the Complainant to see the Bhedia movie at Viviana Mall. The Complainant agreed, and the Petitioner in Pune came to the Complainant's flat at Thane and kept his baggage there. Thereafter, on 24 November 2022, the Petitioner and the Complainant went to see Bhedia movie and, at noon, dined at Utsav Hotel, and the Petitioner came to the Complainant's flat to collect his luggage. The impugned FIR then alleges that at that time, the Petitioner stated that

“we are going to marry and by saying so he had forcible relationship with me even though I was refusing for that”.

53. The FIR then alleges that the Petitioner returned to USA and the Petitioner and the Complainant *“continued to talk, chat and sent messages to each other on email”*. The FIR then states that on the Complainant’s return to Canada on 4 January 2023, the Petitioner would come to Canada, and the Complainant would also go to the USA. The FIR alleges that the Petitioner once again told the Complainant that he would marry her and made her meet his mother and friends. The Complainant admits in the impugned FIR that she stayed at the Petitioner’s flat in the USA, where they had a physical relationship from time to time.

54. The FIR also states that when the Complainant enquired with the Petitioner about marriage, the Petitioner would avoid answers and suggested that *“we live in relationship like the culture of Canada and USA and thereafter we marry and because of such proposal there used to be fights between us”*. The impugned FIR then refers to some job issues in the USA and fights because the Petitioner refused to marry the Complainant. The FIR adds that the Complainant was hoping that one day or the other, the Petitioner would marry her, and in that hope, she did not complain against him. The FIR then ends by stating that the Petitioner *“tempted me on the promise marriage had physical relationship with me forcibly and cheated me by not marrying me”*.

55. Thus, going back to the allegations in the impugned FIR, it is clear that the Complainant's allegations are restricted to the incident of 24 or 25 November 2022 and not to any of the incidents in the USA or Canada during which the Petitioner and the Complainant had multiple sexual encounters. Except for the statement "At that time Petitioner stated that we are going to marry and by saying so, he had forcible relationship with me even though I was refusing for that." there is no allegation that the Petitioner secured the Complainant's consent for sexual relation under any misconception of fact or by making any false promise of marriage. The statement in the second-last paragraph is more like a conclusion drawn by the Complainant.

56. The impugned FIR or complaint must be considered as a whole, and the allegations need to be evaluated within their proper context. Therefore, we find it challenging to maintain that the allegations in the impugned FIR or the complaint, even if taken at face value and accepted in their entirety, constitute an offence or establish a case against the Petitioner.

57. In the facts of the present case, reference to the Complainant's complaint dated 21 February 2024 to the Jersey City Police Department (USA) and the online complaint dated 25 June 2024 to the Kapurbawadi Police Station Thane would also not be out of place. As noted earlier, these complaints do not even refer to the 24 or 25 November 2022 incident. Even if the incident to the extent that the Petitioner

and the Complainant had sexual relations on these dates at Thane is accepted, still, from the attendant circumstances emerging from the Complainant's complaints, it is difficult to hold that such relations were without the Complainant's consent or that the consent was a product of false promise of marriage or misconception.

58. Admittedly, on 24/25 November 2022, the Complainant's marriage to her earlier husband subsisted. The marriage ended with a divorce decree only on 11 January 2024. There is prima facie substance in Mr Mohite's contention that the Complainant launched the criminal proceedings with an ulterior motive for wreaking vengeance or because the Petitioner was unwilling to pay compensation to the Complainant. Therefore, given the Hon'ble Supreme Court's decision in *Salib @ Shalu @ Salim* (supra) it would not be enough for the Court to focus exclusively on the averments made in the FIR/complaint to ascertain whether the necessary ingredients to constitute the alleged offence are disclosed or not.

59. The Hon'ble Supreme Court has held that the Court while exercising its jurisdiction under Section 482 of CrPC or Article 226 of the Constitution, need not restrict itself only to a case's stage but is empowered to consider the overall circumstances leading to the initiation/registration of the case and the materials collected during the investigation. Moreover, in such matters, the Court must look into many

other attending circumstances emerging from the case record over and above the averments and, if need be, try to read between the lines with due care and circumspection.

60. The impugned FIR, the complaint made to the Jersey City Police Station (USA), the online complaint to the Kapurbawadi Police Station Thane and the other material placed on record through the Complainant herself suggest that the allegations made are inherently improbable or that they are made with an ulterior motive for wreaking vengeance or to spite the Petitioner due to private and personal grudge. The material on record suggests that the Complainant did propose a financial settlement, which was possibly not acceded to by the Petitioner, and therefore, the complaints in the USA and India.

61. The material on record nowhere suggests that the Petitioner made false promises of marriage or that the Petitioner never intended to marry the Complainant from the inception. None of the complaints make such allegations. The complaints suggest that the Petitioner disclosed all relevant matters concerning himself to the Complainant, possibly with a view to the matrimony. The Petitioner also introduced the Complainant to his family. In the online complaint dated 25 June 2024, the Complainant referred to the Petitioner making his 83-year-old mother and elder brother fly to Jersey City to meet the Complainant and convince her to marry him. In this online complaint, the Complainant states that she deserves

compensation and justice, and she is ready for mediation and negotiations.

62. Suppose all the above material or attendant circumstances emerging from all such material are considered. In that case, the Petitioner's case deserves to be accepted, and the impugned FIR and the impugned charge sheet deserve to be quashed to meet the ends of justice. In such circumstances, requiring the Petitioner to face prosecution for an offence punishable under Section 376 of the IPC could amount to an abuse of the process.

63. In *Pramod Pawar* (supra), the Hon'ble Supreme Court, in the precise context of allegations of rape based upon false promises to marry, has explained that a breach of promise cannot be said to be a false promise. A promise to marry can be regarded as false if the intention of the maker at the time of making the promise was not to abide by it but to deceive the woman to convince her to engage in sexual relations. There is a distinction between a false promise 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. To establish a false promise, the promise maker should not intend to uphold his word when giving it.

64. Therefore, considering the allegations in the impugned FIR/compliant and even without referring to the attendant circumstances, no case is made of the Petitioner having given

any false promises without the intention of ever fulfilling those promises. The circumstances like the Petitioner and the Complainant were educated and accomplished professionals in their fields, mature individuals aged 58 and 44, or the Complainant's marriage was subsisting, cannot be overlooked in evaluating the larger picture.

65. In the case of *Pramod Pawar* (supra), the Hon'ble Supreme Court quashed the FIR alleging offence punishable under Section 376 of IPC after finding that the allegations in the FIR did not on their face value indicate that the Appellant's promise was false or that the Complainant engaged in sexual relations based on such a promise. The Court noted that there were no proper allegations in the FIR that when the Appellant promised to marry the Complainant, it was done in bad faith or to deceive her.

66. The Hon'ble Supreme Court held that a woman's consent with respect to Section 375 *must involve an active and reasoned deliberation toward the proposed act. To establish whether the consent was vitiated by a misconception of a fact arising out of a promise to marry, the promise of marriage must have been false, given in bad faith and with no intention of being adhered to at the time it was given. Moreover, 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.*

67. In the impugned FIR, neither of the above propositions stands established. Therefore, by applying the principles in *Pramod Pawar* (supra), a case is made out to quash the impugned FIR/complaint by exercising jurisdiction under Article 226 of the Constitution read with Section 482 of the CrPC.

68. In *Sameer Kondekar* (supra), the learned Single Judge of this Court interfered with the order of the Sessions Court, refusing to discharge the applicant on the ground that the case was not of consensual sexual intercourse. Still, the applicant had forced himself on the Complainant. The learned Single Judge noted that a mere allegation that force was used is inconclusive. The Court had to consider the attendant circumstances, which spoke of a prolonged relationship between the two individuals of mature age to remain in a relationship with each other. The Court held that when two mature persons come together and invest in a relationship, only one cannot be blamed because, at some point, the relationship is soured and does not culminate into a marriage. Applying the principles in *Pramod Pawar* (supra) and *Sameer Kondekar* (supra) to the facts of the present case, we are satisfied the impugned FIR deserves to be quashed.

69. The facts in *Pramod Purabia* (supra) relied upon by Mr Aadesh Konde-Deshmukh are not comparable to the facts in the present case. There, the material on record suggested that the accused established sexual relations with the divorcee

Complainant by promising matrimony. He took her to various hotels where they had sexual relations. He ultimately placed the Complainant in rented premises in a Kandivali, where he would reside with her about two to three days a week. All this continued the assurance that the accused would marry her very soon. After the Complainant broached the topic of marriage, the accused assaulted her with fists, kicked her and shifted the Complainant to her aunt's house.

70. In *Pramod Purabia* (supra), after all this, the accused apologised to the Complainant, renewed promises of marriage and got the accused pregnant. Upon insistence of marriage, the accused refused and forced the Complainant to abort the child. There are allegations of abuse, physical violence and even denial of paternity. In these circumstances and given the clear and categorical allegations in the FIR/complaint, the Coordinate Bench declined to interfere and quash the proceedings. Therefore, this decision is irrelevant to the present case's fact situation.

71. As noted earlier, there is no dispute that as of 24 or 25 November 2022, the Complainant was married to her previous husband. The Respondent secured divorce only on 11 January 2024, i.e., almost after 13 months. Allegations by a married woman that she was induced into a sexual relationship based upon the promise of marriage have been viewed differently by the Courts. Such allegations are not readily accepted for the apparent reason that while the

Complainant's marriage was subsisting, she could not have entertained the belief that she was giving her consent to sexual relations based upon a promise to marry. This certainly does not mean that a married woman's autonomy must be respected any less or that some different yardstick must be adopted when dealing with cases of rape of married women. But the Hon'ble Supreme Court and several other Courts have held that allegations by married women that they were induced to have sex based upon a false promise of marriage must be evaluated with greater circumspection and caution.

72. In *Prashant Bharti* (supra), the Hon'ble Supreme Court noted that the Complainant's marriage to Lalji Porwal subsisted till 23 September 2008. The allegations of rape based upon false promises of marriage pertained to occurrences on 23 December 2006, 25 December 2006, 01 January 2007 and 15 February 2007. All these were during the subsistence of the complaint's marriage with Lalji Porwal. The Court held that in such circumstances, it was apparent that the Complainant could not have been induced into a physical relationship based on an assurance of marriage.

73. In *XXXX Vs. State of Madhya Pradesh* (Supra), the Hon'ble Supreme Court held that where the prosecutrix was fully matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during the subsistence of her earlier marriage, conviction under Section 376 of IPC could not be sustained.

74. In *Naim Ahamed* (supra), the Hon'ble Supreme Court held that there can be no straight jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under a misconception of fact. However, in such cases, the Court must consider the surrounding circumstances. In the case before the Hon'ble Supreme Court, the prosecutrix, a married woman with three children, alleged that the accused induced her to have a sexual relationship by promising to marry her. The Court held that such a case could not be believed. The promise to marry without anything more would not give rise to the misconception of fact within the meaning of Section 90. Only a presentation deliberately made by the accused to elicit the assent of the victim without having the intention or inclination to marry her will vitiate the consent. There was a clear distinction between rape and consensual sex, and in a case like this, the Court must very carefully examine whether this was a case of mere breach of promise or not fulfilling a false promise.

75. In *Veerendra Yadav* (supra), the learned Single Judge of the Madhya Pradesh High Court, after considering several precedents on the subject, quashed an FIR and charge sheet in a case where a married woman alleged rape on the false promise of marriage. The learned Single Judge referred to *Naim Ahamed* (supra), where the 313 CrPC statement suggested that the Complainant had made financial demands

and lodged the prosecution because the same was not fulfilled.

76. Mr Aadesh Konde-Deshmukh's contentions based upon the solitary statement in the impugned FIR about forcible sexual relations on 24 or 25 November 2022 is not sufficient to sustain the impugned FIR or the impugned charge sheet based thereon. Such a statement must be considered in its entirety, along with attendant circumstances. The arguments about unprotected physical relations or the Complainant having a bad obstetric history are irrelevant, considering that the impugned FIR relates only to the 24 or 25 November 2022 incident. The allegations in the impugned FIR or the other complaints made by the Petitioner do not suggest a case of false promises by the Petitioner.

77. In any event, no case is made out to suggest that the Complainant gave her consent to be in a sexual relationship with the Petitioner for a considerable period based upon such alleged false promises of marriage. Mr Aadesh Konde-Deshmukh could not explain the Petitioner's marriage proposals, which the Complainant turned down. Also, there was no explanation for the Petitioner's introducing the Complainant to his family members or convincing the Complainant to enter matrimony. There was no explanation about the subsistence of the Complainant's marriage at the time of the alleged incident except the submission that the Complainant was already separated from her earlier husband.

78. Learned Additional Public Prosecutor's contentions about the Petitioner not cooperating with the investigation also cannot be accepted. Mr Mohite pointed out that the prosecution wanted to medically examine the Petitioner almost two years after the alleged occurrence in November 2022. Mr Mohite submitted that the Petitioner had otherwise, through his Advocate, furnished full explanations and, in that sense, had fully cooperated with the prosecution. Given all these circumstances and the nature of the allegations in the impugned FIR, we do not think that we should not exercise our discretionary jurisdiction under Article 226 of the Constitution or Section 482 of CrPC on the alleged ground of non-cooperation by the Petitioner with the investigation in India.

79. For all the above reasons, we allow this Petition and quash the impugned FIR and the impugned charge sheet at exhibit 'C' and 'L' of this Petition. The LOC based on the impugned FIR and the impugned charge sheet is directed to be withdrawn immediately. The rule is made absolute but without any cost order.

80. All concerned can act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)