

HIGH COURT OF JAMMU & KASHMIR**Bench: RAJNESH OSWAL****Date of Decision: 30 May 2024**

CRM(M) No. 497/2019 c/w Bail App No. 159/2019

KUSUM SHARMA & ORS. ...PETITIONER(S)**VERSUS****THE STATION HOUSE OFFICER, DOMANA & ORS. ...RESPONDENT(S)****Legislation:**

Section 376, 420, 354, 120B, 506 of the Ranbir Penal Code (RPC)

Section 482 of the Code of Criminal Procedure, 1973

Subject: Petition seeking quashing of FIR for offenses under Section 376 and 420 RPC, and related bail application. The petitioners argue the accusations are baseless and motivated by personal vendetta.

Headnotes:

Criminal Law – Quashing of FIR – Petition under Section 482 CrPC to quash FIR under Sections 376 and 420 RPC – Allegations involve fraudulent marriage and subsequent physical relations under false pretenses – Court finds no prima facie case against petitioners Nos. 1 & 2 (parents of petitioner No. 3) – FIR quashed against them, while continuing against petitioner No. 3. [Paras 1-17]

Role of Accused in Alleged Offenses – Analysis – Allegations of respondent No. 3 (Miss X) against petitioner No. 3 (Ajay Sharma) include deceitful marriage and coerced physical relations – Court deems investigation necessary to ascertain validity of claims – Finds no evidence implicating parents (petitioners Nos. 1 & 2) in alleged offenses – Holds their inclusion in FIR is to pressurize petitioner No. 3. [Para 12, 14]

Bail – Anticipatory Bail – Interim bail granted to petitioner No. 3 is made absolute with conditions to cooperate with investigation – Bail applications of

petitioners Nos. 1 & 2 dismissed as infructuous post quashing of FIR against them. [Paras 16-17]

Referred Cases:

- State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335
- Salib @ Shalu @ Salim v. State of UP, 2023 SCC OnLine SC 947

Representing Advocates:

Mr. Nitin Verma for the petitioners

Mr. Pawan Dev Singh, Dy. AG for respondents Nos. 1 & 2

Mr. RKS Thakur for respondent No. 3

JUDGMENT

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- 01.** Through the medium of this petition under Section 561-A Cr.PC (now 482 Cr.P.C), the petitioners have sought the quashing of the FIR No. 0134/2019 dated 07.09.2019 registered with Police Station, Nowabad, for commission of offences under Section 376/420 RPC, at the instance of respondent No. 3. The petitioners have also filed an application for grant of bail.
- 02.** The petitioner Nos. 1 & 2 are the mother and father of the petitioner No.3 respectively. It is stated that the respondent No. 3 started following the petitioner No. 3 and developed acquaintance with him. In the year 2016, the respondent No.3 started compelling him to marry her, but the petitioner No. 3 did not agree as she was Muslim and the petitioner No. 3 was a Hindu. In the month of October 2018, the respondent No. 3 told the petitioner No. 3 that if he did not marry her, she would implicate him in false and frivolous cases and would tell everyone that the petitioner No. 3 was her husband. When the petitioner No. 3 refused, she started blackmailing him.
- 03.** The petitioners have sought the quashing of FIR on the ground that if the story projected by the respondent No.3 is accepted in its entirety that she is

a legally wedded wife of petitioner No. 3 and has been living with the petitioner No.3 since 2016, still no offence under Section 376 RPC is made out. The contents of the application submitted by the respondent No. 3, pursuant to which the impugned FIR has been registered, nowhere reveal that the offence under Section 376 RPC is made out. The respondent No. 3 earlier had approached the Police Station, Sarwal and started blackmailing the petitioner No. 3 and when she could not succeed, she approached the Police Station, Nowabad, in whose jurisdiction, they never resided. It is also urged by the petitioners that the respondent No.3 was married lady and divorced by her husband.

- 04.** The official respondents have filed the response stating therein that on 07.09.2019, a complaint of respondent No. 3 was received in the Police Station through DPO, Jammu, pursuant to which FIR No. 134/2019 under Sections 376/420 RPC was registered with the Police Station, Nawabad and the investigation was entrusted to Sabdar Hussain Shah. During investigation, the Investigating Officer visited the spot, prepared the site plan and recorded the statements of the witnesses under Sections 161 Cr. P.C. The Investigating Officer also got recorded the statement of the victim/complainant under Section 164 Cr. P.C. She was also examined by the Doctor in Govt. Medical Hospital, Sarwal. The Investigating Officer also seized the Nikahnama. But thereafter the investigation could not be continued as the same was stayed in this petition.
- 05.** The respondent No. 3 has also filed the response, stating therein that it has been falsely stated that she was married and divorced subsequently. In fact, that the petitioner No. 3 made a marriage proposal to the respondent No. 3 in the year 2016. He made number of attempts to make physical relations with her, which she always resisted. Finally, she agreed to solemnize the marriage with the petitioner No. 3 and ultimately on 17.08.2016, the marriage between petitioner No. 3 and respondent No. 3 was solemnized in presence of witnesses and Molvi. A nikahnama was also executed and signed by the parties to the marriage and witnesses. For solemnizing marriage with her, the petitioner No. 3 renounced Hinduism and embraced Islam and changed his name as Atif Ahmad. In the Nikahnama, the parties have put their thumb impressions. After solemnizing the marriage with the respondent No. 3, the petitioner No. 3 entered into physical relations with her. The respondent No. 3 loved the petitioner No. 3 and solemnized marriage with him, but he and his family members have cheated her and now just to get rid of her, false allegations have been levelled. The respondent No. 3 has annexed

photographs along with her reply. It has also been stated by the respondent No. 3 that after obtaining stay order from this court, the petitioner No. 3 on 28.10.2020 called her number of times from different mobile numbers and made direct and indirect threats to her. The respondent No. 3 has mentioned some of the conversations in her response.

- 06.** Mr. Nitin Verma, learned counsel for the petitioners has argued that whole story has been put forth by the respondent No. 3 not only to harass the petitioner No. 3 but also his parents. He has further stated that if the allegations levelled in the FIR are taken on their face value, they do not disclose any commission of offence, whatsoever.
- 07.** Mr. Pawan Dev Singh, learned counsel for the respondent Nos. 1 &2 has argued that the FIR impugned cannot be quashed on the basis of disputed facts.
- 08.** Mr. RKS Thakur, learned counsel for the respondent No. 3 has argued that the petitioner No. 3 has cheated the respondent No. 3 and after cheating, he established physical relations with the respondent No. 3, therefore, the respondent No. 3 is guilty of offence under sections 376 and 420 RPC.
- 09.** Heard learned counsel for the parties and perused the record.
- 10.** The verbatim contents of the application filed by the complainant/respondent No. 3, pursuant to which FIR impugned has been registered against the petitioners are extracted as under:

“(1) Inspector General of Police, J&K Police Jammu Zone.

(2) Senior Superintendent of Police, J&K Police, Jammu.

(3) SHO/Incharge Police Station Nowabad, Jammu.

Subject: Application seeking registration of FIR against 1. Ajay Sharma @ Atif Ahmed S/o Satish Chander. 2. Satish Chander S/o Not known 3. Kusam Sharma w/o Satish Sharma, all residents of H. No. 197, Rehari Colony near Girls Hr. Secondary School Jammu under section 376, 354, 420, 120B, 506 RPC and their associates.

Sir/Madam,

I hereby respectfully submit as under:

1. that in the month of April 2016, I am residing at Sarwal in an rented accommodation wherein Ajay Sharma S/o Satish Chander met with me and proposed me which I accepted.

(2) That in the month of May, 2016, I shifted to my own accommodation at Nikki Tawi Bali Charana Jammu and started living there with my younger brother and relatives.

(3) That Ajay Sharma started visiting at my house at Beli Charana Jammu and attempted for physical relation on the pretext of love affairs but I resisted his move on the pretext that before marriage this is not possible and I asked the Ajay Sharma whether he will solemnize marriage with me. This proposal of marriage was accepted by him and sought some time so that he is able to make certain arrangements for marriage

(4) That on 17.08.2016, above said Ajay Sharma along with some strangers who were not known to me came to my house at Beli Charana and Ajay Sharma introduced them with me as Molvi, witnesses of the Nikkah and Vakil and performed the nikkah by the Ajay Sharma with me in presence of these persons. The Nikahnama was duly prepared by the Molvi Bashir Ahmed and I alongwith Ajay Sharma signed the same with thumb impression and similarly the marginal witnesses also signed the nikahnama along with Vakil.

(5) That at the time of Nikkah, Ajay Sharma wrote his name as Atif Ahmed in place of his original name of the Nikhanama which was objected by me but Ajay Sharma told that he has changed his religion and therefore, he has also changed his name which is essential for the purpose of Nikkah as told to him by the Molvi Bashir Ahmad. Not only this, Ajay Sharma also entered wrong address of the applicant on the Nikhanama on the pretext that this marriage is against the wishes of the parents of Ajay Sharma so that in near future if they came to know about the marriage, he will be able to defend himself before them.

(6) All the witness, Molvi, Vakil cited in the nikhanama was arranged by said Ajay Sharma @ Atif Ahmed and he was able to understand me at the point of time that now this is valid marriage between me and him and onwards we live as husband and wife.

(7) After marriage Ajay Sharma @ Atif Ahmed started living with me at my residential house at Beli Charana and consummated the marriage under the pretext of marriage dated 17.08.2016. It is important to say here that Ajay Sharma @ Atif Ahmed used to live with me only during the night time and during day time he used to live with her parents at Rehari Colony Jammu and the same process last till June, 2019.

(8) that said Ajay Sharma @ Atif Ahmad introduce me with all his relatives and family members including parents in the retirement party of his uncle and told them that he is going to solemnize marriage with me shortly and parents of Ajay Sharma accepted me at that point of time but know they are extending threats of live eliminated not only on cell phone but also through one of my relative namely Mohd Yousuf, in case I follow Ajay Sharma in near future.

(9). That everything was going well and in accordance with the plan of the Ajay Sharma @ Atif Ahmad till January 2019, when all of sudden he started harassing and torturing me for the reason best know to him and when I tried to pacify him he was not ready to hear a single word and when attitude of Ajay Sharma @ Atif Ahmad remained as such for months together, I approached the Police Station, Women Cell Jammu and lodged a written application against him under No. 641/2019 dated 25.05.2019 and the same is pending before Police sand till date no action has been taken by them on the application so filed by the applicant.

(10) That when Ajay Sharma @ Atif Ahmad got the knowledge of the application filed before the Women Cell Jammu, he left the company of the applicant and told that there is no marriage between us and whatever has been done by him is only to deceive the applicant only in order to get physical relation with me. Said Ajay Sharma @ Atif Ahmad further told that performing Nikkah with me is a drama and now he is no more interested to continue with such relation. When this fact was brought into knowledge of parents of Ajay Sharma @ Atif Ahmad, they instead of understanding their son started extending threats of life elimination to me through one of my relative namely, Mohd Yousaf and not only this the father of the Ajay Sharma @ Atif Ahmad also offered money to close this chapter for which I have a evidence to prove that Ajay Sharma @ Atif Ahmad and his parents are extending threats and offering money to close the chapter.

(11). That I was surprised and traumatized to know this attitude of Ajay Sharma @ Atif Ahmad who in order to get physical relation with me by deceitful means have solemnized marriage with me and developed physical relations with me for last more than three years under the pretext of marriage which was never accepted by said Ajay Sharma @

Atif Ahmad and now left the applicant in such a situation which was never think by me.

(12). Under these fact and circumstances, the Ajay Sharma @ Atif Ahmad along with his associates who accompany him on the day of marriage namely Bashir Ahmed (Molvi) two marginal witnesses, namely Mohd Gaffor S/o Zair Hussain R/o Jhiri Tehsil Serh District Jammu and Shamsheer Al S/o Haji Norra R/o Merian Sahib R. S. Pura, Jammu as Vakil with common intention and made reason to believe me that the marriage is real one, dishonesty and fraudulently performed the Nikkah of the applicant with Ajay Sharma @ Atif Ahmad and thereafter said Ajay Sharma @ Atif Ahmad developed a physical relation with the applicant which lasted for more than three years and now Ajay Sharma @ Atif Ahmad is not ready to accept me as wife meaning thereby, above said Ajay Sharma @ Atif Ahmad has developed physical relations with me by deceitful means under a marriage which was never accepted by him for which he is liable to be prosecuted under the relevant law.

13, Similarly the parents of the Ajay Sharma @ Atif Ahmad, who after fully made aware of the fact that their son Ajay Sharma has converted his religion and accepted Islam has solemnized marriage with applicant by deceitful means by keeping the applicant in dark and instead of taking any action against him son started extending life elimination threats to me and also told that they have high approach in the higher ups both in the police as well as in the administration department and when the applicant did not succumb to their threats now the father of the Ajay Sharma @ Atif Ahmad started offering money to me for settling the issue with their son.

(14). That the applicant tried his level best to make understand the Ajay Sharma @ Atif Ahmad that there is valid marriage between us but every time he is reluctant to accept me as his legally wedded wife denied the marriage and told that the applicant is now stranger for him and he has done what he intends to do after dodging the applicant. It is respectfully submitted here that every act has been done by Ajay Sharma @ Atif Ahmad at my house Beli Charana, Jammu. Keeping in view that facts and circumstances of the case, the applicant seeks action against (1) Ajay Sharma @ Atif Ahmad, S/o Satish Sharma. (2) Satish Sharma S/o not known (3) Kusam Sharma W/o Satish Chander Sharma, all residents of H. No. 197 Rehari Colony near Girls Hr. Secondary School

Jammu. (4) Bashir Ahmed (Molvi) b two marginal witnesses namely Mohd Faffor S/o Zair Hussain R/o Jhiri Tehsil s/erh, District Jammu and Shamsheer Ali S/o Haji Norra R/o Merian Sahib R. S. Pura Jammu and Vakil under Section 376, 354, 420 120_B, 34, 506 RPC and other provisions of law in the interest of justice. Dated. Applicant Affana Bano Shah D/o Mohd Yousaf Sha A/P Nikki Tawi Beli Charana Jammu. xxxxxxxxx.”

11. Pursuant to the direction of the Court, the statement of the prosecutrix was also recorded under Section 164 Cr.PC and in her statement, she has stated that in the month of May-June, 2016, the petitioner No., 3 had made an attempt to sexually assault her but his attempt was not successful and the Police took him with them. Thereafter, the petitioner No. 1 requested her to withdraw her complaint and accordingly, she withdrew her complaint. On 17.08.2016, they solemnized the marriage and started living as husband and wife. In the month of May 2019 while she and petitioner No. 3 had gone to Hotel 17 Miles, the petitioner No. 3 used some unwarranted language towards a girl, who had accompanied his friend. She asked the petitioner No. 3 to say sorry to her, however, instead of saying sorry, he took the complainant out and assaulted her in the car. Thereafter, she made a complaint before the Women Cell and when the Police of Women Cell called the petitioner No. 3 in the Police Station, he said that she was not his wife. On the asking of petitioner No. 3, she went to Kishtwar and when she went there, the petitioner No. 3 called her on phone and told her that he did not recognize her and he had not solemnized any marriage with her. In June 2018, she came back to Jammu and met petitioner No. 2 and disclosed the whole story to him. He asked her to spare few days' time to him, he would talk to Ajay Sharma. Thereafter, the petitioner No. 2 humiliated her. On 20.06.2019, she made a complaint with Police Post, Sarwal, where the petitioner No. 3 was called. He refused to acknowledge the Nikahnama. Ajay Sharma had written his name in the Nikahnama and put his thumb impression on the same. He also refused to acknowledge his signature and thumb impression. She further stated that she resided with the petitioner No. 3 considering him as her husband and was also got pregnant twice, but Ajay Sharma got the foetus aborted. The petitioner No. 2 insisted her to take her case back and accept money in lieu thereof.

12. From the statement of the prosecutrix, this Court does not find that there is any allegation against the petitioner Nos. 1 & 2 in respect of commission of any offence. They have been arrayed as accused only because they are the parents of the petitioner No.3 and to pressurize them, to force the petitioner No. 3 to accept the respondent No. 3 as his wife. The parents cannot be held vicariously held responsible for the acts of their son, when there are no allegations against them in respect of commission of any offence. In **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Apex Court has laid down following parameters for quashing the criminal proceedings/FIR:

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) **Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.**

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.”**

13. It will be appropriate to take note of the judgment of the Hon'ble

Supreme Court of India in case titled, **“Salib @ Shalu @ Salim vs. State of UP and ors”**. **Salib v. State of U.P., 2023 SCC OnLine SC 947** wherein, the Hon'ble Supreme court while quashing the criminal proceedings against the appellant therein held as under:

“ 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.”

(emphasis added)

14. So far as petitioner No. 3 is concerned, there are allegations against him that he entered into nikah with her and resided with her as husband and established physical relations with her. Whether the nikahnama has been signed by the petitioner No. 3 or not, is a matter of investigation. Since factual dispute is involved which requires investigation, as such, this Court does not find any reason to quash the FIR impugned qua the petitioner No. 3. So far as the petitioner Nos. 1 & 2 are concerned, they have been implicated as accused with ulterior motive by the respondent No. 3, as already mentioned above.
15. In view of the above, FIR No. 0134/2019 dated 07.09.2019 registered with Police Station, Nowabad for commission of offences under Section 376/420 RPC qua the petitioner No. 1 & 2 **is quashed**. However, the investigation in the impugned **FIR shall continue** in respect of petitioner No. 3.
16. The petitioners have been granted bail in anticipation of arrest vide order dated 13.09.2019. The allegations levelled by the respondent No. 3 in her reply that the petitioner No. 3 called her on different mobile numbers and threatened her, are also the subject matter of investigation.

- 17.** Accordingly, with quashing of FIR impugned against the petitioner Nos. 1 & 2, their application for grant of bail is dismissed, as having been rendered infructuous. The interim bail granted to the petitioner No.3 vide order dated 13.09.2019 is made absolute with additional condition that he shall participate in the investigation and appear before the Investigating Officer as and when required.
- 18.** Disposed of.
- 19.** Case diary be returned to Mr Pawan Dev Singh, Dy. A.G.

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