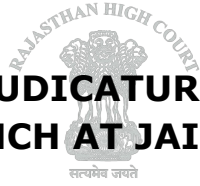




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4245/2021

Gajendra Mourya S/o Roopnar Mourya, aged about 22 Years, R/o Raigaron Ka Mohallan, Ojda, Police Station, Harmara, Jaipur (Rajasthan)

----Petitioner

Versus

1. State of Rajasthan, Through P.P.
2. Victim 'SK'

----Respondents

For Petitioner(s) : Mr.Rahul Sharma for
Mr.Rajneesh Gupta

For Respondent(s) : Mr.Vivek Choudhary, PP
Mr.Yunus Khan

JUSTICE ANOOP KUMAR DHAND

Order

30/03/2026

Reportable

1. By way of filing the instant criminal misc. petition, a prayer has been made for quashing the impugned F.I.R. No.281/2021 registered at the Police Station Harmada, District Jaipur City (West) for the offences punishable under Sections 376, 384, 420 & 120B IPC.
2. Learned counsel for the petitioner submits that the prosecutrix 'SK' is a major lady, aged around 19 years at the time of filing of this petition and her date of birth is 11.09.2002. She along-with the petitioner submitted an application under the provisions of the Special Marriage Act, 1954 (for short, 'the Act of 1954') for solemnizing their marriage before the Marriage Officer/ A.D.M. (IV), Jaipur, District Jaipur on 10.03.2021. Counsel submits



that at the time of submitting the aforesaid application, the age of the prosecutrix was 18 years and 5 months. Counsel further submits that as per the procedure and provisions contained under the Act of 1954, one month notice was issued to the family members of the petitioner as well as the prosecutrix and thereafter, they re-appeared before the Marriage Officer and submitted their affidavits along-with affidavits of three witnesses. Subsequently, their statements were recorded and after perusal of their affidavits along-with affidavits of the three witnesses who were present, their marriage was solemnized by the Marriage Officer on 12.04.2021 and a Marriage Certificate in this regard was also issued on the same day. Counsel submits that the factum of marriage has not been disputed by the petitioner, but at the later stage, the same was disputed by the respondent-complainant. Hence, both of them approached the Family Court No.1, Jaipur Metropolitan-I, Jaipur, where, the petitioner submitted an application under Section 22 of the Act of 1954 for restitution of conjugal rights, whereas, the respondent-complainant/prosecutrix submitted an application under Section 25 of the Act of 1954 for annulment of the marriage.

3. Counsel submits that the aforementioned applications submitted by the petitioner as well as by the prosecutrix were jointly decided and rejected by the Court of Judge, Family Court No.1, Jaipur Metropolitan-I, Jaipur vide order dated 15.07.2025, against which both of them separately approached this Court by way of filing two different civil miscellaneous appeals and the same are lying pending before this Court for adjudication on merits.





4. Counsel submits that in the meantime, on 03.06.2021, i.e., after almost two months of their marriage, the instant impugned F.I.R. has been lodged by the prosecutrix with vague allegations stating therein that the petitioner has been committing rape upon her for last more than one month and on 12.04.2021, i.e., on the day of their marriage, rape was again committed upon her and she was blackmailed to sign the marriage papers before the Marriage Officer/ ADM (IV), Jaipur, District Jaipur. Counsel submits that the aforesaid story is highly unbelievable and has been created by the prosecutrix. Counsel further submits that the prosecutrix is legally wedded wife of the petitioner, hence, under these circumstances, the alleged offence is not made out against the petitioner.

5. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.** reported in **(2019) 9 SCC 608**.

6. Counsel submits that in view of the submissions made hereinabove, the impugned F.I.R. is liable to be quashed and set-aside.

7. *Per contra*, learned Public Prosecutor as well as counsel appearing on behalf of the complainant-respondent opposed the arguments raised by counsel for the petitioner and submitted that as per the allegations levelled in the impugned F.I.R., the complainant-respondent was a minor at the time of solemnization of the marriage under the Act of 1954 and rape was committed upon her one month before the lodging of the impugned F.I.R. It





has been further alleged that an obscene video of the prosecutrix was recorded by the petitioner and in fact, marriage was not solemnized between the parties with mutual consent, rather the prosecutrix was forced to sign the marriage certificate before the Marriage Officer/ ADM (IV), Jaipur, District Jaipur on 12.04.2021. Counsel submits that the prosecutrix is not admitting the factum of marriage, therefore, an application under Section 25 of the Act of 1954 was submitted by her before the Family Court No.1, Jaipur Metropolitan-I, Jaipur seeking annulment of the marriage. Counsel submits that the allegations levelled in the impugned F.I.R. reveal commission of a cognizable offence, hence, under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

8. Heard and considered the submissions made at the Bar and perused the material available on record.

9. Perusal of the record indicates that date of birth of the prosecutrix is 11.09.2002 and she along-with the petitioner approached the Marriage Officer/ A.D.M. (IV), Jaipur, District Jaipur by way of filing an application under Section 5 of the Act of 1954 showing their intention to get married. The Marriage Officer, after following the procedure and provisions contained under the Act of 1954, issued one month notice to all the concerned parties inviting their objections, if any, against the marriage of the petitioner & the prosecutrix. When no objections were submitted by anyone, the petitioner as well as the prosecutrix along-with three witnesses appeared before the Marriage Office/ ADM (IV), Jaipur, District Jaipur after completion of 30 days, i.e., on 12.04.2021, wherein their statements were recorded and their





affidavits were also perused and after being satisfied from all four corners, the Marriage Officer solemnized their marriage and issued a Marriage Certificate in this regard on the same day, i.e., on 12.04.2021. Photographs have also been enclosed along-with the instant petition, which indicate that their marriage was solemnized with mutual consent. However, it appears that subsequently, the prosecutrix has changed her mind and lodged the instant F.I.R., after a lapse of around two months from the date of solemnization of their marriage, wherein the allegations of rape have been levelled against the petitioner. Further allegations have been levelled stating that the petitioner was sexually assaulting her continuously for last more than one month.

10. The documents annexed with the instant petition further indicate that the prosecutrix has submitted an application under Section 25 of the Act of 1954 seeking annulment her marriage with the petitioner before the Family Court on 28.04.2022 and in the meanwhile, the petitioner has submitted an application under Section 22 of the Act of 1954 on 07.07.2021 seeking restitution of conjugal rights. The learned Judge, Family Court No.1, Jaipur Metropolitan-I, Jaipur vide its judgment dated 15.07.2025 jointly decided and rejected both the applications submitted by the parties. Aggrieved by the aforesaid order, both the parties have separately approached this Court by way of filing two different misc. appeals and the said appeals are still lying pending for adjudication on merits.

11. The main allegation levelled against the petitioner by the prosecutrix is that the offence of 'Rape' was committed by the petitioner upon her. The offence of rape is punishable under





Section 376 IPC and the same has been defined under Section 375 IPC.

12. It is worthy here to quote the definition of "rape" as prescribed under Section 375 of IPC, which reads as under:

375. Rape.- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

First.- Against her will.

Secondly.- Without her consent.

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

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

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

Sixthly.- With or without her consent, when she is under sixteen years of age. Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

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

13. The definition of "rape" was later amended by the Criminal Law Amendment Act, 2013 (Act No.13 of 2013) and the amended definition of "rape", as defined under Section 375 of IPC reads as under:-

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





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

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

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

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

First. Against her will.

Secondly. Without her consent.

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

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

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

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

Seventhly. When she is unable to communicate consent. Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific sexual act:





Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1.A medical procedure or intervention shall not constitute rape.

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



14. Upon perusal of the definition of the term 'Rape' under Section 375 IPC, it is evident that the said offence has been expansively defined under the IPC. As per this expansive definition, sexual intercourse by a man with his own wife would not constitute the offence of rape, if she is above 15 years of age. The Hon'ble Apex Court in the case of **Navtej Singh Johar Vs. Union of India** reported in **(2018) 1 SCC 791** has held that in the light of Exception 2 of Section 375 IPC, sexual intercourse or sexual acts by a husband with his wife (not being a minor) do not constitute rape, thereby rendering the aspect of consent within marriage legally immaterial for the purpose of prosecuting such acts as rape.

15. In the case of **Kuldeep Singh Vs. State of Punjab & Ors.** while deciding **SLP (Civil) No.13277 of 2023** vide judgment dated 31.01.2025, the Hon'ble Apex Court has dealt with the identical issue in Para Nos.6 to 16, which read as under :-

"6. In the meanwhile, the Respondent No. 3 on 01.09.2022 recorded a statement under section 164 of the Cr.P.C, with the Ld. JMFC raising allegations of rape against the appellant and also alleged that the marriage has been solemnised forcibly by the appellant. It was further alleged that mother and brother of the appellant had also assisted the appellant in the commission of said crimes. Accordingly, the names of brother and mother of the appellant were



also added to the FIR along with addition of Sections 363, 120B and 376 of IPC.

7. Accordingly, the Special Investigation Team3 consisting of Superintendent of Police, Hoshiarpur, Deputy Superintendent of Police-Crime against Women and Children, Hoshiarpur and Deputy Superintendent of Police-Sub Division City Hoshiarpur had conducted investigation in the matter and filed an inquiry report. In furtherance of the inquiry report, the police filed the challan dated 01.07.2023 under Section 173 of Cr.P.C. which stated that from the investigation conducted by SIT, allegations levelled by the victim against Kuldeep Singh regarding kidnapping and pressurizing her formarriage have not been proved as it was found that the victim has solemnised the marriage with the appellant with her own consent. It was also found that no role can be attributed to the mother or brother of the appellant and hence they were completely exonerated as no evidence could be collected against them. As such, Section 366 of IPC was deleted and only Sections 376 and 506 of IPC survived against the appellant as per the chargesheet.

8. Thereafter, the appellant had preferred CRM-M-No. 41161 of 2023 dated 18.08.2023 before the High Court seeking quashing of FIR No. 148 of 2022 and all consequential proceedings. The High Court, *videthe* impugned order, had dismissed the appellant's petition while holding that the petition lacked any merit and the matter required evaluation of evidence and adjudication by the Trial Court.

9. Aggrieved by the said order, the appellant is before us.

10. Before moving forward, we find it relevant to note here that neither Respondent No. 2, i.e. the complainant nor Respondent No. 3, i.e. the victim has





entered appearance before this Court despite sufficient service of notice.

11. We have heard the learned counsel for the accusedappellant and Respondent No. 1- State and also perused the material on record.

12. It has been submitted by the appellant that he is the legally wedded husband of Respondent No. 3 and therefore no offence under Section 376 of IPC is made out against him since he is covered under Exception No. 2 appended to Section 375 of IPC. The appellant has also brought to our notice the written statement dated 01.08.2023 filed by the Respondent No. 3 in the matter of restitution of conjugal rights and highlighted that she has nowhere made any allegations pertaining to rape against the appellant in the said written statement.

13. It would be relevant to refer to Annexure P-3 which is an order passed by Ld. Single Judge of the Punjab & Haryana High Court in CRWP No. 5913 of 2022 on 21.06.2022 providing protection to the petitioners therein being the appellant and Respondent No. 3. The said petition had been jointly filed by the appellant and Respondent No. 3 seeking protection from the family members of the Respondent No. 3 as she had married the appellant of her own free will and volition against the wishes of her family members. Moreover, it may also be noted that in the reply filed by the Respondent No. 3 to the appellant's petition for restitution of conjugal rights, she has not made any allegation of rape or marriage by force against the appellant. Further, the Respondent No. 3 or for that matter Respondent No. 2 despite service of notice, have not come forward to dispute or deny the abovefacts.

14. Importantly, it must be noted that the case as of now, after the filing of





chargesheet, survives only to the extent of allegations under Sections 376 and 506 of IPC as it was established during the inquiry that the victim had solemnised the marriage with the appellant out of her own free will.

15. In this regard, it has been rightly pointed out by the appellant that as per Exception 2 under Section 375 of IPC, sexual intercourse by a man with his own wife cannot be termed as rape and, hence, a charge under Section 376 of IPC cannot be sustained against the appellant. Further, the conduct of the Respondent No. 2 and 3 in failing to enter appearance despite sufficient notice is reflective of the fact that it is a dead case where no purpose shall be served in continuing the criminal proceedings alleging charges of rape against the appellant.

16. As such, given the facts and circumstances of the case, it is evident that no *prima facie* case constituting any offence is made out against the appellant and he is entitled to the relief sought."

Hence, it is clear that if the accused is legally wedded husband of the victim, the offence of rape punishable under Section 376 IPC is not made out as he is covered under Exception 2 appended to Section 375 IPC.

16. It appears that the petitioner and the prosecutrix desired to marry each other, however, their parents were not accepting their matrimony because they were solemnizing an inter-caste marriage. Therefore, the petitioner and prosecutrix while invoking the process of solemnizing Court marriage under the Act of 1954. Accordingly, applied for marriage before the Marriage Officer/ ADM (IV), Jaipur, District Jaipur and thereafter, one month notice was issued to all the concerned parties inviting their objections, if any,





against their marriage. When no objection was received, their marriage was solemnized by the Marriage Officer ADM (IV), Jaipur, District Jaipur. Hence, it is clear that the prosecutrix has solemnized marriage with the petitioner of her own wish and will, and against the wish and will of her family members. Hence, no prima facie case is made against the petitioner constituting any offence.

17. Considering the overall facts and circumstances of the case and looking to the fact that the prosecutrix is a major lady of the age of above 18 years at the time of marriage and she herself has solemnized marriage with the petitioner on 12.04.2021, lodging of the impugned F.I.R. on subsequent date amounts to abuse of process of law. Hence, the entire proceedings arising out of the impugned F.I.R. stand quashed and set-aside.

18. In view of the discussions made hereinabove, this Court is of the considered opinion that no prima facie case is made out against the petitioner under Section 376 IPC as the prosecutrix has attained the age of majority and is the legally wedded wife of the petitioner. No offence of rape is made out against the legally wedded husband such as the petitioner.

19. Accordingly, the instant criminal misc. petition stands allowed. The proceedings arising out of the impugned F.I.R. No.281/2021 registered at Police Station Harmada, District Jaipur City (West) against the petitioner stand quashed and set-aside.

20. The stay application and all pending application(s), if any, stand disposed of.

21. Before parting with this order, this Court observes that the finding of fact recorded by this Court is confined to disposal of the





instant petition and for quashing of the impugned F.I.R. and the same would not have any bearing on the proceedings initiated by the petitioner under Section 22 of the Act of 1954 as well by the prosecutrix under Section 25 of the Act of 1954. The concerned Court would decide the same on their merits independently, after hearing the arguments raised by the respective parties.

(ANOOP KUMAR DHAND),J

Aayush Sharma /3

