



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Revision Petition No. 406/2019
CNR: RJHC010198242019 | URN: CRLR / 1061U / 2019



-----Petitioner

Versus

- 1. State, Through Pp
- 2.

-----Respondents

For Petitioner(s)	:	Mr. Kaushal Gautam Ms. Falguni Sharma
For Respondent(s)	:	Mr. Sri Ram Choudhary, PP Mr. D.L. Rawla Mr. Pravesh Kumar Rawla

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

23/07/2026

By way of filing the present revision petition, the petitioner has challenged the legality, validity and correctness of the order dated 01.03.2019 passed by the learned Additional Sessions Judge (Women Atrocity Cases), Bikaner in Sessions Case No.89/2018 (State vs. Mukesh), whereby charges have been framed against the petitioner for the offences punishable under Sections 450, 420, 376(2)(n), 366 and 323 of the Indian Penal Code.

Learned counsel for the petitioner submitted that respondent No.2-complainant lodged an FIR alleging, *inter alia*, that her marriage had been solemnized with one Ishwar Ram about



thirteen years prior to the incident. According to the complainant, after about nine years of marriage, her husband compelled her to leave the matrimonial home, whereafter she started residing at her parental house. It was further alleged that about ten months prior to the lodging of the FIR, she came into contact with the present petitioner, who happened to be a friend of her brother. The petitioner allegedly developed physical relations with her on the false promise of marrying her. It was further alleged that on 26.08.2018, the petitioner asked her to come with her Aadhaar Card for solemnization of marriage, but he neither fulfilled the promise nor thereafter remained in contact with her and switched off his mobile phone.

Learned counsel submitted that the allegations contained in the FIR itself reveal that the complainant was a mature married woman, fully conscious of her marital status and capable of understanding the consequences of her actions. Therefore, by no stretch of imagination can it be said that she was induced into establishing physical relations solely on the pretext of marriage. It was contended that the complainant voluntarily entered into a physical relationship with the petitioner, which continued for more than ten months. This circumstance, by itself, prima facie demonstrates that the relationship between the parties was consensual. Hence, even on the basis of the averments contained in the FIR, no offence of rape is made out.

Learned counsel further submitted that the learned trial Court failed to appreciate that the essential ingredients constituting the offences punishable under Sections 450, 420,



376(2)(n), 366 and 323 IPC are wholly absent in the present case and, therefore, the petitioner deserves to be discharged.

Per contra, learned Public Prosecutor as well as learned counsel for the complainant vehemently opposed the revision petition. It was submitted that the allegations are grave in nature and disclose the commission of serious offences. Learned counsel argued that at the stage of framing of charge, the Court is not required to meticulously examine the evidence on record or consider the defence of the accused. The only requirement is to ascertain whether a prima facie case exists. It was further contended that the material available on record clearly indicates that the petitioner was aware of the complainant's matrimonial dispute and, taking advantage of her vulnerable position, induced her into establishing physical relations under a false promise of marriage without ever intending to fulfil such promise. It was thus submitted that the complainant's consent stood vitiated by fraud and misconception of fact from its very inception.

Heard.

Having heard learned counsel for the parties and upon perusal of the material available on record, this Court finds that Section 376(2)(n) IPC prescribes enhanced punishment where rape is committed repeatedly upon the same woman. The expression "repeatedly" employed in the provision contemplates more than one distinct act of sexual intercourse constituting rape, committed at different points of time. The object of the provision is to deal with aggravated cases involving repeated acts of sexual assault and not a continuing consensual relationship subsequently alleged to be non-consensual.





The Hon'ble Supreme Court, in "**Naim Ahmed vs. State**" **reported in (2023) 15 SCC 385**, while dealing with a case where the prosecutrix, who herself was a married woman, alleged that she had consented to sexual relations on the assurance of marriage, observed as under:

"21. The bone of contention raised on behalf of the Respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the Accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375 Indian Penal Code. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the Accused. In case of false promise, the Accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the Accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence Under Section 376. As stated earlier, each case would depend upon its proved facts before the court."

The Hon'ble Supreme Court, in "**Pramod Kumar Navratna vs. State of Chhattisgarh**", **reported in (2026) 2 Supreme 631**, while considering allegations of repeated rape made by a mature married woman on the basis of a promise of marriage, held that the law does not recognize a second marriage during the subsistence of a valid first marriage. Therefore, where both parties are conscious of the subsisting marital status of the prosecutrix, it



would ordinarily be difficult to conclude that she was induced into a physical relationship solely on the promise of marriage.

In the present case, it is an admitted position that the complainant was legally married to Ishwar Ram and that no decree of divorce had been obtained at the relevant point of time. Consequently, any alleged promise of marriage could not have been lawfully fulfilled unless the existing marriage had first been dissolved in accordance with law. *Prima facie*, therefore, it cannot be said that the complainant's consent was obtained solely on a legally enforceable promise of marriage.

The admitted facts further reveal that the complainant voluntarily maintained a physical relationship with the petitioner over a considerable period. *Prima facie*, the material available on record suggests that the relationship was consensual and that the criminal proceedings came to be initiated only after the relationship between the parties deteriorated.

This Court is, therefore, of the *prima facie* opinion that the charge-sheet and the material collected during investigation do not disclose sufficient grounds for framing charges against the petitioner for the offences punishable under Sections 450, 420, 376(2)(n), 366 and 323 IPC.

Consequently, the revision petition is allowed. The order dated 01.03.2019 passed by the learned Additional Sessions Judge (Women Atrocity Cases), Bikaner in Sessions Case No.89/2018 framing charges against the petitioner for the offences under Sections 450, 420, 376(2)(n), 366 and 323 IPC is





quashed and set aside. The petitioner stands discharged from the aforesaid charges.

Stay petition and all pending applications, if any, stand disposed of.

(KULDEEP MATHUR),J

7/Divya Raj Jasmatiya

