

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No.5664/2025
URN: CRLMP / 13105U / 2025

-----Petitioner

Versus

- 1. State Of Rajasthan through P.P.
- 2. Victim

-----Respondents

For Petitioner(s)	:	Mr. Sushil Pujari Mr. Rahul Kumar Sharma
For Respondent(s)	:	Mr. Manvendra Singh Shekhawat, PP Mr. Ashutosh Bhatia

JUSTICE ANOOP KUMAR DHAND

Order

17/07/2026

- 1. The instant criminal misc. petition has been preferred with the prayer to quash the impugned FIR No.299/2025 registered with the Police Station Udhyog Nagar, District Sikar for the offences punishable under Sections 419, 420, 384, 376(2)(n), 344, 327, 328, 120B and 376D IPC.
- 2. Learned counsel for the petitioner submits that the prosecutrix-respondent No.2 is a major lady and after her divorce with the former husband, she performed special marriage under the provisions of the Special Marriage Act, 1954 with the petitioner before the Marriage Officer, i.e., the Id. Additional

District Magistrate, Jaipur, on 21.11.2022. Learned counsel submits that the marriage of the parties was an inter religious marriage and when the parties received threat perception to their life and liberty, the prosecutrix submitted an application before the authorities for grant of protection. He further submits that even a Criminal Writ Petition No.812/2022 was also submitted before this Court seeking protection of their personal life and liberty at the hands of their family members. Learned counsel submits that out from the wedlock, a daughter "M" was born on 14.10.2024. He further submits that the prosecutrix was happy with the family members of the petitioner, this fact is clear from the photographs annexed with the instant petition.

3. Learned counsel further submits that later on, a concocted story was created by the prosecutrix, wherein the allegations have been leveled against the petitioner stating therein that by administering drugs, medicines, and through black magic, she has been misled by the petitioner to get married with him, and allegations of rape have been leveled against him. Learned counsel submits that the prosecutrix is a legally wedded wife of the petitioner, hence in terms of Exception 2 appended to Section 375 IPC, no offence is made out against the legally wedded husband, i.e., the petitioner. He submits that registration of the impugned FIR amounts to abuse of the process of law, hence, the same is liable to be quashed and set aside.

4. *Per contra*, learned Public Prosecutor as well as learned counsel appearing on behalf of the complainant opposed the arguments raised by counsel for the petitioner and submitted that by using black magic, the marriage of the prosecutrix with her

earlier husband was dissolved by the petitioner and by administering drugs and medicines, the marriage was solemnized with the petitioner before the Marriage Officer, against the wish and will of the prosecutrix. They submit that after investigation, the Police has found a *prima facie* case against the petitioner for which he has been charged before the court of the Id. Additional Sessions Judge No.2 Sikar, where an application seeking discharge of the petitioner was submitted, but the said application was rejected and charges have been framed against the petitioner by the Court concerned under section 419, 420, 384, 327, 344 & 328 & 120B IPC, and under Section 6(2) of the Rajasthan Prevention of Witch-Hunting Act, 2015. Learned counsel submits that under the changed circumstances, the instant criminal misc. petition has become infructuous and the same is liable to be rejected.

5. In rebuttal, learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Apex Court in the case of **Mukesh & Ors. Vs. The State of Uttar Pradesh & Ors.**, while deciding **Special Leave Petition (Criminal) No. 12354/2024** decided on 29.11.2024. Learned counsel submits that as per the ratio propounded by the Hon'ble Apex Court in the case of **Mukesh (surpa)**, after submission of charge sheet and after framing of charges, the criminal misc. petition filed by the petitioner seeking quashing of the FIR does not become infructuous and the same is maintainable under section 482 Cr.P.C./Article 226 of the Constitution of India, if the challenge to an FIR is on the ground of abuse of the process of law and in the instant case, the process has been misused by the prosecutrix, who is the legally wedded wife of the petitioner.

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

7. Perusal of the record indicates that the prosecutrix-respondent No.2 is a major lady who after her divorce from the earlier husband performed marriage with the petitioner under the provisions of the Special Marriage Act before the Marriage Officer-cum-Additional District Magistrate, Jaipur on 21.11.2022 and her marriage has also been registered by the said Marriage Officer and a certificate in this regard has been issued on 21.11.2022.

8. It appears that the married couple, i.e., the petitioner and the prosecutrix, were apprehending threat to their life and liberty, hence, they not only approached the authorities concerned, but before this Court also by way of filing S.B. Criminal Writ Petition No. 812/2022, seeking protection to their life and liberty at the hands of their family members.

9. The record further reveals that from the wedlock of the petitioner and the prosecutrix, one daughter "M" was born on 14.10.2024.

10. It appears that later on, after four years of marriage and after one year of the birth of the girl child, the prosecutrix has lodged the instant FIR with vague allegations that she was misled by the petitioner through drugs and medicines and she was compelled to marry him and was raped and sexually exploited by the petitioner.

11. The main allegations 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 form marriage 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, *vide* the 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."

16. Hence, it is clear that the petitioner is legally wedded husband of the victim. The offence punishable under Section 376 is not made out, as he is covered under the Exception 2, appended to Section 375 IPC. So far as the rest of the offences are concerned, the same are also not made out *prima facie* against the petitioner.

17. Considering the overall facts and circumstances of the case and looking to the fact that the prosecutrix is a major lady who has above 18 years at the time of marriage and she herself has solemnized marriage with the petitioner on 21.11.2022 and since out from their wedlock, a girl child was born on 14.10.2024, it appears that subsequently the prosecutrix has changed her mind

and lodged the instant FIR after a lapse of around three years since her marriage and after one year of birth of the girl child, wherein multiple allegations including allegation of rape have been levelled against the petitioner.

18. The registration of the impugned FIR is nothing but abuse of the process of law, hence, the entire proceedings arising out of the impugned F.I.R. stand quashed and set-aside.

19. Accordingly, the instant criminal misc. petition stands allowed. Stay application as well as all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J