

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.10550 OF 2022

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BETWEEN:

MR.RAJESH K.S.N
(K.S.N. RAJESH)
S/O LATE K.N. SEETHARAMAIAH
AGED ABOUT 45 YEARS
ADVOCATE, KSNR ASSOCIATES
ESSEL CHAMBER
KARANGALPADY
MANGALURU – 575 003
RESIDENT OF NO. 4-35/4(9)
"SHARVAREE", SANKAIGUDDE
BEJAI NEW ROAD,
MANGALURU – 575 004
D.K. DISTRICT.

... PETITIONER

(BY SRI PARAMESHWAR N.HEGDE, ADVOCATE)

AND:

1 . STATE BY
KARNATAKA THROUGH
MANGALORE WOMEN POLICE STATION
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . XXXXX
XXXXX
XXXXX
XXXXX

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R-1;
SMT.SOPHIA, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE CHARGE SHEET IN C.C.NO.2108/2022 REGISTERED FOR THE OFFENCE P/U/S.376, 376(2)(F), 376(2)(K), 376(C)(A), 511, 354-A, 354-B, 354-C, 354-D, 506, 384, 388, 389, 204, 203, 212, 120-B, 179, 202 R/W SEC.149 OF IPC REGISTERED BY THE 1ST RESPONDENT POLICE AND PENDING ON THE FILE OF THE JMFC (III COURT) MANGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question proceedings in C.C.No.2108 of 2022 pending before the JMFC (III Court), Mangaluru arising out of charge sheet in Crime No.78 of 2021 of Mangalore Women Police Station registered for offences punishable under Sections 376, 376(2)(f), 376(2)(k), 376C(a), 511,

354A, 354B, 354C, 354D, 506, 384, 388, 389, 204, 203, 212, 120B, 179, 202 r/w 149 of the IPC.

2. *The facts adumbrated*, are as follows:-

The petitioner is a practicing Advocate. The 2nd respondent is the complainant. It is the case of the prosecution that the 2nd respondent, a second year law student of the SDM College gets to know the petitioner through one Mr. Dhruva Hegde, a classmate and friend. It is the case that the 2nd respondent was in requirement of work-cum-internship and, therefore, informs Mr. Dhruva Hegde to search out a place for internship. It is then Mr. Dhruva Hegde introduced to his brother-in-law one Mr. Shivanandana who was in contact with the petitioner. It is on the recommendation of Mr. Shivanandana, the complainant joins the office of the petitioner on 14-08-2021. It is said that the petitioner had narrated of the job and also indicated that the intern will have to stay up to 8.00 p.m. It was further informed that a stipend of ₹6,000/- per month would be paid. The job began from 18-08-2021 and days passed by. The petitioner is said to have

befriended the complainant by communications through whatsapp messages. The complainant is said to have reacted to such whatapp messages without knowing the intention of the petitioner. It is further alleged that the petitioner used to send CCTV footage and pictures of the complainant and was continuously watching the private movements of the complainant like combing hair, washing face etc. through the CCTV footage and used to send the same as pictures to the complainant.

3. As days passed by liberty was taken by the petitioner for making certain comments with regard to the dress that the complainant wore and sexuality involved in such dresses. It is said that the complainant did not reply to such messages as they were inappropriate. It is then, the petitioner started sending messages like he began to miss the complainant and began to like her. Chats between the two galore and the chats lead to a particular incident. On 25-09-2021 it is said that inside the cabin the petitioner was discussing a case and at around 6.40 p.m. there was no one in the office except himself and the complainant. It is then the petitioner calls the complainant into the cabin, pulled her hands and kissed on

the forehead. After the said act, he held her tight and made her to sit on his lap and began to unbutton the complainant. It is further said that he moved his hands on the private parts of the complainant and started to undress himself. The complainant traumatized by the said act pushed the petitioner and ran out and while so doing, it is alleged that the petitioner threatened the complainant that if she would reveal anything that has happened therein everyone would see her dead body.

4. It is then the complainant appears to have called Mr. Dhruva Hegde and asked him to meet her. It appears that after a few minutes the friend of the complainant arrives. Later it is alleged that the petitioner went on calling the complainant continuously and one such call was recorded by the complainant wherein he had confessed repeatedly that he has attempted to rape the complainant and apologized and requested the complainant to close the issue. It appears, the complainant also complained to the wife of the petitioner which had led to certain threats being made to the complainant that she would be finished if she moves further by registering any complaint. It is then, the complainant takes

courage and registers a complaint on 18-10-2021 before the Commissioner of Police at Mangalore narrating the entire incident with minute details. The matter was referred to the jurisdictional Police Station and the jurisdictional Police Station registers a crime against the petitioner in Crime No.78 of 2021 for the offences punishable under Sections 376, 376(2)(f), 376(2)(k), 376C, 511, 354A, 354B, 354C, 354D, 506, 34, 384, 388 and 389 of the IPC. The Police conduct investigation and the investigation leads to recording of various statements of the victim and all others after which the Police file a charge sheet against the petitioner for the offences under Sections 376, 376(2)(f), 376(2)(k), 376C(a), 511, 354A, 354B, 354C, 354D, 506, 384, 388, 389 204, 203, 212, 120B, 179, 202 r/w 149 of the IPC. The filing of the charge sheet leads the petitioner to this court in the subject petition.

5. Heard Sri Parameshwar N. Hedge, learned counsel appearing for the petitioner, Smt. K.P. Yashodha, learned High Court Government Pleader appearing for respondent No.1 and Smt. Sophia, learned counsel appearing for respondent No.2.

SUBMISSIONS:***PETITIONER'S:***

6. The learned counsel appearing for the petitioner would submit that the petitioner is no doubt guilty of offences that would become punishable under Section 354A, B, C and D or even all other offences, but would vehemently contend there is no evidence, even *prima facie*, to include offences under Sections 376, 376(2)(f), 376(2)(k), 376C(a) and 511 of the IPC. It is his submission that he is restricting the challenge to the offences punishable under section 376(2)(f), 376(2)(k), 376C(a) and 511 of the IPC. He would submit that the complaint or the summary of the charge sheet, even if they are taken to be correct, they nowhere indicate any offence of commission of rape as obtaining under section 375 of the IPC. The complaint though narrates attempt to rape, it does not move forward of any commission of rape.

6.1 He would take this Court through the medical records to submit that at the time of medico legal examination, the complaint nowhere indicates, any incident that she has been raped. He would

submit that it cannot be a case that offences punishable under Section 376 of the IPC are even met, in the teeth of the victim herself indicating that there was no sexual intercourse before the Doctor. He would seek quashment of the order of cognizance insofar as it pertains to offences punishable under Sections 376, 376(2)(f), 376(2)(k), 376C(a) and 511 of the IPC.

COMPLAINANT'S:

7. Per-contra, the learned counsel appearing for the complainant vehemently refutes the submissions of the learned counsel for the petitioner contending that the matter is at the stage of framing of charges. The petitioner has challenged the charge sheet and there are instances where Section 511 IPC would clearly get attracted to the issue in the case at hand. The learned counsel would submit that the petitioner does not deny occurrence of the incident, but in fact admits the incident. Once he admits the incident, it would not become a case for quashment under Section 482 of the Cr.P.C for any offences alleged. She would take this Court through Section 164 Cr.P.C. statement of the victim to

buttress her submission that there was a clear intention and preparation to rape. It is her further submission that there is a very thin line between preparation and attempt, and both preparation and attempt would become a disputed question of fact and, therefore, interference is not warranted.

STATE:

8. The learned High Court Government Pleader representing the State would toe the lines of the learned counsel representing the 2nd respondent/complainant and would contend that if a perusal at the 164 Cr.P.C. statement is made, it would become unmistakable that it requires evidence and trial. The contentions of the learned counsel for the petitioner should not be considered at this juncture. She has placed the entire charge sheet material for a perusal of the Court.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record, including the entire charge sheet material which

is placed by the learned High Court Government Pleader for a perusal.

DISCUSSION AND CONSIDERATION:

UNFURLING OF FACTS:

10. It is not in dispute that the complainant joins the office of the petitioner on 18-08-2021 to work as an intern at the office of the petitioner for a stipend of ₹6,000/- per month. The happenings after joining of the complainant in the office of the petitioner till the date of infamy i.e., 25-09-2021 are all narrated hereinabove. They would not require any reiteration. The incident happens on 25-09-2021 and several correspondences have taken place thereafter up to the date of filing of the complaint on 18-10-2021. The crime comes to be registered on 18-10-2021 based upon the complaint made by the complainant. Since the sprout in the *lis* is the complaint, I deem it appropriate to notice the complaint. It reads as follows:

"....

25th September 2021 as it was a Saturday, in the afternoon inside his cabin, where we were discussing about a

case, he started manipulating me telling that he has high influence in Lokayuktha and Karnataka State Law University and he will offer me any job I seek for in future. Suddenly he got up from his chair and hugged me it shocked me, he said he is like my father and he will look after me. after that my day went according to the mundane routine, he came to the office in the evening. At around 6:40 when there was no one in the office except him and me, he rang the calling bell for which I had to respond by going inside and I had told him that **"Sir I'm about to finish the work which was given to me and I wanted to leave as early as possible" because Mr. Dhruva Hegde had come to Mangalore the same day after a week, but I got a reply from K.S.N. Rajesh like "don't worry you have worked sufficient for today" and asked me to sit on the chair. My quick response to him was that Sir I will leave now hence, he put forward both his hands and asked me to give both my hands to him and he pulled my hands and he kissed me on my forehead held tight and rotated me and forcefully Made sit on his lap, he pressed me against his chest and came close to my ear and whispered "Love you, want to have you" and grabbed my face and removed my spectacles and kissed me, forcefully he tried to unbutton me and grabbed my breast pressed and buttocks. He also touched my private parts with his bare hand. I could feel his penis erect. He attempted to forcibly rape me. he was in the position of undressing himself I was traumatised by the act which he had done, I was already shattered into fragments and I could not process the things that very time. With a great difficulty I pushed his hands away and I ran out, when doing so he threatened me saying that "If I tell this to anybody then everyone will see your dead body." I ran and came out of his cabin, took my bag and my phone which was there for charge and I ran out of his office using stairs. When I reached downstairs, I called Mr. Dhruva Hegde and told him to come to meet me at that very moment, for time being I went to a nearby automobile shop, at that very time the shop keeper was about to close the shop so then I pleaded him to wait for 5 minutes. As the people in the shop had seen my condition even they showed their concern and were asking what has happened.**

After a few minutes Mr. Dhruva Hegde came and had conveyed him everything that had happened to me. He decided to take me to his Brother-in-law's home which is situated in Skate City, Mangaluru. When we reached there we understood that he was not at home hence, me and Mr. Dhruva Hegde sat near the entrance of their home. That time I had noticed K.S.N. Rajesh was calling me continuously and there were many missed calls, he had even texted that he requesting me to pick up the call as he wanted to ask about some Notice. I told everything to Mr. Dhruva Hegde and even he was shocked for all of this. Mr. Dhruva Hegde told me to call him back and talk to K.S.N. Rajesh so we can record in his phone whatever he tells on the call to me. I called K.S.N. Rajesh which is the first audio recorded and then he had called me back which is the second audio and the conversation is recorded after the call with K.S.N. Rajesh, Mr. Dhruva Hegde sent me both the recorded audio. He confessed repeatedly that he has attempted to rape me and apologised and requested me to close the issue

On 27th September 2021 around 10 a.m. I had visited the office and had a conversation with K.S.N. Rajesh in which he had no outcome. Later I was left with no option so I had to contact his wife Mrs. Shashi, regarding the incident.

Mr. Dhruva Hegde and his family including his mom and Brother-in-law has told me to keep quite as there was threat to my life and Mr. Dhruva Hegde will be for obvious reasons get involved in the matter. Mr. Dhruva Hegde had also informed me that K.S.N. Rajesh has tapped my phone. I due to the threat and the fear within me, had not done anything against K.S.N. Rajesh. On 13th October 2021, Mr. Dhruva Hegde and his mom came to Mangaluru on the same day and met me. They portrayed that I will be in trouble and my future will be ruined if I go against K.S.N. Rajesh. They convinced me to meet him so, I called K.S.N. Rajesh fearing my career and my future. In went to his office and told him not to do anything to me, He said that the audio has reached to the Bar Association and I had sent it to them, which was false. I said I have not sent it to the Bar Association and had signed a letter telling that I had not sent it, which has my signature and thumbprint. K.S.N Rajesh continuously threatening me that he will use the police and file a extortion case against me and all the people involved if I proceeded with any complaint. He also threatened me that I

should give affidavit telling he has not done anything if given he will not complain against me.

On 14th October 2021, I went to K.S.N. Rajesh his office telling that not to do anything and I am scared of doing anything against him which will cause trouble to me and I will be murdered. He had agreed and told me to make a video together stating that, we both have not done anything and all of this is false. I had denied to do it as my name was already defamed for the things I have not done so, I told him on his face that the mistake was yours and I won't compromise.

Later on the same day, 14th October 2021 I came to know that there is a Document which has been made and Mr.Dhruva Hegde has signed on it. I asked Mr. Dhruva Hegde and he had agreed that he has signed a Document in K.S.N Rajesh's office which is an Affidavit, which states that I have done all this for money which is not true. Mr.Dhruva Hegde, his mom and his Brother-in-law were involved in signing the Document and Mr. Dhruva Hegde has confessed that he and his family members were manipulated by K.S.N. Rajesh and he had misguided them telling that some Durga wants to arrest and create troubles for Mr. Dhruva Hegde. Mr. Dhruva Hegde himself has told that he did not Read the Document which he was signing and was forced by his family member and K.S.N. Rajesh to sign it telling, it was for his safety. Hereby, I request the Commissioner of Police of Mangalore to look into this case very carefully and bring light to this case. Every day one or the other girl faces same or worst situation than this and almost no one comes forward as they know it's a lengthy process. People go to Advocates who guards the interest of public, but here in my case its totally opposite. I have come to know that the has sexual abused and raped many students but because of his power they are afraid.

K.S.N. Rajesh his rowdys and some police are sent by Rajesh who were continuously following me. I'm very poor n helpless anytime I maybe murdered he has already destroyed the C.C.T.V footage. I am seeking justice I will produce all the materials in the course of enquiry. I am humbly praying for justice."

(Emphasis added)

The complaint is lurid, it narrates the story from the date the complainant comes in contact with the clients of the petitioner, enters the office of the petitioner and till registration of the complaint. They are minute details of activities of the petitioner upon the complainant. It then becomes a crime in Crime No.78 of 2021 for the afore-quoted offences. The Police began to record statements of concerned witnesses and the victim. The victim then tenders her statement under Section 164 Cr.P.C. The statement is in minute detail as to what has transpired from the date of entry into the office of the petitioner till the date on which the incident happens. Section 164 Cr.P.C. statement reads as follows:

"..... .."

I am basically from Kolhapur, Maharashtra. I came to Mangaluru to study law in S.D.M. Law College. Currently I am in the 2nd year of Law College. Due to certain personal problem I needed an internship cum work to earn. Therefore I asked my classmate Dhruva Hegde to help in finding an internship cum job. Dhruva Hegde asked his brother-in-law Shivanandana Bhat for the job. He suggested K.S.N.R. Associates. On 14.08.2021 I went to meet K.S.N. Rajesh where he interviewed me and said yes for the job. He mentioned that the work timings will be from morning 9.30/10.00 till 8.00 in the night. When I asked him why that late, he said no one will give me an opportunity and this is the time to learn. Therefore, I agreed and started working there from 18.08.2021.

As Dhruva's brother-in-law had asked me to discuss some of my family problems with K.S.N. Rajesh. After I started working there for some time it was good and K.S.N. Rajesh told

me that I am like his elder daughter and he would take care of me. One day when I was in the hostel at night I got a message from K.S.N. Rajesh asking me if I had food. I replied that I was having Maggie. He sent a message asking me to send a selfie picture of mine. I replied that it is inappropriate to asked for a picture.

One day in the office in the evening at about 7.45/8.00 P.M. when I was about to leave, K.S.N. Rajesh told me that he was hungry and asked me to order food from food delivery app. When I asked him what he wanted, he asked me to order Ice Cream. He also said that apart from Ice Cream he wants to eat something else. I asked him Masala Dosa can be ordered for which he said okay. So I ordered Ice Cream and Masala Dosa from Ideal Cafe. When the food was delivered at about 8.30 P.M. K.S.N. Rajesh paid for the food. He asked us to sit in the Balcony of the office and have the food. The Masala Dosa was kept on plate and he insisted that I share Masala Dosa. I was hesitant as I usually do not share food. However, as he insisted I had couple of bites of the Masala Dosa.

One day when I was in the hostel I had severe migraine attack. K.S.N. Rajesh texted saying that the migraine due to acidity and I should stop eating non-veg as he does not eat non-veg. For that I refused. But, he texted saying I should stop eating non-veg for him. Thereafter, he started commenting on my Display picture of the whatsapp saying I look cute and beautiful. He started calling me as his beautiful daughter in the office. He also texted me saying he is a bad person for which I asked him why was he mentioning it to me. He also texted saying "I Miss you" "I like you the most in the office".

I do not have a dad. Therefore, K.S.N. Rajesh started considering himself as my father. But, I never told him to do so. In his office cabin 2-3 times he would draw flower on my hand. I would not react to it. One day when my mood was off. K.S.N. Rajesh took my hand and asked me "you are not going to tell your appa?" I was offended and told him there was nothing. For that he was like now you stared hiding things from me. I replied him that I will be okay.

K.S.N. Rajesh knew that I and Dhruva are dating.

My hostel is in Lalbagh and K.S.N. Rajesh's office is in Karangalpady. I would not get Bus immediately from Karangalpady and I would have to wait half an hour for the Bus. Therefore, I requested K.S.N.Rajesh that if I could leave early at about 7.00 P.M. he got offended and told me that had I mentioned before he would have given me Rickshaw money. He gave me Rickshaw money and I would go to the hostel in Rickshaw.

K.S.N.Rajesh is highly influentially and had mentioned that he knows many police. He has won rape case and has bribed many judge. When my result was about to be declared he asked me if I need good marks as he had many contacts in Karnataka State Law University. One day for a case when I had gone with K.S.N.Rajesh to Udupi we had lunch at M.T.R. there Rajesh took my photos and told that he will not share it with anyone. Later he send the photos on my whatsapp.

In the office I was close to another inter/my senior Rashmi Mallya. K.S.N.Rajesh did not like Rashmi Mallya and he would insult her on her face and has body shamed her and has mentioned a lot of bad things about her to me saying I don't know why is she like that.

Rashmi was on study leave as she had her 10th sem exams. During that time K.S.N.Rajesh told a lot of things about Rashmi and manipulated me. 4-5 days prior to 25.09.2021 when Rashmi came back I had a small fight with her. K.S.N.Rajesh has another office on the 3rd floor of Essel Chambers where a person named Jacqueline D'Silva. During my fight with Rashmi she mentioned that she saw K.S.N.Rajesh in a compromising position. But I did not know the meaning of compromising position and I thought it to be some sort of a bribe. K.S.N.Rajesh had manipulated me so much that I started hating Rashmi and started staying away from her. 2-3 days later K.S.N.Rajesh fired Rashmi and another girl. After that he became relaxed and was happy that she had gone. On 24.09.2021 when I was texting Rashmi she mentioned that she had seen Rajesh in a compromising position with Jacqueline D'Silva. I sent the screen shots of the whatsapp conversation to Rajesh sir. He got pissed off and asked me why was she spreading rumours and why was my reply like that. I told him that in order to make Rashmi confess I had replied like that.

On 25.09.2021 in the afternoon in the chamber we were discussing about a case where a boy did not have his parents. At that time only the two of us were in the cabin and the staff were outside. All of a sudden he got up from his chair and hugged me and whispered in my ear that "don't worry I am there with you, I will take care of you". But, I did not hug him back. That day I had a paper cut in my finger and I could not type fast and I had to remove my bandage as it was dirty. Rajesh had gone home for lunch and came back at 6.30 P.M. on that day I, another intern Ananth and Advocates Divya and Neslin were there. First Ananth left and I asked him to wait but, he did not wait for me and left the office. **Therefore, Divya and Neslin also left even though I asked them to wait for me. That day Dhruva had come from Honnavara after one week and as it was Saturday I wanted to leave early and meet him. Just when I was about to finish and leave I heard a calling bell from Rajesh's Chamber. As there was no one in the office I went to the cabin and told him that I was about to finish the work. But he told me enough of work for today. But I told him I needed five more minutes and he can correct the work on Monday. All of a sudden Rajesh put his both the hands forward and told me "come baba" I did not understand and gave my hands to him. He pulled me towards him and kissed me on my forehead. I was shocked. Rajesh held my hands tightly and rotated and made me sit on his slap and he wrapped his hands around my waist. I did not understand what was going on. He whispered in my ears "Love you, I want to have you". He moved his hands towards my breasts and touched it. I could feel his penis erection. He held me tightly and touched my vagina. He removed my spectacles and kept it on the table. He held my face and tried to kiss me and also unbutton the shirt that I was wearing. I said no and removed his hands from me and picked up my spectacles as I cannot see without spectacles and my eyes were watery. There are two doors to the cabin, one for the staff and another for the clients. I ran through the staff door. When I was coming out of the cabin he told me not to mention it to anyone and if I mention it everyone will see my dead body. I ran to my table picked up my bag and the phone which was put on charge along with the charger and ran out of the office and came down through the steps. I was shivering**

and I went to a small shop, Vinaya Automobiles and asked them if I could sit. Two persons in the shop gave me chair and I sat there and called Dhruva to come immediately. The two persons asked me if I was okay. But I could not even reply to them and requested to them to keep the shop open till Dhruva comes. Later, Dhruva came on his bike and we went on his bike to his brother-in-law Shivanandana's house. But, Shivanandana was not at home and therefore, we sat outside his house. Meanwhile, I had many missed calls from Rajesh. So we decided we will receive the call and record his conversation. But, in my phone if I record it says this call is being recorded. Therefore, we decided to receive the call on my phone and put it on loud speaker and record from Dhruva's phone. At first I called him and asked what he wanted. He asked me if I reached and said sorry. That call was for one minute few seconds. Later, he called me and said sorry and told me that it was not intentional. He was crying and begging me to come back to the office and see him and told me that I can leave with the rest of the office in the evening. I asked him why should I come to office for which he said he should suffer. I told him if I want him to make him suffer I can make him suffer. He said he wants to suffer in his heart. I asked him if he done something similar to anyone else for which he said he had never done this to anyone. I told him if I should go to his house, Sharvaree and inform his wife about him. I told him he had two daughters and how could he behave like that. At last I told him not to call me again and this is a warning. This call was for 11 minutes 55 seconds and the same was recorded. In the audio he accepted he had done a mistake with me.

After Dhruva and I went to eat food. Dhruva sent me the audio and I remembered Rashmi mention on the previous day that she hopes that I leave the office soon. So I called Rashmi and told her about the incident which made her angry. I also sent the audio clip to her and few other people close to me and also the staff who work at Rajesh's office. On 27.09.2021 in the morning I had called Rajesh's wife and tried to tell her about the incident. But, there was communication gap as she does not know English and I do not know Kannada.

As I make Tea regularly I had kept my induction stove in the office. On 27.09.2021 I along with Dhruva, Rashmi and my roommate Aadhya went to the office. Dhruva and Aadhya

stayed outside and Rashmi I went inside the office. In the cabin Rajesh started pointing at Rashmi and said everything happened because of her. I told him to talk to me and not to talk to Rashmi. Rashmi said if she should step outside for which he said if she goes outside I will start blaming him again. He also mentioned that he tried to console me. After that I wished him all the best and came out of the office and called his wife and asked her to check the C.C.TV footage. She requested me not to tell this anyone. When I told her that I had the audio clip of the conversation of Rajesh she tried to defend him.

On 24.09.2021 one Vineeth Poojary had got cash and had kept it on the table of Rajesh. They told that it was Rs.14 lakh in cash. At that time Rajesh was not there. Therefore, all of us took selfie in Vineeth's phone and I also took a photo of the cash after asking for permission.

After the incident I was scared to step out as Rajesh had threatened me. The audio clip got circulated and many of my college mates got to know about it. Some of them who were interning with Rajesh also got to know about it and I asked them not to go to that office as I was concerned about them.

In the month of October one day Dhruva's brother -in-law called and asked me what had I done as the audio clip was now edited and circulated everywhere and it had reached the ministry. He told me that he cannot help me as it was coming on his family and his family was more important. When I asked him to send the edited audio clip he said he did not have it. I called Dhruva and mentioned about conversation to him and he told me we will see what happens. After that one day Dhruva called me on whatsapp and told me that he had information that Rajesh might try to kill me. I got scared and did not step out the hostel.

On 11.10.2021 Dhruva told me that my phone is tapped by Rajesh. On 13.10.2021 Dhruva texted me in the morning saying that he wants to meet me and his mother was also coming to meet me. At about 10.00 A.M. they came near my hostel and I went and I sat inside the car. In the car they told me that it was Rashmi who had edited the audio clip and had circulated it and she had send it to Bar association. They repeatedly told me that I should meet Rajesh and sort it out and

yet they told me it is not a force. So I called Rajesh and asked him if I could meet him. He asked to me to come to the office. Dhruva and his mother dropped me to his office. I met Rajesh who told me that it was Rashmi who had done the entire thing. I told him that I did not send the audio clip to the Bar association and I am willing to give it in writing. But, I did not want to mention anyone's name. Rajesh typed the letter where he mentioned Rashmi's name. I put my signature and thumb impression on it.

On 14.10.2021 Rashmi called and informed that women association called her and wanted to meet her and after that they would come and meet me. In the afternoon I got a call from Rashmi where there was a lot of chaos and I heard Rashmi tell a lady that she should talk to me for which that lady mentioned why she should talk to me and the call got disconnected. After that Rashmi's phone was not reachable and her whatsapp was not working. Later, Dhruva's mother called me and informed that Rashmi had given an apology letter. I was confused and went and met Rajesh in his office. He told me that Rashmi had apologised and I requested him not to spoil my career and I intended to complete law degree and write judiciary. That night texted me on instagram saying that she was taken to Urwa police station where she saw some documents with my signature and also Dhruva's photo. I texted Dhruva asking if he had signed any documents. He said yes. I was upset that he did not tell about it. Dhruva told me that he would talk to Rajesh.

On 15.10.2021, Dhruva went and met Rajesh. I do not know what happened there. Later when Dhruva called and his brother-in-law spoke to me saying if I wanted a copy of the Affidavit. When I asked him to send a copy he denied it. I spoke to Dhruva telling him to return my things and I would return his things. So I went to Dhruva's flat where he told me that in the Affidavit it is written that Rashmi had done it for her personal revenge and I had done it for money. Dhruva told me that he did not read the Affidavit. Dhruva's mother told me that the case was closed. But, I was defamed and could not keep quite. It was mentioned by Dhruva that Rajesh manipulated then and Sub-Inspector Bharati would arrest them if they did

not co-operate. Therefore, I filed a complaint with the Women's Police Station."

(Emphasis added)

After the statement of the complainant under Section 164 Cr.P.C. (*supra*), the Police on the basis of the evidence collected during investigation have filed a charge sheet. The summary of the charge sheet, as obtaining in column No.17, reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ವಿವರ (ಅವಶ್ಯವಿದ್ದಲ್ಲಿ ಪ್ರತ್ಯೇಕ ಹಾಳೆ ಲಗತ್ತಿಸಿ) Brief Facts of the case (add separate sheet, if necessary).

ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣಾ ಮೊ.ನಂ.78/2021 ಕಲಂ 376, 376(2)(ಎಫ್), 376(2)(ಕೆ), 376(ಸಿ)(ಎ), 511, 354(ಎ), 354(ಬಿ), 354(ಸಿ), 354(ಡಿ), 506, 384, 388, 389, 204, 203, 212, 120(ಬಿ), 179, 202 ಜೊತೆಗೆ 149 ಐಪಿಸಿ ಪ್ರಕರಣದ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂ.17 ರಿಂದ.

ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂಬ್ರ 12 ರಲ್ಲಿ ಕಾಣಿಸಿರುವ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಹೊರಿಸಲಾದ ಆರೋಪಣೆ ಏನೆಂದರೆ 25-9-2021 ರಂದು ಮದ್ಯಾಹ್ನದ ಹೊತ್ತಿಗೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ಮಹಿಳಾ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನ ಮಂಗಳೂರು ಕರಂಗಲ್ಪಾಡಿ ಎಂಬಲ್ಲಿರುವ ಎಸ್‌ಎಲ್ ಚೇಂಬರ್ಸ್ ಕಟ್ಟಡದ ಎರಡನೇ ಮಹಡಿಯಲ್ಲಿರುವ ಡೋರ್ ನಂಬ್ರ 4-6-535/24, 4-6-535/25, 4-6-535/26 ನೇದರ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರ ಕಛೇರಿಯ ಚೇಂಬರ್‌ನಲ್ಲಿ ಚಾಸಾ 1ನೇಯವರು ಕುಳಿತುಕೊಂಡು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರೊಂದಿಗೆ ಬೇರೆ ಪ್ರಕರಣದ ಬಗ್ಗೆ ಚರ್ಚೆ ನಡೆಸುತ್ತಿದ್ದಂತೆ ಸ್ವಲ್ಪ ಹೊತ್ತಿನ ಬಳಿಕ ಆರೋಪಿಯು ಅವರು ಕುಳಿತ ಚೇಂಬರ್‌ನಿಂದ ಒಮ್ಮೆಲೇ ಎದ್ದು ಬಂದು ಚಾಸಾ 1ನೇಯವರನ್ನು ತಬ್ಬಿಕೊಂಡು ಚಾಸಾ 1ನೇಯವರ ಕಿವಿಯಲ್ಲಿ ಆರೋಪಿಯು "ನೀನು ಚಿಂತಿಸಬೇಡ, ನಾನು ಇದ್ದೇನೆ, ನಿನ್ನ ಬಗ್ಗೆ ಗಮನಿಸುತ್ತೇನೆ" ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ನಂತರ ಅದೇ ದಿನ ಸಂಜೆ ಕಛೇರಿಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯ ಸಂಜೆ 6-30 ಗಂಟೆಯ ನಂತರ ಆರೋಪಿ ರಾಜೇಶ್ ರವರು ಅವರ ಚೇಂಬರ್‌ನ ಚಯರ್‌ನಲ್ಲಿ ಕುಳಿತುಕೊಂಡು ಚಾಸಾ 1ನೇಯವರನ್ನು ಉದ್ದೇಶಿಸಿ "ಬಾ ಬಾಬ" ಎಂದು ಹೇಳಿ 1ನೇ ಆರೋಪಿ ಚಾಸಾ 1ನೇಯವರ ಕೈಗಳನ್ನು ಹಿಡಿದು ಆರೋಪಿಯ ಬಳಿಗೆ ಎಳೆದುಕೊಂಡು, ಚಾಸಾ 1ನೇಯವರ ಹಣೆಗೆ ಒತ್ತಾಯದಲ್ಲಿ ಮುತ್ತನ್ನು ಕೊಟ್ಟಿರುತ್ತಾರೆ. ಅಲ್ಲದೆ ಚಾಸಾ 1ನೇಯವರನ್ನು 1ನೇ ಆರೋಪಿಯು ಅಪ್ಪಿಕೊಂಡು ಆತನ ತೊಡೆಯ ಮೇಲೆ ಕುಳ್ಳಿರಿಸಿ ಆತನ ಎದೆಗೆ ಚಾಸಾ 1ನೇಯವರನ್ನು ಗಟ್ಟಿಯಾಗಿ ಹಿಡಿದುಕೊಂಡು ಚಾಸಾ 1ನೇಯವರನ್ನು ಉದ್ದೇಶಿಸಿ "ನಿನ್ನನ್ನು ಪ್ರೀತಿಸುತ್ತೇನೆ, ನಿನ್ನನ್ನು ಪಡೆಯುತ್ತೇನೆ" ಎಂದು ಕಿವಿಯಲ್ಲಿ ಹೇಳಿ ಮುಖವನ್ನು ಹಿಡಿದುಕೊಂಡು ಚಾಸಾ 1ನೇಯವರು ಧರಿಸಿದ್ದ ಕನ್ನಡಕವನ್ನು ತೆಗೆದು ಚಾಸಾ 1ನೇಯವರಿಗೆ ಮುತ್ತನ್ನು ಕೊಟ್ಟಿರುವುದಲ್ಲದೆ, ಚಾಸಾ 1ನೇಯವರು ಧರಿಸಿದ್ದ ಟಾಪ್‌ನ ಬಟನನ್ನು ಒತ್ತಾಯಪೂರ್ವಕವಾಗಿ ತೆಗೆಯಲು ಯತ್ನಿಸಿದಲ್ಲದೆ, ಆರೋಪಿಯು ಚಾಸಾ 1ನೇಯವರ

ಎದೆಯ ಭಾಗಕ್ಕೆ ಕೈಹಾಕಿ ಮೊಲೆಯನ್ನು ಮತ್ತು ಕುಂಡೆಯನ್ನು ಹಿಸುಕಿರುತ್ತಾರೆ. ಮತ್ತು ಚಾಸಾ 1ನೇಯವರ ಗುಪ್ತಾಂಗವನ್ನು 1ನೇ ಆರೋಪಿಯು ಒತ್ತಾಯದಲ್ಲಿ ಸ್ಪರ್ಶಿಸಿರುತ್ತಾರೆ. ಅಲ್ಲದೆ ಆರೋಪಿಯು ಚಾಸಾ 1ನೇ ಯವರ ಇಚ್ಛೆಗೆ ವಿರುದ್ಧವಾಗಿ ಅತ್ಯಾಚಾರ (ಹಲ ಸಂಭೋಗ) ನಡೆಸಲು ಚಾಸಾ 1ನೇಯವರು ಧರಿಸಿದ್ದ ಬಟ್ಟೆಯನ್ನು ಬಿಚ್ಚಿ ಪ್ರಯತ್ನಿಸಿದಾಗ ಚಾಸಾ 1ನೇಯವರು ಆರೋಪಿಯ ಕೈಗಳನ್ನು ದೂರ ತಳ್ಳಿ ಆರೋಪಿಯಿಂದ ತಪ್ಪಿಸಿಕೊಂಡು ಹೋಗುವಾಗ ಆರೋಪಿಯು ಚಾಸಾ 1ನೇಯವರನ್ನು ಉದ್ದೇಶಿಸಿ ಇದನ್ನು ಯಾರಿಗಾದರೂ ಹೇಳಿದರೆ ಎಲ್ಲರೂ ನಿನ್ನ ಮೃತದೇಹವನ್ನು ನೋಡುತ್ತಾರೆ ಎಂದು ಜೀವ ಬೆದರಿಕೆ ಒಡ್ಡಿರುತ್ತಾರೆ.

1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ತನ್ನ ಕಛೇರಿಯಲ್ಲಿ ಚಾಸಾ 1ನೇಯವರನ್ನು ಕೆಲಸಕ್ಕೆ ಸೇರಿಸಿಕೊಂಡು ಜವಾಬ್ದಾರಿಯನ್ನು ಹೊಂದಿಕೊಂಡು, ಚಾಸಾ 1ನೇಯವರಲ್ಲಿ ನಂಬಿಗಸ್ಸನಾಗಿದ್ದುಕೊಂಡಿದ್ದರೂ ಕೂಡಾ ಆರೋಪಿಯು ಚಾಸಾ 1ನೇಯವರಿಗೆ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯ ನಡೆಸಿ ಅತ್ಯಾಚಾರ ಮಾಡಲು ಯತ್ನಿಸಿದವನಾಗಿರುತ್ತಾರೆ.

1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಎಸಗಿದ ಕೃತ್ಯವನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ಈ ಕೃತ್ಯದ ಬಗ್ಗೆ ಇರುವ ದೂರಿನ ವಿಚಾರವನ್ನು ಮುಕ್ತಾಯಗೊಳಿಸುವಂತೆ ಚಾಸಾ 1ನೇಯವರಿಂದ ಮಂಗಳೂರಿನ ವಕೀಲರ ಬಾರ್ ಅಸೋಸಿಯೇಶನ್‌ನ ಅಧ್ಯಕ್ಷರಿಗೆ ಒತ್ತಾಯದಲ್ಲಿ (ಬಲತ್ಕಾರದಿಂದ) ದಿನಾಂಕ.13-10-2021 ರಂದು ಪತ್ರವನ್ನು ಬರೆಯಿಸಿಕೊಂಡು ಸಹಿಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ.

ಇದಲ್ಲದೆ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಚಾಸಾ 1ನೇಯವರಿಗೆ ಎಸಗಿದ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದ ಮತ್ತು ಅತ್ಯಾಚಾರ ಎಸಗಲು ಪ್ರಯತ್ನಿಸಿದ ಕೃತ್ಯವನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ಚಾಸಾ 3ನೇ ದ್ರುವ ರವರಿಂದ ಕೂಡಾ ಒತ್ತಾಯದಲ್ಲಿ ದಿನಾಂಕ 12-10-2021 ರಂದು 1ನೇ ಆರೋಪಿಯು ಅಫಾದವಿತ್ ತಯಾರಿಸಿಕೊಂಡು ಸಾಕ್ಷಿ ದ್ರುವ ರವರಿಂದ ಅಳಿದವಿತ್‌ಗೆ ಸಹಿಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ.

ಅಲ್ಲದೆ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಚಾಸಾ 1ನೇಯವರಿಗೆ ಎಸಗಿದ ಲೈಂಗಿಕ ದೌರ್ಜನ್ಯದ ಮತ್ತು ಅತ್ಯಾಚಾರ ಎಸಗಲು ಪ್ರಯತ್ನಿಸಿದ ಕೃತ್ಯದ ಕುರಿತು ಚಾಸಾ 2ನೇ ರಶ್ಮಿ ಮಲ್ಯ ರವರು ಆಡಿಯೋವನ್ನು ಪ್ರಸಾರ ಮಾಡಿರುವುದರ ಬಗ್ಗೆ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಎಸಗಿದ ಕೃತ್ಯದ ವಿಚಾರವನ್ನು ಮರೆಮಾಚುವ ಉದ್ದೇಶದಿಂದ ಸಾಕ್ಷಿ ರಶ್ಮಿ ಮಲ್ಯ ರವರಿಂದ ಕೂಡಾ ದಿನಾಂಕ:14-10-2021 ರಂದು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಒತ್ತಾಯದಲ್ಲಿ ಒಂದು ಪತ್ರವನ್ನು ಬರೆಯಿಸಿಕೊಂಡು ಸಾಕ್ಷಿ ರಶ್ಮಿ ಮಲ್ಯ ರವರಿಂದ ಸಹಿಯನ್ನು ಪಡೆದುಕೊಂಡಿರುತ್ತಾರೆ.

ಇದಲ್ಲದೆ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರ ಕಛೇರಿಯಲ್ಲಿ ಅಳವಡಿಸಿರುವ ಸಿಸಿ ಕ್ಯಾಮರದ ಸಂಪರ್ಕವನ್ನು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ತನ್ನ ಮೊಬೈಲ್ ಮೋನಾಗೆ ಕೂಡಾ ಸಂಪರ್ಕಿಸಿಕೊಂಡು ಚಾಸಾ 1ನೇಯವರು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್ ರಾಜೇಶ್ ರವರ ಕಛೇರಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದ ಸಮಯ ಚಾಸಾ 1ನೇಯವರು ತನ್ನ ವೈಯಕ್ತಿಕ ಕೆಲಸ ಕಾರ್ಯಗಳನ್ನು ಅಂದರೆ ತಲೆ ಬಾಚುವುದನ್ನು, ಮುಖ ತೊಳೆಯುವುದನ್ನು ಹಾಗೂ ಇನ್ನಿತರ ಕೆಲಸ ಕಾರ್ಯಗಳನ್ನು ಮಾಡುತ್ತಿದ್ದಾಗ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಲೈಂಗಿಕ ಉದ್ದೇಶದಿಂದ ಸಿಸಿ ಕ್ಯಾಮರದಲ್ಲಿ ಸೆರೆಹಿಡಿಯಲ್ಪಡುವ ಚಾಸಾ 1ನೇಯವರ ವೈಯಕ್ತಿಕ ಕೆಲಸ ಕಾರ್ಯಗಳನ್ನು ನೋಡಿಕೊಂಡು ತೃಪ್ತಿ ಪಡುತ್ತಿದ್ದರು.

ಮತ್ತು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಶರಣಾಗತರಾಗಿ ಇವರನ್ನು ತನಿಖೆಯ ಸಲುವಾಗಿ ಪೊಲೀಸ್ ಕಸ್ಟಡಿಗೆ ಪಡೆದುಕೊಂಡು ಬಳಿಕ ತನಿಖೆಯ ವೇಳೆ ತನಿಖಾಧಿಕಾರಿಯವರಿಗೆ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಚಾಸಾ 1ನೇಯವರಿಗೆ ಎಸಗಿದ ಕೃತ್ಯದ ಕುರಿತು ಸ್ಪಷ್ಟವಾದ ಮಾಹಿತಿಯನ್ನು ನೀಡಲು ನಿರಾಕರಿಸಿರುತ್ತಾರೆ.

1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್, 2ನೇ ಆರೋಪಿ ಅನಂತ ಭಟ್ ಮತ್ತು 3ನೇ ಆರೋಪಿ ಅಚ್ಚುತೈಭಟ್ ರವರು ಒಟ್ಟು ಸೇರಿಕೊಂಡು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ದಸ್ತಗಿರಿ ಸಿಗದಂತೆ ತಪ್ಪಿಸಿಕೊಳ್ಳುವ ಬಗ್ಗೆ ಹಾಸನದ ಕಾಳಭೈರವ ಹೋಟೆಲ್ ಬಳಿಯ ಖಾಲಿ ಜಾಗದಲ್ಲಿ ಒಳಸಂಚು ನಡೆಸಿರುತ್ತಾರೆ. 1ನೇ ಆರೋಪಿಯು ಕಾನೂನು ಕಲಂ 376, 376(2)(ಎಫ್), 376(2)(ಕೆ), 376(ಸಿ)(ಎ), 511, 354(ಎ), 354(ಬಿ), 354(ಸಿ), 354(ಡಿ), 506, 384, 388, 389, 120(ಬಿ), 179 ಜೊತೆಗೆ 34 ಐಪಿಸಿ ಯಂತೆ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧ ಎಸಗಿರುತ್ತಾರೆ.

ಈ ಪ್ರಕರಣದ 2ನೇ ಆರೋಪಿಯ ವಿರುದ್ಧ ಹೊರಿಸಲಾದ ಆರೋಪಣೆ ಏನೆಂದರೆ ಈ ಪ್ರಕರಣದ 2ನೇ ಆರೋಪಿಯಾದ ಅನಂತ ಭಟ್ ರವರು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರ ವಿರುದ್ಧ ಪ್ರಕರಣ ದಾಖಲಾದ ವಿಚಾರ ತಿಳಿದು ಅವರ ಬಗ್ಗೆ ಪೊಲೀಸರಿಗೆ ಮಾಹಿತಿ ನೀಡದೇ ಆರೋಪಿಯ ಇರುವಿಕೆಯ ಮಾಹಿತಿಯನ್ನು ಮರೆಮಾಚಿದಲ್ಲದೆ, 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ದಸ್ತಗಿರಿಗೆ ಸಿಗದಂತೆ ದಿನಾಂಕ:25-9-2021 ರಂದು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರನ್ನು ಕೆಎ-19-ಎಂಎಫ್-8965 ನೇ ಇಟಿಯೋಸ್ ಕಾರಿನಲ್ಲಿ ಕುಳ್ಳಿರಿಸಿಕೊಂಡು 2ನೇ ಆರೋಪಿಯು ಕಾರು ಚಲಾಯಿಸಿಕೊಂಡು ಹೋಗಿ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರನ್ನು ಹಾಸನದ ತನಕ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಹಾಸನದ ಕಾಳಭೈರವ ಹೋಟೆಲ್ ಬಳಿಯ ಖಾಲಿ ಜಾಗದಲ್ಲಿ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್, 2ನೇ ಆರೋಪಿ ಅನಂತ ಭಟ್ ಮತ್ತು 3ನೇ ಆರೋಪಿ ಅಚ್ಚುತೈಭಟ್ ರವರು ಒಟ್ಟು ಸೇರಿಕೊಂಡು 1ನೇ ಆರೋಪಿ ದಸ್ತಗಿರಿ ಸಿಗದಂತೆ ತಪ್ಪಿಸಿಕೊಳ್ಳುವ ಬಗ್ಗೆ ಒಳಸಂಚು ನಡೆಸಿರುತ್ತಾರೆ. 2ನೇ ಆರೋಪಿಯು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ದಸ್ತಗಿರಿಗೆ ಸಿಗದಂತೆ ಮಾಡಿ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಸಹಕರಿಸಿದ್ದಾಗಿರುತ್ತದೆ. 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಎಸಗಿದ ಕೃತ್ಯದ ಬಗ್ಗೆ ಹಾಗೂ ಆರೋಪಿಯ ಇರುವಿಕೆಯ ಮಾಹಿತಿಯನ್ನು ತಿಳಿದು 2ನೇ ಆರೋಪಿಯು ಮಾಹಿತಿಯನ್ನು ನೀಡದೇ ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ತಪ್ಪಿಸಿಕೊಂಡಿರುವುದಲ್ಲದೆ, 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ತಪ್ಪಿಸಿಕೊಳ್ಳಲು 1, 2 ಮತ್ತು 3ನೇ ಆರೋಪಿಗಳು ಒಳಸಂಚು ನಡೆಸಿದರವರಾಗಿರುವುದರಿಂದ 2ನೇ ಆರೋಪಿಯು ಕಾನೂನು ಕಲಂ 202, 203 ಮತ್ತು 120 (ಬಿ) ಜೊತೆಗೆ 34 ಐಪಿಸಿ ಯಂತೆ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ.

ಈ ಪ್ರಕರಣದ 3ನೇ ಆರೋಪಿಯ ವಿರುದ್ಧ ಹೊರಿಸಲಾದ ಆರೋಪಣೆ ಏನೆಂದರೆ ಈ ಪ್ರಕರಣದ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್, 2ನೇ ಆರೋಪಿ ಅನಂತ ಭಟ್ ಮತ್ತು 3ನೇ ಆರೋಪಿ ಅಚ್ಚುತೈಭಟ್ ರವರು ಒಟ್ಟು ಸೇರಿಕೊಂಡು 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ದಸ್ತಗಿರಿ ಸಿಗದಂತೆ ತಪ್ಪಿಸಿಕೊಳ್ಳುವ ಬಗ್ಗೆ ಹಾಸನದ ಕಾಳಭೈರವ ಹೋಟೆಲ್ ಬಳಿಯ ಖಾಲಿ ಜಾಗದಲ್ಲಿ ಒಳಸಂಚು ನಡೆಸಿರುತ್ತಾರೆ. 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ಎಸಗಿದ ಕೃತ್ಯದ ಬಗ್ಗೆ ಹಾಗೂ ಆರೋಪಿಯ ಇರುವಿಕೆಯ ಮಾಹಿತಿಯನ್ನು ನೀಡದೇ ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ತಪ್ಪಿಸಿಕೊಂಡಿರುವುದಲ್ಲದೆ, ತಲೆಮರೆಸಿಕೊಂಡ 1ನೇ ಆರೋಪಿ ಕೆ.ಎಸ್.ಎನ್.ರಾಜೇಶ್ ರವರು ದಸ್ತಗಿರಿಗೆ ಸಿಗದಂತೆ 3ನೇ ಆರೋಪಿಯು ತನ್ನ ಮನೆಯಲ್ಲಿ ಆಶ್ರಯ ನೀಡಿರುವುದರಿಂದ 3ನೇ ಆರೋಪಿಯು ಕಾನೂನು ಕಲಂ 202, 212 ಮತ್ತು 120(ಬಿ) ಜೊತೆಗೆ 34 ಐಪಿಸಿ ಯಂತೆ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ.

ಆದುದರಿಂದ 1ನೇ ಆರೋಪಿ ಕೆ.ಸಿ.ಎನ್.ರಾಜೇಶ್, 2ನೇ ಆರೋಪಿ ಅನಂತ ಭಟ್ ಮತ್ತು 3ನೇ ಆರೋಪಿ ಅಚ್ಚುತಭಟ್ ರವರು ಈ ಮೇಲಿನ ಕಾನೂನು ಕಲಂನನ್ವಯ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ ಎಂಬುದಾಗಿ ಸಲ್ಲಿಸಿದ ದೋಷಾರೋಪಣ ಪತ್ರ.”

The charge sheet is filed for offences punishable under sections 376, 376(2)(f), 376(2)(k), 376C(a), 511, 354A, 354B, 354C, 354D, 506, 384, 388, 389, 204, 203, 212, 120B, 179, 202 r/w 149 of the IPC. The learned Magistrate takes cognizance of the offences against accused 1 to 3 on 20-08-2022, and issues summons by the following order:

"Charge sheet submitted by Assistant Police Commissioner of Mangalore South Sub-Division on 17-08-2022 against the accused

*A1 – K.S.N. Rajesh,
A2 – Ananth Bhat
A3 – Achhutha K.B.*

For offences U/Sections 376, 376(2)(F), 376(2)(K), 376(C)(A), 511, 354(A), 354(B), 354(C), 354(D), 506, 384, 388, 389, 204, 203, 212, 120(B), 179, 202 R/w 149 of IPC

Accused Nos. 1 to 3 are released on anticipatory bail.

Perused the charge sheet and enclosures. There is sufficient ground for proceeding. Hence, cognizance is taken for the offences U/Sec. 376, 376(2)(F), 376(2)(K), 376(C)(A), 511, 354(A), 354(B), 354(C), 354(D), 506, 384, 388, 389, 204, 203, 212, 120(B), 179, 202 r/w 149 of IPC.

Register the case in Register No.III. Issue Summons to the accused Nos. 1 to 3 r/by 13.10.2022.

Sd/- JMFC (III Court), Mangalore."

(Emphasis added)

It is this order that is now called in question. The submission restricts the challenge to taking cognizance for the offences punishable under Sections 376, 376(2)(f), 376(2)(k), 376C(a), 511 of IPC. The issue now is whether interference is called for with the order of cognizance insofar as the afore-quoted offences.

11. The learned counsel for the petitioner has restricted his challenge only to the said offences. The offences alleged are the ones punishable for ingredients of Section 375 which become punishable under Section 376 of the IPC. Section 376 (2)(f) and 376(2)(k) are alleged in the case at hand. Section 376 (2) reads as follows:

"376. Punishment for rape.—(1)

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

- (iii) *on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or*
- (b) *being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*
- (c) *being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*
- (d) *being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
- (e) *being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
- (f) *being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or***
- (g) *commits rape during communal or sectarian violence; or*
- (h) *commits rape on a woman knowing her to be pregnant; or*
- (i) *[* * *]*
- (j) *commits rape, on a woman incapable of giving consent; or*
- (k) *being in a position of control or dominance over a woman, commits rape on such woman; or***
- (l) *commits rape on a woman suffering from mental or physical disability; or*
- (m) *while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*
- (n) *commits rape repeatedly on the same woman,*

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

- (a) *"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted*

- under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;*
- (b) *"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;*
 - (c) *"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);*
 - (d) *"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."*

(Emphasis supplied)

What is alleged is Section 376(2)(f) which makes the person liable for punishment who being a relative, guardian or teacher or a person in a position of trust or authority towards a woman commits rape of such woman. Section 376(2)(k) punishes a person who is in a position of control or dominance over a woman commits rape of such woman. Section 376C(a) would make a person punishable for rape if he commits a rape being in a position of authority or in a fiduciary relationship.

12. Therefore, if the ingredients of the complaint are seen, the petitioner fits in all these positions. He is in the position of a teacher or in a position of trust over a complainant. In terms of Section 376(2)(k) he is in position of control or dominance and in terms of Section 376C(a) he is in position of authority, as the complainant was an intern working under the petitioner. It is to be seen whether being in that position the petitioner has committed an act of rape. The complaint, the summary of the charge sheet and Section 164 Cr.P.C. statement are as narrated hereinabove. Therefore, it becomes necessary to notice Section 511 of the IPC which is also alleged and upon which much emphasis is laid by the learned counsel for the petitioner. Therefore, I deem it appropriate to notice Section 511 of the IPC and it reads:

"511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

Section 511, deals with punishment for attempt to commit offences punishable with imprisonment for life or other imprisonment. Whoever attempts to commit an offence or causes such an offence to be committed or does act towards the commission of offence shall, where no express provision is made under the Code, would be punished with imprisonment which may extend to one-half of the imprisonment for life as the case may be or one half of the longest term of imprisonment. Therefore, the soul of the provision is '**attempt**' to commit an offence. The petitioner admits occurrence of the incident. But, contends that it is only a preparation or attempt and not commission.

LEGAL LANDSCAPE:

13. Before embarking upon the journey of consideration of the case of the petitioner *qua* the interplay between Section 511 and Section 376 of the IPC, I deem it appropriate to notice the law laid down by the Apex Court in the cases of allegation of rape where interplay between Section 511 and 376 are elucidated. The

Apex Court in the case of **NATHU RAM v. STATE OF HARYANA**¹

has held as follows:

“

11. *We have given our careful consideration to the above arguments. We may straight away say that we are not in a position to accept any of them. This is a case in which an illiterate villager with his daughter-in-law came for medical treatment but the appellant as well as the doctor had other designs to exploit the situation. When Mansa Ram (PW 8) returned with hot water what he saw had alarmed him. He is positive that doctor was standing naked while the appellant was scantily dressed in his kachha and banian. The salwar of Nirmala (PW 4) had been half folded. How the appellant came in was when Dr Ramesh (accused 1) assured Mansa Ram and Nirmala, PWs 8 and 4 respectively, that he will cure Nirmala with the help of his guru who is none else than the appellant. Merely because it happened to be a Sunday, it does not mean there was no possibility of the appellant not being there.*

12. *There may be minor discrepancies in the evidence of Mansa Ram (PW 8), as rightly held by the learned Sessions Judge but they are natural. A tutored witness will depose in a parrot-like fashion. In any event, these discrepancies are not so material as to reject his testimony. Above all, the two rustic villagers Nirmala and Mansa Ram, PWs 4 and 8 respectively, could not have ever thought of foisting a false case, more so, when there was admittedly no enmity between the appellant and Dr Ramesh on one hand and these prosecution witnesses on the other. We fully concur with the findings of both the courts that the plea of defence has to be rejected.*

13. *No doubt, Ganga Ram (CW 2) would say that no complaint was preferred to him by Mansa Ram (PW 8) but positive case of Mansa Ram (PW 8) is he promised to take action but he did not do anything. Therefore, he had to go up to the Chief Minister and the higher authorities. It is this relentless pursuit which made the police register the case. The sentence*

¹ (1994) 1 SCC 491

*cannot also be called excessive, under these circumstances of the case, when in complicity with Dr Ramesh (accused 1), the appellant abetted the offence of rape. **It is not that he was a mere bystander or onlooker. In the circumstances narrated above, the scanty dress clearly will make him fall under the said two sections with which he is charged. "It is the apparel that proclaims."** For all these reasons, we find no ground had been made out warranting interference. Accordingly, the appeal will stand dismissed."*

(Emphasis supplied)

The Apex Court was considering a case where the accused was standing in kachha and banian. The allegation was that he was attempting to rape the prosecutrix. The defence was that he had not opened the clothes completely. Therefore, it would not become a rape. It was only at best a preparation and not commission. The Apex Court declines to accept and upholds the conviction holding: **"It is the apparel that proclaims"**.

14. Later, the Apex Court in the case of **MADAN LAL v. STATE OF J & K**² holds as follows:

"...."

12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has

² (1997) 7 SCC 677

been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC.

... ..

14. In this view of the matter it must be held that apart from the reliable testimony of the prosecutrix herself there have been sufficient corroborative pieces of evidence on which the High Court has relied in setting aside the order of acquittal passed by the learned Sessions Judge. In our view on the evidence on record the conclusion is irresistible that the prosecution has been able to establish the charge of attempt to commit rape beyond all reasonable doubts and consequently the conviction and sentence passed by the High Court does not require any interference by this Court.

(Emphasis supplied)

The Apex Court holds that the difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination. The accused strips the girl naked and then making her lie flat on the ground and undresses himself. By the time he could commit any act, he ejaculates; there was no penetration. Even then, the Apex Court on interplay between the provisions of Sections 354, 376 r/w 511 holds that it was an

attempt to commit rape and he had been rightly convicted for offences under Section 376 and 511 of the IPC.

15. The Apex Court in **CHAITU LAL v. STATE OF UTTARAKHAND**³ has held as follows:

"....

7. The statement of the complainant victim reveals that the appellant-accused had attempted to molest her on numerous occasions. In order to attract culpability under Section 354 IPC, the prosecution has to prove that the accused applied criminal force on the victim with the intention of outraging her modesty. In the case at hand, prior to the commission of the offence, the appellant-accused had attempted to molest the complainant victim on the same day itself. **Later that night, the appellant-accused forcibly entered the house of the complainant victim in a drunken state, being aware about the absence of her husband. Thereafter, the appellant-accused, exerting criminal force, pounced upon the complainant victim and forcibly lifted her petticoat. Although, the complainant victim pleaded the accused to stop considering the fact that she was his aunt; he responded stating, it does not matter to him. The aforesaid action of the appellant-accused is sufficient to prove his culpability.**

8. The counsel of the appellant-accused has pleaded that the actions of the appellant-accused do not constitute the offence under Section 511 read with Section 376, as the appellant-accused had not committed any overt act such as any attempt to undress himself in order to commit the alleged act. This Court in Aman Kumar v. State of Haryana [Aman Kumar v. State of Haryana, (2004) 4 SCC 379 : 2004 SCC (Cri) 1266] , held that: (SCC p. 388, para 11)

³ (2019) 20 SCC 272

"11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part."

9. *The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. In the present case, the appellant-accused pounced upon the complainant victim, sat upon her and lifted her petticoat while the complainant victim protested against his advancements and wept. The evidence of the daughter (PW 2) also reveals that she pleaded with the appellant-accused to spare her mother. In the meantime, hearing such commotion, other villagers intervened and threatened the accused of dire consequences pursuant to which the accused ran away from the scene of occurrence. Here, the evidence of independent witness Sohan Lal (PW 4) assumes significance in corroborating the events on the date of occurrence, wherein he has averred that at around 10.00 p.m., he heard noise coming from the house of complainant victim, pursuant to which he saw the appellant-accused's wife holding his neck coming out from the house of the complainant victim. PW 4 had also overheard the complainant victim complaining that the appellant-accused was quarrelling with her.*

10. *Herein, although the complainant victim and her daughter were pleading with the accused to let the complainant victim go, the appellant-accused did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the appellant-accused would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.*

11. *The counsel on behalf of the appellant-accused placed reliance upon **Tarkeshwar Sahu v. State of Bihar (Now Jharkhand) [Tarkeshwar Sahu v. State of Bihar (Now Jharkhand), (2006) 8 SCC 560 : (2006) 3 SCC (Cri) 556]** , to claim the benefit of acquittal for the offence under Section 511 read with Section 376 IPC. But, on careful perusal of the aforesaid decision in the backdrop*

of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the appellant-accused in forcibly entering the house of the complainant victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.

... ..

13. Considering the facts and circumstances, the guilt of the appellant-accused has been established beyond doubt. In our opinion, therefore, the courts below have rightly convicted and sentenced the accused. In view of the aforesaid observations, the appeal lacks merit and is accordingly dismissed."

(Emphasis supplied)

Usage of criminal force to outrage the modesty of the victim and an attempt to rape her was upheld on interplay between Sections 511 and 376 of the IPC. The Apex Court holds that the attempt to commit an offence begins when the accused commences the act with the necessary intention. The facts therein were that the appellant pounced upon the victim, sat upon her, lifted her petticoat and was about to commit the act, by which time the victim cried and was rescued by the mother. Conviction was affirmed.

16. In the latest judgment, the Apex Court in the case of **STATE OF MADHYA PRADESH v. MAHENDRA**⁴ has held as follows:

“ ”

13. There is a visible distinction between “preparation” and “attempt” to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of “preparation” consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an “attempt” to commit the offence, starts immediately after the completion of preparation. “Attempt” is the execution of mens rea after preparation. “Attempt” starts where “preparation” comes to an end, though it falls short of actual commission of the crime.

... ..

22. There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of “rape” as it stood conservatively defined under Section 375IPC at that time.

23. The deposition by the victims (PW 1 and PW 2) are impeccable. Both have unequivocally stated as to how the respondent allured them and indulged in all those traumatic acts which have already been narrated in the preceding paragraphs. The statements of both the victim-children inspire full confidence, establish their innocence

⁴ (2022) 12 SCC 442

and evince a natural version without any remote possibility of tutoring.

24. Additionally, the feeble contention regarding the contradiction between the testimonies of PW 8 vis-à-vis both the victims is equally untenable. The perceived contradiction is not adequate to unsettle the narrative on which the case of the prosecution is based. Even otherwise, this contradiction can at best be seen as a mere "exaggeration" on behalf of a child witness whose remaining testimony completely supports the prosecution. As correctly pointed out by the trial court, the pivotal fact that the details of the incident were shared by the victims with PW 8 remains undisputed and as such the courts are obliged not to discard the entire testimony on the basis of a minor exaggeration. Furthermore, this Court has time and again reiterated that the victim's deposition even on a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist."

(Emphasis supplied)

On a coalesce of the afore-quoted legal fresco and on the bedrock of the principles laid down by the Apex Court, the crux of the allegations of the case at hand are required to be re-noticed. The incident narrated in the complaint has several hues. The petitioner pulls the hands of the complainant; kisses her; holds her tight; forcefully makes her sit on his lap; presses against her chest; whispered in her ear "love you and want to have you" grabbed the face; removed spectacles, forcibly tried to unbutton her; grabbed her breasts; pressed buttocks and touched all her private parts with bare hands. During all these the victim would clearly notice erection

of penis of the petitioner. The narration does not remain only in the complaint. But, Section 164 Cr.P.C. statement *supra* is a vindication of the narration in the complaint. Whether this would be preparation and attempt which is a thin line of difference, and they would require evidence as to what was the subsequent action, after preparation and attempt. This would undoubtedly be in the realm of disputed question of fact.

17. The contention of the learned counsel for the petitioner is that the victim, as at the time when she was examined by the doctor which is an extra-judicial statement, narrates that there was no sexual intercourse. The narration or what has happened would again be in the realm of disputed questions of fact. The CCTV footage and the voice sample, *inter alia* which are all the charge sheet material would be a matter of evidence with regard to preparation and attempt. Therefore, these matters would be in the territory of seriously disputed questions of fact, as the incident has three ingredients – intention, preparation, an attempt and whether commission has happened or not is the 4th stage, which would be a matter of evidence.

18. This Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., cannot delve deep at this stage, as to what has transpired after the intention, preparation and attempt, to allow the petition and set aside the order of taking of cognizance. Outraging the modesty or all other acts performed by the petitioner would undoubtedly mean intention, preparation and attempt. I decline to accept that the commission of offence should be examined by this Court on the basis of the charge sheet so filed and the statements so made by all the witnesses. The statement of co-intern/CW-2 is also taken under Section 164 of the Cr.P.C. These are all to be examined during the trial. In the teeth of what is afore-narrated interference at this stage, is not called for.

19. The learned counsel for the petitioner has laid emphasis on the order taking cognizance by contending that it suffers from non-application of mind. I decline to accept the said contention in the light of the judgment of the Apex Court in the case of **PRADEEP S.WODEYAR v. STATE OF KARNATAKA**⁵ wherein a

⁵ 2021 SCC OnLine SC 1140

Three Judge Bench of the Apex Court considers this very issue and holds as follows:

"C.5 Cognizance order and non-application of mind

76. *The counsel for the appellant has contended that the order of the Special Judge taking cognizance has not sufficiently demonstrated application of mind to the material placed before him. To substantiate this contention, the appellant relied on the decisions in Pepsi Foods Ltd. v. Special Judicial Magistrate, Fakhruddin Ahmad v. State of Uttaranchal, Mehmood Ul Rehman v. Khazir Mohammad Tunda, Sunil Bharti Mittal v. CBI and Ravindranatha Bajpe v. Bangalore Special Economic Zone Ltd. The respondent argued that this Court has made a distinction on application of mind by the judge for the purpose of taking cognizance based on a police report on the one hand and a private complaint under Section 200 CrPC on the other, and that the requirement of a demonstrable application of mind in the latter case is higher. For this purpose, the counsel relied on this Court's decisions in Bhushan Kumar v. State (NCT of Delhi) and State of Gujarat v. Afroz Mohammed Hasanafatta.*

77. *The decision of this Court in Pepsi Foods Ltd. (supra), arose out of the institution of a complaint filed against the appellants under Section 7 read with Section 16 of the Prevention of Food Adulteration Act 1964. The allegation in the complaint was that the appellants sold a bottle of beverage which was adulterated. After recording primary evidence, the Magistrate passed orders summoning the appellants. The appellants instituted proceedings before the High Court under Section 482 CrPC for quashing the summoning order and the proceedings. It was in this backdrop, that while adverting to the procedure envisaged in Chapter XV of the CrPC more particularly the provisions of Section 200, Justice DP Wadhwa speaking for a two judge Bench held:*

"12. [...] One of the modes by which a court can take cognizance of an offence is on filing of a complaint containing facts which constitutes such offence. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate (Sections 190 and 200 of the Code)."

78. Having noticed that proceeding had been initiated on the basis of a complaint, this Court held:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

79. On the facts, the Court held that the allegations against the appellants did not establish any offence under Section 7 of the Prevention of Food Adulteration Act and there was no basis in the complaint to make such allegation. Setting aside the order of the High Court, this Court accordingly quashed the complaint. The genesis of the

decision in Pepsi Foods Ltd. is founded on a complaint made to the Magistrate upon which steps had been initiated pursuant to the provision of Section 200 of the CrPC.

80. In Sunil Bharti Mittal (supra), the case before this Court arose out of alleged irregularities in the grant of an additional Spectrum in 2002. The case was being monitored by this Court. The CBI registered a case and after completion of the investigation filed a charge-sheet in the court of the Special Judge. The CBI, among others, mentioned three telecom companies as accused persons in respect of offences under Section 13(2) read with 13(1)(d) of the PC Act and allied offences. When the matter was taken up for the issuance of summons to the accused persons, the Special Judge while recording satisfaction that there was enough incriminating material to proceed against the accused named in the charge-sheet also found that three individuals, namely, the CMD, MD and Director of the three telecom companies were an alter ego of the respective companies. While taking cognizance of the cases, summons were issued not only to the accused in the charge-sheet but to the aforesaid three persons as well. Two of them moved this Court. Justice A K Sikri, while speaking for the three judge Bench, held that before taking cognizance of an offence, the Magistrate should have applied his mind to the case to satisfy himself that the allegations would constitute an offence:

"48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the

material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not."

81. Justice Sikri observed that while the Magistrate is empowered to issue process against a person who has not been charge-sheeted, there has to be sufficient material in the police report showing his involvement. The Court held that no such exercise was carried out by the Special Judge and in its absence, the order summoning the appellants could not be sustained. The decision in *Sunil Bharti Mittal (supra)* arose out of a police report but clearly involved a situation where appellants had not been arraigned as accused in the charge-sheet. The Magistrate had issued summons to them merely treating them to be an alter ego of the company. This Court held that it was a wrong (and a 'reverse') application of the principle of alter ego and that the order summoning them could not be sustained.

82. In *Mehmood Ul Rehman (supra)*, a complaint was filed by the Respondent under Section 500 of the Ranbir Penal Code (in parimateria to Section 500 of the IPC). The Magistrate passed the following order:

"4. [...] Perused the complaint, and the statements recorded. In the first instance of proceedings, let bail warrant to the tune of Rs. 15,000/- be issued against the alleged accused persons, with direction to the accused persons to cause their appearance before this Court on 22-4-2007, to answer the material questions."

83. The Respondent filed a petition before the High Court seeking to quash the proceedings initiated by the Magistrate. The High Court rejected the petition. Before this Court, a contention was raised that the Magistrate had not applied his mind to the complaint to form an opinion on whether the allegations would constitute an offence. Relying on *Pepsi Foods Ltd. (supra)*, it was observed that the Magistrate ought to have applied his mind to the allegations and must be satisfied that the facts alleged would constitute an offence. The order of the Magistrate was set aside by this

Court on the ground that the order did not indicate an application of mind by the Magistrate. The facts in this case fall squarely within Section 190(1)(a) CrPC since the Magistrate was only guided by the complaint before him. Moreover, Justice Kurian Joseph, writing for the two-judge Bench has clearly taken note of the difference between Section 190(1)(a) and 190(1)(b):

"21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."

84. In Fakruddin Ahmed (supra), a complaint was lodged before the Judicial Magistrate alleging commission of offences under Sections 240, 467, 468 and 471 IPC. The Magistrate directed the police to register the case and investigate it. The Magistrate thus, instead of following the procedure laid down under Section 200 or 202 CrPC, ordered that the matter be investigated and a report be submitted under Section 173(2) of the Code. Based on the police report, cognizance was taken by the Magistrate. A two-judge Bench of this Court observed that the Magistrate must apply his mind before taking cognizance of the offence. However, no observation was made that the cognizance order based on a police report needs to be 'well-reasoned'. On the facts of the case, the Court held that since the cognizance order was not placed before the High Court, it did not have the opportunity to review if the Magistrate had applied his mind while taking cognizance. The matter was thus remanded back to the High Court for it to peruse the documents and then decide the Section 482 petition afresh.

85. It must be noted that the decisions in Pepsi Foods Ltd. (supra) and Mehmood Ul Rehman (supra) arose in the

context of a private complaint. Though the decision in Sunil Bharti Mittal (supra) arose from a police report, it is evident from the narration of facts in the earlier part of this judgment that in that case, the charge-sheet had not named the Chief Executive Officers of the Telecom Companies as accused. The Magistrate, however, furnished the reason that the CEO was an alter ego of the Telecom Company which, as this Court noted in its judgment was a "reverse application" of the alter ego doctrine. Similarly, the cognizance order in Fakruddin Ahmed (supra) was based on a police report. However, this Court remanded the case back to the High Court for fresh consideration of the validity of the cognizance order and did not review the Magistrate's satisfaction before issuing the cognizance order. Therefore, none of the above judgments referred to support the contention of the appellant. Though all the above judgments mention that the Magistrate needs to apply his mind to the materials placed before him before taking cognizance, they have been differentiated on facts from the present case as unlike the present case where cognizance was taken based on the SIT report, in those cases cognizance was taken based on a complaint. The difference in the standard of proof for application of mind with reference to cognizance based on a complaint and police report has been briefly discussed in Mehmood Ul Rehman (supra) and Fakruddin Ahmed (supra). A two-judge Bench of this Court in Afroz Mohammed Hasanfatta (supra) laid down the law on the difference of the standard of review of the application of mind by the Judge while taking cognizance based on a police report and a private complaint.

86. In Afroz Mohammed Hasanfatta (supra), a complaint was filed by the Manager of a Bank against a Private Limited Company alleging that in pursuance of a conspiracy, the Company was importing rough and polished diamonds from the foreign market and selling them in the local market. On verification, the bills of entry were found to be bogus. Based on the complaint, an FIR was registered for offences under Sections 420, 465, 467, 468, 471, 477A and 120B of the Penal Code. A charge-sheet was submitted under Section 173 CrPC against two persons and the respondent was referred to as a suspect. A supplementary charge-sheet was

submitted inter alia against the respondent and based on it, cognizance was taken by the Magistrate. The High Court set aside the order of the Chief Judicial Magistrate taking cognizance. Justice Banumathi speaking for the two judge Bench dealt with the issue as to whether while taking cognizance of an offence under Section 190(1)(b) CrPC, the Court has to record reasons for its satisfaction before the issuance of summons. Relying upon the decision in Pepsi Foods Ltd. (supra), it was urged by the accused that the order for the issuance of process without recording reasons was correctly set aside by the High Court. Moreover, it was urged that there was no application of mind by the Magistrate. While distinguishing the decision in Pepsi Foods Ltd. (supra) on the ground that it related to taking of cognizance in a complaint case, the court held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons:

"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. **Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the**

Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.”

(emphasis supplied)

87. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under Section 173 CrPC and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in Afroz Mohammed Hasanfatta (supra). The Special Judge took note of the FIR, the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate that an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous.”

(Emphasis supplied)

Here again the concerned Court has taken cognizance on the basis of a final report – charge sheet filed against the petitioner. Therefore, the contention of the learned counsel for the petitioner

that the order taking cognizance suffers from non-application of mind and on that score it should be obliterated, is unsustainable, in the light of the judgment of the Apex Court in the case of **PRADEEP S.WODEYAR**.

20. If, on the peculiar facts of this case, this Court were to interfere under Section 482 of the Cr.P.C., it would run foul of plethora of judgments of the Apex Court which direct High Courts exercising jurisdiction under Section 482 of the Cr.P.C., not to interfere, if the issue is shrouded with seriously disputed questions of fact. The Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**⁶ has held as follows:

""

9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the

⁶ (2021) 9 SCC 35

learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. **If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.** Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar* [*Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in *Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in *Arvind Khanna* [*CBI v. Arvind Khanna*, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , *Managipet* [*State of Telangana v. Managipet*, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in *XYZ* [*XYZ v. State of Gujarat*, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e.

27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed.”
(Emphasis supplied)

Prior to the judgment in **KAPTAN SINGH**, the Apex Court in the case of **PRITI SARAF v. STATE OF NCT OF DELHI**⁷ has held as follows:

“

23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.

24. The question which is raised for consideration is that in what circumstances and categories of cases, a criminal proceeding may be quashed either in exercise of the extraordinary powers of the High Court under Article 226 of the Constitution, or in the exercise of the inherent powers of the High Court under Section 482 CrPC. This has often been hotly debated before this Court and various High Courts. Though in a series of decisions, this question has been answered on several occasions by this Court, yet the same still comes up for consideration and is seriously debated.

... ..

28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the

⁷ 2021 SCC OnLine SC 206

case is the rarest of rare case, to scuttle the prosecution at its inception.

29. In the matter under consideration, if we try to analyse the guidelines of which a reference has been made, can it be said that the allegations in the complaint/FIR/charge-sheet do not make out a case against the 2nd respondent or do they disclose the ingredients of an offence alleged against the 2nd respondent or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the 2nd respondent."

(Emphasis supplied)

21. In the light of the aforesaid judgments of the Apex Court, in the considered view of this Court, it is a matter of evidence, in a full blown trial for the petitioner to come out clean. The concerned Court is yet to frame charges and there is no reason to believe that the Court would not apply its mind while framing charges. Therefore, none of the submissions made by the learned counsel for petitioner merit any acceptance.

22. Judged from these spectrum and analysed on the aforesaid prismatic analysis, the irresistible conclusion, is that there is no warrant of interference at the hands of this Court at this juncture, to intervene, interdict or obliterate those allegations of rape, preparation and attempt for an offence against the petitioner,

as any interference by this Court would be rendering plaudits to the wanton lust and vicious appetite of the petitioner. If a naive student of law, enters the office of an Advocate, as an intern; in turn gets to face these horrendous acts, it would have a chilling effect on the entire practice and profession. Therefore, it is for the accused to come out clean in a full blown trial.

23. For the aforesaid reasons, finding no merit in the petition, the petition stands dismissed.

It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against him before the concerned Court.

Consequently, I.A.No.1 of 2022 also stands disposed.

**Sd/-
JUDGE**

bkp