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PRASHANT BHARTI

v.

STATE OF NCT OF DELHI

(Criminal Appeal No. 175 of 2013)

JANUARY 23, 2013

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[D.K. JAIN AND JAGDISH SINGH KHEHAR, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

- C s. 482 read with s.401 – Quashing of criminal proceedings – Allegations leveled by prosecutrix against accused for commission offences punishable u/ss 328, 354 and 376 on false promise of marriage – Charge-sheet filed – Charges framed – Held: In the charge sheet, Investigating Officer acknowledged that he could not find any proof to substantiate the charges – Charge-sheet was filed only on the basis of statement of prosecutrix u/s 164 – Further, in view of scientific investigation as revealed by mobile phones of prosecutrix and accused, commission of offence as alleged by prosecutrix cannot be established in trial – Therefore, judicial conscience of High Court ought to have persuaded it, on the basis of the material available before it to quash criminal proceedings initiated against appellant, in exercise of inherent powers vested with it u/s 482 – Accordingly, FIR, consequential charge-sheet as also charges framed by trial court are quashed – Penal Code, 1860 – ss.328, 354 and 376.

- G On the basis of the statement of the complainant prosecutrix, an FIR was registered against the appellant for offences punishable u/ss 328 and 354, IPC. The appellant-accused was arrested on the same day. Five days thereafter the prosecutrix made a supplementary statement alleging that the accused, on the assurance of getting her married, had physical relations with her

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several times, the latest being one and half months prior to the date of the FIR. Accordingly, the offence punishable u/s 376 IPC was added to the case. Subsequently, statement of complainant/prosecutrix was recorded u/s 164 CrPC by the Metropolitan Magistrate. The police filed charge-sheet for offences punishable u/ss 328, 354 and 376 IPC. The writ petition filed by the petitioner alleging false implication and seeking to quash the FIR was dismissed by the High Court. Even the writ petition filed by the prosecutrix seeking to quash the FIR filed by her was also dismissed. The order framing the charges having been unsuccessfully challenged by the accused, in revision before the High Court, he filed the instant appeal.

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Allowing the appeal, the Court

HELD: 1.1. This Court is satisfied that the assertion made by the complainant/ prosecutrix, that on 23.12.2006, 25.12.2006 and 1.1.2007, she was induced to a physical relationship by the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified, as during the said period and more than one year and eight months thereafter, she had remained married to one 'LP'. She also affirmed that she was remarried thereafter to one 'M' and produced a "certificate of marriage" dated 30.9.2008. In the absence of any scientific evidence of sexual intercourse between the complainant/prosecutrix and the appellant-accused, it is unlikely, that a factual assertion made by the complainant/prosecutrix, would be acceptable over that of the appellant-accused. Further, a consensual relationship without any assurance obviously will not substantiate the offence punishable u/s 376 IPC alleged against the accused. [para 15-17] [515-F-G; 516-D-E; 517-A-B, D-E; 518-A]

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- A 1.2. The assertions made by the prosecutrix in her first complaint dated 16.2.2007 regarding the incident of 15.2.2007, her presence as well as the presence of the appellant-accused at the alleged place of occurrence at the alleged time has been established to be false on the
- B basis of mobile phone call details of the parties concerned, and it must be considered to be conclusive for all intents and purposes. The factual conclusion cannot be altered at the culmination of the trial, since the basis of such determination is scientific evidence. Neither
- C has the said material been contested by the prosecutrix. It is, thus, obvious that the allegation made by the complainant/ prosecutrix against the appellant-accused of having outraged her modesty, was false. What stands established now, will have to be reaffirmed on the basis
- D of the same evidence at the culmination of the trial. Such being the fact situation, it has to be concluded, that the allegations levelled by the prosecutrix against the accused, which culminated in the registration of a first information report on 16.2.2007, as well as her
- E supplementary statement, would never lead to his conviction. [para 18] [518-B, D-E; 519-C-H]

Gajraj vs. State (NCT) of Delhi 2011 (12) SCR 701 = 2011 (10) SCC 675 - relied on

- F 1.4. Most importantly, as against the allegations, no pleadings whatsoever have been filed by the complainant. As a matter of fact, the prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would, therefore, be legitimate to conclude in the facts and circumstances of the case, that the material relied upon by the accused has not been refuted by the complainant/ prosecutrix. Even in the charge sheet dated 28.6.2007, the investigating officer has acknowledged that he could not find any proof to substantiate the charges. The
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charge-sheet had been filed only on the basis of the statement of the prosecutrix u/s 164 of the Cr.P.C. [para 21] [525-A-C]

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1.5. Therefore, judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it u/s 482 Cr.P.C. Accordingly, this Court is satisfied, that the first information report registered for offences punishable u/ss. 328, 354 and 376 IPC against the appellant-accused, and the consequential charge-sheet as also the framing of charges by the Additional Sessions Judge deserve to be quashed. Ordered accordingly. [para 22] [525-E-G]

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Rajiv Thaper & Ors. vs. Madan Lal Kapoor [2013] 1 SCR - relied on.

Case Law Reference:

2011 (12) SCR 701	relied on	para 18
[2013] 1 SCR	relied on	para 18

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 175 of 2013.

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From the Judgment & Order dated 16.01.2009 of the High Court of Delhi at New Delhi in Criminal Revision Petition No. 08 of 2009.

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K.T.S. Tulsi, Gaurave Bhargava (for Niraj Gupta) for the Appellant.

R.K. Rathore, Vikas Bansal, D.S. Mahra (for Anil Katiyar) (Priya-Complainant) for the Respondent.

The Judgment of the Court was delivered by

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- A JAGDISH SINGH KHEHAR, J. 1. Leave granted.
- B 2. On 16.2.2007, Priya (hereinafter referred to as, the complainant/prosecuterix), aged 21 years, a resident of Tughlakabad Extension, New Delhi, made a phone call to the Police Control Room (hereinafter referred to as, the PCR). Police personnel immediately reached her residence. She made a statement to the police, leading to the registration of first information report no. 47 of 2007 at Police Station Lodhi Colony, New Delhi, under Sections 328 and 354 of the Indian Penal Code. In her statement to the police, the complainant/prosecuterix alleged, that the appellant herein Prashant Bharti (hereinafter referred to as, the appellant-accused) was known to her for about four months. The appellant-accused was a resident of Lodhi Colony, New Delhi. It was alleged that on the preceding day i.e., on 15.2.2007, the appellant-accused had made a phone call to the complainant/prosecuterix, at about 8.45 pm, and asked her to meet him at Lodhi Colony, New Delhi. When she reached Lodhi Colony, he drove her around in his car. He also offered the complainant/prosecuterix a cold drink (Pepsi) allegedly containing a poisonous/intoxicating substance. According to the complainant/prosecuterix she felt inebriated after taking the cold drink. In her aforesaid state, the appellant-accused started misbehaving with her. He also touched her breasts. Inspite of the complainant/prosecuterix stopping him, it was alleged, that the appellant-accused continued to misbehave with her. The complainant/prosecuterix then got the car stopped, and hired an auto-rickshaw to return to her residence. In her statement, the complainant/prosecuterix requested the police to take legal action against the appellant-accused.
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- G 3. Immediately after recording the statement of Priya (the complainant/prosecuterix) on 16.2.2007, the police took her to the All India Institute of Medical Sciences (hereinafter referred to as, the AIIMS), New Delhi. She was medically examined at 1.44 pm. It is sufficient to record herein, that as per the medical
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report prepared at the AIIMS, there was no evidence of A
poisoning.

4. Based on the statement made by the complainant/ B
prosecuterix, the appellant-accused Prashant Bharti was arrested at 6 pm, on the same day on which the complainant recorded her statement, i.e., on 16.2.2007, a day after the occurrence.

5. After a lapse of five further days, on 21.2.2007, at 8.20 C
am, the complainant/prosecuterix made a supplementary statement to the police. On this occasion, she alleged, that D
Prashant Bharti, the appellant-accused, had been having physical relations with her in his house, on the assurance that he would marry her. It was alleged by the complainant/ E
prosecuterix, that the appellant-accused had subsequently refused to marry her. With reference to the incident of F
15.2.2007, she alleged, that she had been administered some intoxicant in a cold drink (Pepsi) by Prashant Bharti, so as to enable him to have a physical relationship with her. But, it was alleged, that she did not succumb to his said desire on G
15.2.2007. The complainant/prosecuterix further alleged, that after she returned to her residence on 15.2.2007, she did not feel well and accordingly, had gone to sleep. She therefore explained, why she had made her earlier complaint, on the following day of the incident. In her supplementary statement, she requested the police to take legal action against Prashant Bharti, the appellant-accused, for having physical relations with her (on 23.12.2006, 25.12.2006 and 1.1.2007) at his residence, on the basis of a false promise to marry her.

6. Immediately after recording her supplementary statement, the complainant/prosecuterix was taken to the AIIMS. G
She was medically examined at the AIIMS at 12 noon, on H
21.2.2007. In the medical report prepared at the AIIMS after her examination, it was recorded, that she had no external injuries, and that her hymen was not intact. It was pointed out, that a vaginal smear was not taken, because more than a month

- A had elapsed from the date of the alleged intercourse(s). Likewise, it was pointed out, that her clothes were not sent for forensic examination, because she had changed the clothes worn by her at the time of the alleged occurrence(s). In other words, the assertions made by the accused could not be tested
- B scientifically, because the complainant was being medically examined, after a substantial delay.

- C 7. Based on the supplementary statement of Priya (the complainant/prosecuterix) recorded on 21.2.2007, the offence under Section 376 was added to the case.

- D 8. On 27.2.2007, the statement of the complainant/prosecuterix was recorded under Section 164 of the Code of Criminal Procedure by the Metropolitan Magistrate, New Delhi (in first information report no. 47 of 2007). A relevant extract of the aforesaid statement, is being reproduced below:-

- E "... then Prashant asked for my number and detail of address. I gave my office telephone number to him. In evening, Mr. Prashant Bharti called me and talked about loan and after some days, Prashant Bharti came to meet in my office and thereafter we became good friends and one day, Prashant Bharti told me that he loves me and wish to marry me and thereafter, we started meeting frequently and I consented for marriage.
- F One day, when all the family members were gone somewhere, Prashant Bharti called me to his home for party and he told me that he will marry me soon and will inform to his parents about our relationship and he made relation with me. And, whenever his home was vacant, he usually calls me up and when his parents came, I asked him to tell them about our relationship and he did not inform this and on this issue, we have fight with each other and I informed to his parents. Then his parents called Prashant about this and Prashant Bharti denied our relationship to his father and neither he wish to marry me and on that day,
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I was sent to my home by his parents. A

After two days, Prashant Bharti called me and asked me to meet him, as he wish to tender apology and when I was going to reach my home from office, then I, through auto rickshaw, reached at Central School, Lodhi Colony, where Prashant Bharti was standing near to his Santro Car, and he met me there and he asked me that he has committed mistake and he wish to tender apology and after some time, he took me to his car and thereafter, he told me that he is feeling thirsty and thereafter, he brought Pepsi in car and we both took the Pepsi. And, after drinking the same, I lost my conscious and thereafter, he started misbehaving with me and I asked him that why he was doing so, then he told me that, as I complained to his father, he will take revenge from me, and he forcibly misbehaved with me, and I immediately got down from the car and by Auto, I came to my house and as I was unwell, I could not lodge my complaint with police. On the next day, I called 100 number PCR and there police official, accompanies me and I informed everything to SHO Surinder Jeet and on that basis, he was arrested." E

9. By an order dated 12.3.2007, the Additional Sessions Judge, Delhi granted bail to the appellant-accused. In the aforesaid order passed on 12.3.2007, the following factual position was relied upon, to extend the benefit of bail to the appellant-accused. The appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15.2.2007. He was at Noida before 7.55 pm. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh etc. From 9.15 pm to 11.30 pm on 15.2.2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the appellant-accused was found to be correct by the investigating officer, on the basis of his mobile phone call details. H

- A Verification of the mobile phone call details of the complainant/prosecuterix Priya revealed, that on 15.2.2007, no calls were made by the appellant-accused to the complainant/prosecuterix, and that, it was the complainant/prosecuterix who had made calls to him. The complainant/prosecuterix, on and
- B around the time referred to in the complaint dated 16.2.2007, was at different places of New Delhi i.e., in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlakabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. Even though the
- C complainant/prosecuterix was married to one Manoj Kumar Soni, S/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16.2.2007 and 21.2.2007), she had suggested that she was not married. At the time when the complainant/prosecuterix alleged, that the appellant-accused had misbehaved with her and had outraged her modesty on 15.2.2007 (per her complaint dated 16.2.2007), she was actually in conversation with her friends (as per the verification
- E made by the investigating officer on the basis of her mobile phone call details). Even though the complainant/prosecuterix had merely alleged in her complaint dated 16.2.2007, that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (on
- F 21.2.2007), levelled further allegations against the accused of having repeatedly raped her (on 23.12.2006, 25.12.2006 and 1.1.2007), on dates preceding the first complaint.

- G 10. On 28.6.2007, the police filed a chargesheet under Sections 328, 354 and 376 of the Indian Penal Code. In the chargesheet, it was clearly mentioned, that the police investigation, from different angles, had not yielded any positive result. However, the chargesheet was based on the statement made by the complainant/prosecuterix before the Metropolitan Magistrate, New Delhi under Section 164 of the Code of
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Criminal Procedure, which was found to be sufficient for the charges alleged against the appellant-accused. A relevant extract of the chargesheet depicting the aforesaid factual position, is being reproduced below:-

"I the Inspector, tried my best from all angles to recover the intoxicating substance/Pepsi/Pepsi glass and undergarments worn at the time of the rape. But nothing could be recovered and for this reason, the blood sample of accused could not be sent to FSL. As from the investigation so far conducted, no proof could be found in support of the crime under Section 328/354 IPC and even the position of accused Prashant Bharti is not available at Lodhi Colony at the date and time as his mobile phone ill. However, prosecuterix Priya Porwal made statement on 21.2.2007 and on 27.2.2007 under Section 164 Cr.P.C. which is sufficient in support of his challan for the offence under Section 376 IPC."

(emphasis is ours)

11. Aggrieved by the first information report (bearing no. 47 of 2007) registered at the Police Station Lodhi Colony, New Delhi, the appellant-accused filed Writ Petition (Crl.) no. 1112 of 2007 before the Delhi High Court for quashing the said first information report on the ground, that the appellant-accused had been falsely implicated. The High Court, dismissed the said writ petition on 27.8.2007, without going into the merits of the controversy, by recording the following observations:-

"This Court cannot quash the FIR on the ground that FIR was false FIR. In case of a false FIR, it must be brought to its logical conclusion and Investigating Officer must give a report to that effect. In this case, if it is found that the petitioner has been falsely implicated and the complaint was false, it would be obligatory on the part of the Investigating Officer to register a case and book the prosecuterix for falsely implicating the person in an offence

- A under Section 376 IPC. It is a very serious matter that a prosecuterix just by making a false statement can book somebody in offence under Section 376 IPC, which is serious in nature and invites a minimum punishment of 07 years. I consider that Investigating Officer shall submit a detailed report and in case, it is that the petitioner was falsely implicated, he would take steps for booking the complainant for falsely implicating the petitioner."
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- C 12. Interestingly, even the complainant/prosecuterix filed Writ Petition (Crl.) no. 257 of 2008 before the Delhi High Court seeking quashing of the first information report lodged by the complainant/prosecuterix herself. The High Court noticed the observations recorded in the order dated 27.8.2007 (passed in Writ Petition (Crl.) no. 1112 of 2007) and dismissed the writ petition filed by the complainant/prosecutrix.
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13. On 1.12.2008, the Additional Sessions Judge, New Delhi, framed charges against the appellant-accused, by observing as under:-

- E "4. Considering the facts and circumstances of the case that prosecuterix has levelled specific allegations against the accused that she was given pepsi to drink and after consuming the same she was intoxicated and accused teased her, moved his hands on her breast and earlier made physical relations with her on the assurance of marriage, I am of the considered opinion that prosecution has brought *prima facie* sufficient material on record against the accused for charge under Sections 354/328/ 376 IPC. Let charge be framed accordingly."
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- G 14. Dissatisfied with the action of the trial Court in framing charges against him, the appellant-accused filed Criminal Revision Petition no. 08 of 2009, whereby he assailed the order dated 1.12.2008 passed by the Additional Sessions Judge, New Delhi. The Delhi High Court dismissed the revision petition on 16.1.2009, by interalia observing as under:-
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“12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this Revision Petition is dismissed in limine while making it clear that anything herein shall not be construed as an opinion on merits at trial.”

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15. Despite notice having been issued to the complainant/prosecuterix by this Court in the present case, she failed to enter personal appearance (or be represented through counsel). To procure her presence, bailable warrants were issued in furtherance of this Court’s order dated 12.5.2010 and again on 16.10.2012. Priya, the complainant/prosecuterix entered personal appearance on 8.11.2012. During the course of hearing, consequent upon clarifications sought from her in respect of her marital status (at the time of the alleged occurrences with the appellant-accused), she informed this Court, that even though she was married earlier, she had divorced her previous husband before the dates of occurrence. To verify the factual position pertaining to her marital status as on the dates of occurrence(s), she was asked to produce the judgment and decree of divorce, from her previous husband. She accordingly produced a certified copy of the judgment and decree of the Court of the Civil Judge (Senior Division), Kanpur (Rural) dated 23.9.2008. A photocopy thereof duly attested by Priya, the complainant/prosecuterix, and her counsel, were taken on record. A perusal of the same reveals, that the complainant/prosecuterix was married to Lalji Porwal on 14.6.2003. She was divorced from her said husband by mutual consent under Section 13B of the Hindu Marriage Act, 1955, on 23.9.2008. Priya, the complainant/prosecuterix also affirmed, that she had remarried thereafter. She also produced before us a “certificate of marriage” dated 30.9.2008. A photocopy thereof duly attested by Priya and her counsel, was also taken on record. A perusal of the same reveals, that Priya (date of birth, 17.6.1986), daughter of Anup Kumar was married

- A to Manoj (date of birth, 8.12.1983), son of Ram Kumar, on 30.9.2008.

16. The factual position narrated above would enable us to draw some positive inferences on the assertion made by the complainant/prosecuterix against the appellant-accused (in the supplementary statement dated 21.2.2007). It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person.
- B The judgment and decree dated 23.9.2008 reveals, that the complainant/prosecuterix was married to Lalji Porwal on 14.6.2003. It also reveals, that the aforesaid marriage subsisted till 23.9.2008, when the two divorced one another by mutual consent under Section 13B of the Hindu Marriage Act.
- C In her supplementary statement dated 21.2.2007, the complainant/prosecuterix accused Prashant Bhati of having had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during
- D the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecuterix, that the appellant-accused had physical relations with her, on the assurance that he would marry
- E her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If
- F the judgment and decree dated 23.9.2008 produced before us by the complainant/prosecuterix herself is taken into consideration alongwith the factual position depicted in the supplementary statement dated 21.2.2007, it would clearly emerge, that the complainant/prosecuterix was in a relationship of adultery on 23.12.2006, 25.12.2006 and 1.1.2007 with the
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appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecuterix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

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17. Would it be possible for the prosecution to establish a sexual relationship between Priya, the complainant/prosecuterix and Prashant Bharti, the appellant-accused, is the next question which we shall attempt to answer. Insofar as the instant aspect of the matter is concerned, medical evidence discussed above reveals, that the complaint made by the complainant/prosecuterix alleging a sexual relationship with her by Prashant Bharti, the appellant-accused, was made more than one month after the alleged occurrences. It was, therefore, that during the course of her medical examination at the AIIMS, a vaginal smear was not taken. Her clothes were also not sent for forensic examination by the AIIMS, because she had allegedly changed the clothes which she had worn at the time of occurrence. In the absence of any such scientific evidence, the proof of sexual intercourse between the complainant/prosecuterix and the appellant-accused would be based on an assertion made by the complainant/prosecuterix. And an unequivocal denial thereof, by the appellant-accused. One's word against the other. Based on the falsity of the statement made by the complainant/prosecuterix noticed above (and other such like falsities, to be narrated hereafter), it is unlikely, that a factual assertion made by the complainant/prosecuterix, would be acceptable over that of the appellant-accused. For the sake of argument, even if it is assumed, that Prashant Bharti, the appellant-accused and Priya, the complainant/prosecuterix, actually had a physical relationship, as alleged, the same would necessarily have to be consensual, since it is the case of the complainant/prosecuterix herself, that the said physical relationship was with her consent consequent upon the assurance of marriage. But then, the discussion above, clearly

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- A negates such an assurance. A consensual relationship without any assurance, obviously will not substantiate the offence under Section 376 of the Indian Penal Code, alleged against Prashant Bharti.
- B 18. Insofar as the assertion made by the complainant/prosecuterix, in her first complaint dated 16.2.2007 is concerned, it is apparent, that on the basis thereof, first information report no. 47 of 2007 was registered at Police Station Lodhi Colony, New Delhi. In her aforesaid complaint,
- C Priya, the complainant/prosecuterix had alleged, that the appellant-accused had called her on her phone at 8.45 pm and asked her to meet him at Lodhi Colony, New Delhi. When she reached there, he drove her around in his car. He also offered her a cold drink (Pepsi) containing a poisonous/intoxicating substance. Having consumed the cold drink, she is stated to
- D have felt inebriated, whereupon, he took advantage of her and started misbehaving with her, and also touched her breasts. Insofar as the instant aspect of the matter is concerned, the presence of the complainant/prosecuterix, as well as the appellant-accused, at the alleged place of
- E occurrence (Lodhi Colony, New Delhi), on the night of 15.2.2007 after 8.45 pm, has been established to be false on the basis of mobile phone call details of the parties concerned. Details in this respect have been summarized in paragraph 8 above. The same are not being repeated for reasons of brevity.
- F The proof of the aforesaid factual matter must be considered to be conclusive for all intents and purposes, specially, in view of the observations made by this Court in *Gajraj Vs. State (NCT) of Delhi* [(2011) 10 SCC 675], wherein it was held as under:-
- G "19. In the aforesaid sense of the matter, the discrepancy in the statement of Minakshi PW23, pointed out by the learned counsel for the accused-appellant, as also, the reasoning rendered by the High Court in the impugned judgment becomes insignificant. We are satisfied, that the
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process by which the accused-appellant came to be identified during the course of investigation, was legitimate and unassailable. The IEMI number of the handset, on which the accused-appellant was making calls by using a mobile phone (sim) registered in his name, being evidence of a conclusive nature, cannot be overlooked on the basis of such like minor discrepancies . In fact even a serious discrepancy in oral evidence, would have had to yield to the aforesaid authentic digital evidence which is a byproduct of machine operated electronic record having no manual interference. For the reasons recorded hereinabove, we find no merit in the first contention advanced at the hands of the learned counsel for the accused-appellant.”

The aforesaid factual conclusion, that the two concerned parties were not present at Lodhi Colony, New Delhi after 8.45 pm on 15.2.2007, as has been established on the basis of the investigation carried out by the police, cannot be altered at the culmination of the trial, since the basis of the aforesaid determination is scientific evidence. Neither has the said material been contested by the complainant/prosecutrix. Once it is concluded, that the complainant/prosecuterix and the appellant-accused were at different places, far away from one another, and certainly not in Lodhi Colony, New Delhi on the night of 15.2.2007, it is obvious that the allegation made by Priya, the complainant/prosecuterix against Prashant Bharti, the appellant-accused of having outraged her modesty, was false. What stands established now, as has been discussed above, will have to be reaffirmed on the basis of the same evidence at the culmination of the trial. Such being the fact situation, we have no other alternative but to conclude, that the allegations levelled by the complainant/prosecuterix, which culminated in the registration of a first information report at Police Station Lodhi Colony, New Delhi on 16.2.2007, as well as her supplementary statement, would never lead to his conviction.

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- A 19. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* (Criminal Appeal No..... of 2013, arising out of SLP (Crl.) no.4883 of 2008, decided on 23.1.2013) wherein this Court inter alia held as under:
- B 22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon
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by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

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23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

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- (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
- (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
- (iv) Step four, whether proceeding with the trial would

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- A result in an abuse of process of the court, and would not serve the ends of justice?
- B If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."
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- D 20. The details in respect of each aspect of the matter, arising out of the complaints made by Priya on 16.2.2007 and 21.2.2007 have been examined in extensive detail in the foregoing paragraphs. We shall now determine whether the steps noticed by this Court in the judgment extracted hereinabove can be stated to have been satisfied. In so far as the instant aspect of the matter is concerned, the factual details referred to in the foregoing paragraphs are being summarized hereafter. Firstly, the appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15.2.2007. He was at Noida before 7.55 pm. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh etc. From 9.15 pm to 11.30 pm on 15.2.2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the appellant-accused was found to be correct by the investigating officer on the basis of his mobile phone call details. The accused was therefore not at the place of occurrence, as alleged in the complaint dated 16.2.2007. Secondly, verification of the mobile phone call details of the complainant/prosecuterix Priya revealed, that on 15.2.2007, no calls were made by the appellant-accused to the complainant/prosecuterix, and that, it was the complainant/prosecuterix who
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had made calls to him. Thirdly, the complainant/prosecuterix, on and around the time referred to in the complaint dated 16.2.2007, was at different places of New Delhi i.e., in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlakabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. The complainant was also not at the place of occurrence, as she herself alleged in the complaint dated 16.2.2007. Fourthly, at the time when the complainant/prosecuterix alleged, that the appellant-accused had misbehaved with her and had outraged her modesty on 15.2.2007 (as per her complaint dated 16.2.2007), she was actually in conversation with her friends (as per the verification made by the investigating officer on the basis of her mobile phone call details). Fifthly, even though the complainant/prosecuterix had merely alleged in her complaint dated 16.2.2007, that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (on 21.2.2007), levelled allegations against the accused for offence of rape. Sixthly, even though the complainant/prosecuterix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16.2.2007 and 21.2.2007), she had suggested that she was unmarried. Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23.9.2008, the complainant was married to Lalji Porva on 14.6.2003. The aforesaid marriage subsisted till 23.9.2008. The allegations made by the complainant dated 16.2.2007 and 21.2.2007 pertain to occurrences of 23.12.2006, 25.12.2006, 1.1.2007 and 15.2.2007, i.e., positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30.9.2008. This is evidenced by a "certificate of marriage" dated 30.9.2008. In view of the aforesaid, it is apparent that the complainant could

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- A not have been induced into a physical relationship, based on an assurance of marriage. Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by
- B the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated 30.9.2008, indicating her date of birth as 17.7.1986. Ninthly, as per the medical report recorded by the AIIMS dated 16.2.2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16.2.2007 it was observed that blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations levelled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence. Tenthly, The factual position indicated in the charge-sheet dated 28.6.2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the complainant had consumed the same. The allegations made by the complainant could not be verified even
- F by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28.6.2007. Eleventhly, as per the medical report recorded by the AIIMS dated 21.2.2007 the assertions made by the complainant that the accused had physical relations with her on 23.12.2006,
- G 25.12.2006 and 1.1.2007, cannot likewise be verified as opined in the medical report, on account of delay between the dates of occurrences and her eventual medical examination on 21.2.2007. It was for this reason, that neither the vaginal smear was taken, nor her clothes were sent for forensic examination.

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21. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the Cr.P.C.

22. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in *Rajiv Thapar's* case (*supra*) stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed.

Disposed of in the aforesaid terms.

R.P.

Appeal disposed of.

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