courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 23/12/2025

(2025) 12 SHI CK 0049

Himachal Pradesh HC

Case No: CR. MMO NO. 442 Of 2022

Vikram Singh	APPELLANT
Vs	
State Of H.P. & Others	RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Constitution Of India, 1950-Article 226
- Code Of Criminal Procedure, 1973-Section 155(2), 156(1), 161, 164, 482
- Indian Penal Code, 1860-Section 90, 375, 376, 506
- Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989-Section 3(1), 3(1)(u), 3(1) (w), 3(2)(vii)
- Hindu Marriage Act, 1955-Section 13B
- Evidence Act, 1872-Section 3

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: N.S. Chandel, Rajesh Kumar Sharma, Vishal Verma, Rohit Sharma, Ranjna Patial, Hemant Vaid, Yudhvir Singh Thakur

Final Decision: Allowed

Judgement

Virender Singh, J

1. Petitioner Vikram Singh has filed the present petition, under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), for quashing of FIR No.143, dated 12.09.2019, (hereinafter referred to as the FIR, in question) registered, under Sections 376 and 506 of the Indian Penal Code (hereinafter referred to as the IPC') and Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SCST Act'), with Police Station Manali, District Kullu, H.P., as well as, the proceedings resultant thereto.

2. According to the petiti ner, he is permanent resident of the address, as men ioned in the petition and presently, residing in Aust alia.

3. It is the case of the petitioner that in hope of better future, he has migrated to Australia, where, he was running a taxi, as a part time job, so that he could raise funds for his education in Australia.

4. It is his further case that respondent No.3, met him at Australia in a club in the month of November December 2018, and after small introduction, both of them come closure to each other.

5. As per the further case of the petitioner, respondent No.3 has told him that she is in Australia since 2009 and is green card holder and residing with her boyfriend, who is Australian citizen. Thereafter, both of them remained in touch with each other, and after few days, respondent No.3 came to the petitioner to reside with him, on the pretext, that relations of respondent No.3 with her boyfriend have now become strained and she wants to reside with, him only for few days, till she will make her own arrangement. Due to the above intimacy, the relation had developed between the petiti ner and respondent No.3.

6. It is the further case of he petitioner that in the month of January 2019, the petitioner came to India for vacation, as, he was on st dy visa and living in Australia. Respondent No.3 also came to India in month of February, 2019, and she had called the petitioner by informing that she is in India. Both of them visited different places in India and ultimately, went back to Australia, in the month of March, 2019. The petitioner went back to Australia on 24. 03.2019. After reaching Australia, respondent No.3 planned a trip to Bali (Indonesia) and she had made a request to the petitioner to be with her to Bali, upon which, the petitioner informed her that he is not in a position to spend money on such type of trips. Thereafter, respondent No.3 had assured that she will bear all the expenses incurred on this trip. Thereafter, both of them went to Bali on 03.04.2019 and returned back to Australia on 11.04.2019.

7. It is the further case of the petitioner that on 19. 05.2019, he received a message from respondent No.3 intimating that she is pregnant and is not interested to have the child. Thereafter, the petiti ner advised her that she can abort the child, if she is not comfortable. Thereafter, respondent No.3 had informed the petitioner that s per the advice of the doctor, abortion is not possible. Thereafter, she suggested the petitioner to go to another country i.e. India or Bali, for abortion, but, the petitioner refused to cooperate her, on her suggestion regarding abortion. Thereafter, she become upset and started shouting upon the petitioner and told him to leave the house, as such, he left the house and started living with his friend at Blacktown Australia. Thereafter, respondent No.3 started harassing the petitioner with phone calls and messages and threatened the petitioner that if he will not come back and stay with her, she will made the complaint to the police, however, petitioner refused to accept her request. Consequently, she filed a complaint on 24.06.2019, under Crimes (Domestic and Personal Violence) Act, 2007 for Apprehended Domestic Violence Order (AVO).

8. It is the further case of the petitioner that on receiving the complaint, an inquiry was conducted and video recording was also made by the Australian Police on 28. 06.2019. At the time of inquiry, various questions have been asked from respondent No.3. In this regard, the petitioner has relied pon q estion No.7, which was put to respondent No.3, to which she has replied as under:

"they are living together and been in relationship since last one & half year."

8. In answer to question No.17, she had replied that, "she told him, that its time now we should get married now because I am pregnant and in Indian culture that doesn't happen, a single girl can have baby without marriage."

10. On the basis of these questions, the petitioner has pleaded that there was nothing in her complaint that the relationship was made on the pretext of marriage or any other word pertaining to her caste. The petitioner has also relied upon the proceedings conducted by the Australian Police on 28.06.2019 (Annexure P2).

11. On the basis of the document Annexure 2, the petitioner has pleaded that in those proceedings, there was not even a whisper about the offence under Sections 376, 506 of IPC and Section 3 (1) of SCST Act.

12. On the basis of the rep rt Annexure P2, petitioner allegedly was called in the Court in Australia, where, he made a statement on 10.07.2019 however, the Court in Australia passed the order dated 10.07.2019, in favour of resp ndent No.3 and the petitioner was restrained for a particular behavior about contact with respondent No.3. Copy of order dated 10.07.2019, along with the statement of the petitioner, grounds of application, and the statement of the Police Blacktown have been enclosed with the petition, as Annexure P3 (Colly.). Later on, the said case was dismissed as withdrawn by respondent No.3 in terms of order dated 12.03.2020 and said order has also been annexed with the petition, as Annexure P4.

13. It is the further case of the petitioner that respondent No.3, has levelled the allegations against the petitioner that petitioner has committed the offence on the pretext of love and assurance to marry her, between 09.07.2019 to 15.07.2019, leading to registration of the FIR, which was initially registered with Police Station Sadar, Shimla, and later on, the same was registered in Police Station, Manali.

14. It is the further case f the petitioner that after registration of FIR at Shimla, respondent No.3 was contacted by the Police and she joined the investigation on 30. 07.2019. Thereafter, she was produced before the Court of learned JMFC, C urt No.6, Shimla on 01.08.2019, where her statement was recorded. Thereafter, the police visited various spots, however, the allegations levelled by respondent No.3, were found to be false. As such, FIR was transferred to Manali, where she stayed for 2 days, i.e., 22. 03.2019 & 23.03.2019, along with her brother and his fiance.

15. It has also been highlighted that as per the contents of the FIR, the alleged offence had taken place at Manali, but nothing has been disclosed, in the statement, by respondent No.2 as to why she had not disclosed this fact to her brother or anyone else immediately, and there is an unexplained delay of about 5 months, in lodging the FIR.

16. It is the further case of the petitioner that respondent No.3 had concealed material facts from the investigating agencies in India, as well as, in Australia and also from this Hon'ble Court. Resp ndent No.3 was married to one Mr. Lakhvir Singh son of Sh. Mahinder Pal, Village and Post Office Mithapur, Tehsil & District Jalandhar on 28.07.2008, and thereafter, the marriage was dissolved by way f divorce order passed by the Federal Court of Australia in File No.(P) PAC1061 of 2015. Thereafter, she was married to one Mr. Gagandeep Joshi son of Sh. Vijay Kumar Joshi, Sagar Gate District SBS Na ar Punjab and the said marriage was subsisting, on the date of alleged occurrence and both of them were residing in Australia at the time, when the marriage has taken place. According to the petitioner, the material facts have not been disclosed by the respondent No.3 intentionally and deliberately.

17. It is the further case of the petitioner that the second marriage of respondent No.3 was subsisting, when she was associated in the investigation in India, more particularly at Shimla, H.P. In this regard, petitioner has placed on record the copies of the marriage certificates & divorce order as Annexure P6 (Colly.).

18. It is the further case f the petitioner that when, respondent No.3 failed in her case before Australian Court against the petitione , she immediately filed a petition, before this Hon'ble Court, through her mother Nirmala Devi, n 27.11.2019, bearing CWP No.3987 of 2019 titled as Nirmala Devi versus State of H.P. The said case is stated to be filed in order to blackmail the petitioner as t e relationship with respondent No.3 was consensual, knowingly that her marriage is subsisting with Mr. Gagandeep, who was initially impleaded as respondent No.4. All these facts have been pleaded to demonstrate that at the time of their alleged relationship, marriage of respondent No.3 with Gagandeep Joshi was still subsisting.

19. On the basis of the above facts, the FIR, in question, has been sought to be quashed on the ground that the relation between petitioner and respondent No.3 was consensual in nature and was not developed after obtaining the consent by false promise of marriage, and if there was a promise, whether it could have allured respondent No.3 to indulge in physical relation, who, at that time, was married with Gagandeep.

20. On the basis of the ab ve facts, a prayer has been made to allow the pe i ion, by quashing the FIR, in question, as well as, the p oceedings, resultant thereto.

21. When p t to notice, respondents No.1 and 2 have filed reply to the petition. The stand of respondents No.1 and 2, as taken in the status report, filed in this case, is as under:

“Application for registration of a criminal case against Vikram Singh son of Shri Gulzar Singh, resident of VPO Urlana Khurd, District Panipat (Haryana) at present R/o H.No.8, Bechary Road, NSW, Australia for committing the rape upon the applicant by making false promise of marriage

and also for committing the offence of criminal intimidation and using defamatory and derogatory words against my caste, which is offence and punishable under S.C. S.T. Act and also against Malkit Virk (brother of Vikram Singh) for giving threats to me. Sir, It is respectfully submitted as under: 1. That I am NRI. At present, I am living in Australia since the year 2009 and doing the job there. I also completed my study of Diploma of I.T. in Network Security at Australia. 2. That in the month of January, 2018, I came in contact with the accused. The accused kept evil eye upon me, but I was not aware about the same. With the passage of time, the accused started meeting frequently either on one pretext or the other or after elapse of some time, he expressed his willingness to marry me. Initially, I was not ready for the same, but he told that he very much loves me and he cannot live without me. He also told that he will talk with my family in this regard and also told that I will introduce you with my family. Accordingly, the accused came back to India in January, 2019 for few days and I also came to India in February, 2019 for few days and we stayed in a Hotel at New Delhi namely Shangrilas for two days and also went to Shirdi for one day where we stayed in a hotel together and two days we stayed in Aurangabad. After reaching India, the accused tried to develop physical relations wi h me. I resisted for the same and told that as per our radition, these things should happen after ma iage, but the accused told that he has sta ted considering me as his wife and he advised me to consider him as her husband and also told that very soon our marriage shall be solemnized and for this purpose, we have come to India, so there is nothing wrong in this regard and in this way, by entangling in his sweet talks, he developed physical relations with me as the accused made me to believe that he is my husband and in this way, thereafter, at many occasions and at different places, he developed physical relations with me. He also met my brother and mother in India and then we went to Manali together. My brother and his fiance also went with us to Manali and where we stayed for two days on 22.03.2019 and 23.03.2019. There also, the accused committed intercourse with me and we also stayed at Chandigarh for one day, where he met with my mother and also showed his willingness to marry me and also told my mother and brother that soon he is going to talk with his family. After meeting my brother and mother, the accused also stayed in my parental house at Shimla. During his stay in my parental house, my mother went to her job place and my brother was not available at the house. So taking undue advantage of absence of my mother and brother from the house, the accused committed sexual intercourse with me by making me to believe that he is my lawful husband and upon my resistance, accused did not stop doing sexual intercourse with me at my parental house at Shimla by saying that you are my wife and your mother is also considering me as soninlaw, now nothing is wrong in this regard. Thereafter, I went back to Sydney and the accused also came back to Australia in the end week of March, 2019. After that, the accused planned for a tour to Bali and we went to Bali on 03.04.2019, where we stayed till 11.04.2019. The entire expenses were incurred by me. At Bali also, the accused committed sexual intercourse with me and also showed to the society that we both are husband and wi e at Bali (Indonesia). After that, we came back to Australia. 3. That after coming back to Australia, I many times requested the accused to arrange f r marriage and the accused told me that he has already talked with his family and wi hin one or two months, the marriage or roka ce emony shall be solemnized as per the consent of the families. 4. That all of a sudden, I fell ill in May, 2019 and during my medical treatment and medical tests, it came to my knowledge that I am pregnant from the loins of accused. After that, 1 intimated the accused about my pregnancy and also requested

him to arrange for marriage at the earliest, but I was shocked to see the hostile attitude of the accused. The accused openly told that he was only fulfilling lust of sex with me and infact, his intention was never to solemnize marriage with me and he forced to get the child aborted as he will never solemnize marriage with me. He also told that his intention was to extort the money from me and now he has acheived his goal and I can do whatever I like. On hearing this, I was very much shocked and I requested the accused that now the relationship between me and him has come to knowledge of everybody so my life shall be spoiled in case the accused will not solemnize marriage with me, but the accused did not listen anything and flatly refused to solemnize marriage with me. On my repeated requests, the accused got infuriated and assaulted me, abused me, harassed and humiliated me, regarding which I lodged complaint with Australian police on a day when he strangled me from my neck and tried to kill me alongwith the baby on 24.06.2019 on my refusal for abortion and he also threatened me. The accused also snatched my phone with the intention to delete all the pics and documents which shows that we are in relationship with each other, but luckily some photographs and documents remained left in my phone. Now the accused is openingly giving threats to kill me alongwith my unborn child and also threatened to kill my mother in India also because my mother is a Widow lady. The complaint with Australian police is still pending. He is also sending threatening messages to me and also openly refused to accept me and my unborn child and also forcing me to get aborted the child. Vikram also used defamatory and derogatory words against my caste as I belong to Balmiki community, which is a lower caste as per the Indian religions and also insulted me in front of friends and also t ld that you are related to lower caste and I cann t solemnize the marriage with you because y u kind f people used to do sweeping and cleaning in our houses. By hearing this, the behaviour of my friends changed towards me and they stopped talking with me. 5. That the acc sed on the false pretext of solemnizing marriage with me has committed rape upon me and also cheated me and also gave threats to kill me. Now the br ther of accused namely Malkit Virk also made threatening telephonic call to me who forced me to accept money in lieu of the aforesaid happenings committed with me by the accused and leave the matter, otherwise I will have to face dire consequences along with my family. Call detail of his brother and message of the accused and photographs are in my custody which I can produce at the relevant time. It is, therefore, respectfully prayed that a criminal case may kindly be registered against the accused and justice be imparted to me."

22. On the basis of the above facts, the police of Police Station Sadar Shimla, registered FIR No.151/2019, dated 20.07.2019 and investigation was initially conducted by Inspector Sandeep Chaudhary, SHO Police Station, Sadar Shimla HP. During investigation, respondent No.3, was medicolegally examined and the physical evidence, so collected, by the police, was sent to SFSL Junga for examination. Thereafter, statement of complainant was recorded and on the basis of her statement, Section 3(1) of the SC ST Act was added and thereafter, the investigation has been transferred to Sh. Parmod Shukla, HPPS, Dy.SP HQ Shimla.

23. During investiga ion, respondent No.3, was produced before the Cou t of learned JMFCVI, Shimla, where, her statement nder Section 164 Cr.PC has been got recorded. Rec rds f the Hotels have been taken into possession, vide seizure memo. Caste certificate of respondent No.3

has been obtained from competent aut ority. CDRs of mobile number of respondent No.3 and accused person, were also obtained. On the basis of the above documents, case was recommended to be transferred to Police Station Manali District Kullu HP, through proper channel, where, fresh FIR No.145/2019 dated 12.09.2019 under Sections 376, 506 IPC and Section 3(1) of SCST Act has been registered.

24. It is the further case of respondent No.1 and 2 that investigation was thereafter conducted by Sher Singh, HPPS and Sanjeev Kumar, HPPS, the then Dy.SP, Manali. During investigation, caste certificate of petitioner Vikram Singh was obtained from concerned authority and relevant record from Hotel Sangrila, Delhi was also obtained. Petitioner Vikram Singh had g ne to Australia on his passport bearing Number is T 9267323 Valid upto 11. 04.2029 and Visa No. 0079521269223 Valid upto 15. 03.2020. When, the petitioner was not found on his address, then, pen dated warrants of arrest were obtained and efforts were made to nab him. Consequently, he was arrested on 27.03.2023 at 2.30 AM from Indira Gandhi International Airport, New Delhi and was produced before the Court of learned Sessions Judge, Kullu on the same day.

25. After completion of the investigation, charge sheet has been filed against him before the learned Sessions Court, Kullu, on 25.03.2023.

26. Respondent No.3 has also filed reply in the present case, in which, she has taken the stand, as taken in the FIR. Apart from this, she has asserted that whatsoever she has got recorded in her statements under section 161 Cr.PC and 164 Cr.PC, is correct. She has also denied that she ever disclosed to the petitioner that she is a green card holder and residing in Australia with her boy friend. According to her, initially, respondent No.3, did not accept the proposal of marriage advanced by the petitoner, however, the petitioner was persistently making the proposal by expressing his love towards respondent No.3. It is her further case that from the date, when, they became friends, petitioner was taking financial assistance from her by alluring her.

27. It has been admitted by respondent No.3 that s e and petitioner had visited Bali, however, she denied that when the factum of pregnancy was disclosed to the petitioner, respondent No.3, ever informed the petitioner that she was not interested to have a child. According to her, after the pregnancy, she has informed the petitioner and requested him time and again to marry her, as despite living in Australia, she is following the Indian customs and traditions. The fact that she tried to get the pregnancy aborted in Australia, has also been denied.

28. The stand of the petitioner, qua the fact that the complaint under Crimes (Domestic and Personal Violence) Act, 2007, was filed due to the reason that the petitioner did not accept her request to cooperate or abortion of the fetus, as alleged has been denied by respondent No.3. According to her, she was being ortured and misbehaved by the petitioner only when she had informed him about her pregnancy and req ested him to marry. Legal proceedings in Australia after lodging the complaint by respondent No.3, have not been disputed being matter of record. She has also admitted that after lodging FIR, in S imla, s e joined investigation and her statement was recorded under Section 164 Cr.PC. She has denied that the primary allegations levelled by her against the petitioner were found false. There was no delay in lodging the FIR.

29. Respondent No.3 has taken the specific stand that she had fallen prey to the false promises of marriage, extended by the petitioner, as such, she had not disclosed the factum of her physical relations with the petitioner to anyone in her family and when the petitioner finally refused to marry respondent No.3, then, she had lodged the FIR.

30. According to respondent No.3, her marriage with Lakhvir Singh, had already been dissolved by an order of divorce in the year 2015 and so far as the marriage with Gagandeep Joshi is concerned, the same never materialized, as she never resided with said Gagandeep Joshi, nor, the marriage was ever consummated, that is why, respondent No.3 has filed a petition for divorce in the year 2017 and the same was allowed on 3.4.2019. She has placed on rec rd the copy of the order dated 3.4.2019 Annexure R31.

31. According to the further stand of respondent No.3, t e petitioner was well aware about the divorce petition filed against Gagandeep Joshi and he himself assured respondent No.3 that he would marry her, after the divorce petition, filed against Gagandeep Joshi was allowed.

32. It is the further stand of respondent No.3 that she never asked the petitioner to solemnize marriage with her before dissolution of her marriage with Gagandeep Joshi. She has taken the stand that petitioner has refused to fulfill his promise of marriage with her, after decree of divorce was passed. The petitioner had stayed with respondent No.3 in Australia, even after the marriage of respondent No.3 with Gagandeep Joshi was dissolved

33. All these facts have been pleaded to demonstrate that the previous marital status of respondent No.3, has no bearings on the merits of the present case. She has reiterated that marriage of respondent No.3 with Gagandeep Joshi has been dissolved much prior to lodging of the FIR and even m ch prior to the refusal of the petitioner to marry her. She has taken the stand that petitioner, as well as, respondent No.3, were well aware that the divorce petition filed against Gagandeep Joshi, was bound to succeed in near future and due to this fact, respondent No.3, would be competent to marry the petitioner.

34. Respondent No.3 has also taken another stand that before visiting India, in the year 2019, the petitioner has not developed physical relations with her. CWP No. 3987 of 2019 was filed by the mother of respondent No.3, as petitioner was not joining the investigation, nor, the investigating agency was able to secure his presence, in the present case.

35. Respondent No.3, has further admitted that after lodging the FIR, she has given birth to a male child and petitioner was found to be the biological father of the child. She has further reiterated the act that the physical relations between the petitioner and respondent No.3 developed initially in India.

36. On the basis of the above facts, a prayer has been made to dismiss the petition.

37. Sc pe f Section 482 Cr.P.C., has elaborately been discussed by the Hon’ble Apex Court, in the year 1992, in the lead case reported as 1992 CrLJ, 527, titled as State of Haryana Vs. Chaudhary Bhajan Lal & Others, in which, the Hon’ble Apex Court has formulated the guidelines

for exercising the powers under Section 482 Cr.P.C. Relevant paragraph 107 of the judgment is reproduced as under:

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegati ns made in the First Information Report or he c mplaint, even if they are taken at their face value and accepted in their entirety do not p ima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Rep rt and ther materials, if any, accompanying the FIR. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate with the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the FLR do not constitute a cognizable offence but constitute only. a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal pr ceeding is manifestly attended with mala fide and/ r where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and pe sonal grudge.”

38. This view has again been reiterated by a three Judge Bench f the Hon’ble Apex Court in Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra & Others, 2021 SCC Online SC

315. Relevant paragraph 38 of the judgment is reproduced as under:

38. In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart fr m express provisions of law which are necessary for proper discharge of functions and duties imposed upon hem by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, p ssess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence r where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression,

or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to shortcircuit a prosecution and bring about its sudden death…..

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest court of a State sh uld normally refrain from giving a prima facie decision in a case where the en ire facts are incomplete and hazy, more so when the evidence has not been collec ed and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective with ut sufficient material. Of course, no hardandfast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no ma erial to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be f sec ndary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

39. In view of the guidelines, as laid down, by the Hon'ble Apex Court, this Court would proceed to discuss the stand, as taken by the petitioner, in the present petition.

40. In order to decide the petition, effectively, only those documents can be considered, the veracity of which is beyond challenge or the documents, which are not in dispute.

41. It is no longer res integra that at the time of deciding the petition under Section 482 Cr.PC, this Court cannot assume the powers of the appeal/revisional Court, nor this Court can act as trial Court. While holding so, the view of this Court is being guided by the decision of Hon'ble apex Court in Chilakamar hi Venkateswarlu & Another versus State of Andhra P adesh & Another, (2019) 10 Scale 239. Relevant paragraph 15 of the judgment is reproduced as under:

"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

42. Similar view has also been taken by the Hon'ble Apex Court in S.W. Palanitkar & Others versus State of Bihar & Another, (2002) 1 Supreme Court Cases, 241.

43. At the time of deciding the petition, only prima facie case is to be seen and the truthfulness of the allegations are not to be seen. Reference in this regard can be made to the decision of Hon'ble Apex Court in Rajiv Thapar & Others versus Madan Lal Kapoor, (2013) 3 SCC, 330.

44. Before proceeding further, this Court has to see whether the documents elied upon by the parties can be taken into consideration or not. Annexure P2 is the transcript of AudioVideo recording, recorded by Australian Police. Police has relied upon the answers given by respondent No.3 in the proceedings, which was conducted in Crimes (Domestic and Personal Violence) Act, 2007, as respondent No.3 had made a complaint on 24.06.2019. Respondent No.3 is the best person to say about those proceedings and in reply to paragraphs 7 and 8 of the petition, filing of the complaint under Crimes (Domestic and Personal Violence) Act, before the Australian authorities has been admitted. Even in para 9, she has admitted those proceedings as a matter of record, as such, those documents can be taken into consideration.

45. Annexure P6, is the marriage certificate of respondent No.3, with one Lakhvir Singh and the date of marriage has been mentioned as 20.07.2008. The said marriage, according to the certificate placed on record was dissolved on 22.04.2015.

46. As per the certificate issued under the Hindu Marriage Register, respondent No.3, again married one Gagandeep Joshi, on 05.09.2015. This document can also be taken into consideration, being admitted, as respondent No.3, has not disputed her marriage with Gagandeep Joshi, however, she has taken the plea that the said marriage was not consummated and later on, the same was dissolved w.e.f. 04.05.2019, by way of order of divorce dated 3. 04.2019.

47. The documents demonstrating the factum of divorce have been placed on record by respondent No.3 herself. Respondent No.3, has also annexed the documents, which can be taken into consideration for deciding the present matter. She has annexed the copy of the divorce order passed by the Federal Court of Australia on 03.04.2019, dissolving the marriage of respondent No.3 with said Gagandeep Joshi, w.e.f. 04.05.2019.

48. As per the documents so annexed, as referred, the date of birth of respondent No.3 is 09 02 1989. Meaning thereby, at the time of lodging the FIR, in the year 2019, she was about 30 years and already married twice. The age and marital status assume significance as respondent No.3, has levelled he allegations against the petitioner that he developed physical relations with her on the pretext of marriage. As stated above, at the time of deciding the petiti n under Section 482 Cr.PC, only the allegations, as contained in the FIR, as well as, the evidence, so collected, by the prosecution, is to be considered.

49. As per the contents of the FIR, respondent No.3 had alleged that in the month of January 2018, she came in contact with petitioner and petitioner kept evil eye upon her, but, she was not aware about the same. With the passage of time, the petitioner started meeting her frequently, either, on one pretext, or the other and after lapse of some time, the accused expressed his willingness to marry her, for which, she was not ready, but he told that he loved her very much and cannot live without her.

50. Admittedly, at that time, her petition for divorce has not been allowed by the competent Court in Australia, as according to the documents, the marriage was dissolved w.e.f. 04.05.2019. Meaning thereby, her marital status was that of married lady. How a married lady, even if her divorce petition is pending, can an icipate the final result of the same, has not been explained by respondent No.3, in her reply, before this Co rt. Situation would have been otherwise, had resp ndent No.3 got lodged that she had explicitly disclosed to the petitioner that she is married, however, her petition for divorce is pending. This material fact as not been mentioned in the FIR, which was lodged by the complainant, who cannot be said to be an illiterate, but, earning her livelihood in foreign country.

51. When respondent No.3, has taken the plea that although, she was residing in Australia, but, she is having every respect to the Indian customs and traditions, then, permitting the petitioner to cross the sacred line, that too, on the alleged promise to marry, is a fact, which goes against the truthfulness of the allegations made by respondent No.3. The FIR, in question is totally silent about the fact that the petitioner allegedly expressed his intention to marry her after coming to know about the alleged pregnancy of respondent No.3. As per the contents of the FIR, both of them had stayed in di erent hotels, on various occasions, firstly they stayed in Hotel at Delhi in the month of February 2019, from where, they had gone to Shirdi, where, the petitioner allegedly tried to develop physical relations with respondent No.3, however, she resisted and allegedly t ld him that as per their tradition, these things should happen after the marriage. She has failed to mention the important aspect of her life to the petitioner that she is already married, although, the petition for divorce is pending.

52. The act of respondent No.3 to conceal these material fact from the petitioner assumes significance, in the present case, as from 3.4.2019 to 11.04.2019, both of them had gone to Bali, where the alleged sexual intercourse had taken place between them and petitioner allegedly pretended to the society that both of them were husband and wife. The alleged physical relations, according to respondent No.3, had taken place, between 3.4.2019 to 11.04.2019. At that time her marriage with Gagandeep Joshi was subsisting, as the same had dissolved on 04.05.2019,

although, order has already been passed on 03.04.2019.

53. A futile attempt, has been made by respondent No.3 to introduce a plea that her marriage with Gagandeep Joshi was not consummated will not help her, in the present case, as reason for non consummation has not been uttered by her in the reply. Even, the Court at Australia, found the ground for application for divorce order as the marriage has broken down irretrievably. In such situation, the present case can be said to be the result of sour relationship between the petitioner and respondent No.3, which had initially developed with the consent of both the parties. In other words, the relationship can be said to be consensual, in the present case.

54. Situation would have been otherwise, had the complaint to Superintendent of Police, Shimla, was moved by respondent No.3, in a hasty manner. The said complaint was moved on 9th July, 2019, whereas, she allegedly came to know about her alleged pregnancy in the month of May, 2019 and in the complaint, which is consisting of five typed pages, nothing has been mentioned by respondent No.3, about her previous marriage with Gagandeep Joshi, which was dissolved on and w.e.f. 04.05.2019, vide order of divorce dated 03.04.2019. No incident, after 04.05.2019, has been mentioned, in the complaint. Meaning thereby, respondent No.3 cannot be exonerated from crossing the sacred line, as, at the relevant time, her marriage with Gagandeep was still subsisting. Even, in her statement, which was recorded on 01.08.2019, respondent No.3 had given the same version, according to which, the physical relations, ad taken place between them, last time from 3.4.2019 to 11.4.2019, in Indonesia. Even her mother, in her statement, recorded under Section 161 Cr.PC had given the date as 26.02.2019, when petitioner allegedly made physical relations with respondent No.3, in her house. On that day, even the decree of divorce has not been passed.

55. The plea of respondent No.3, qua the fact that physical relations were made by accused by obtaining the consent on the false promise of marriage cannot be accepted as at the relevant time, i.e., the date of alleged incident, she was already married and there, as, no occasion for the petitioner to make a promise of marriage to a women, who is already married, although, her petition for divorce was pending. Moreover, there is nothing on the record to demonstrate that the material fact with regard to her marriage with Gagandeep Joshi and pendency of the petition for divorce has been b ought to the notice of the petitioner, by respondent No.3, as her complaint, as well as, her statement, under Section 164 Cr.PC are totally silent about this material fact.

56. Hon'ble Apex Court in Pramod Suryabhan Pawar versus The State of Maharashtra & Another, (2019) 9 Supreme Court Cases 608, has held that the false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act. Relevant paragraphs 18 to 22 of the judgment, are reproduced, as under:

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time

it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

19 The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relati ns with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to seve al o her allegations that are relevant for the p esent purpose. They are as follows:

(i) The c mplainant and the appellant knew each other since 1998 and were intimate since 2004;

(ii) The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and

(iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

20 The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual rela ions long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise f marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred.

21 With respect to the offences under the SC/ST Act, the WhatsApp messages were alleged to have been sent by the appellant to the complainant on 27 and 28 August 2015 and 22 October 2015. At this time, Sections 3(1) (u), (w) and 3(2) (vii) of the SC/ST Act as it stands today had not been enacted into the statute. These provisions were inserted by the (Prevention of Atrocities) Amendment Act 201513 which came into force on 26 January 2016. Prior to the Amending Act, the relevant provisions of the statute (as it stood then) were as follows:

"3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe. …

(x) intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Schedule Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed; …"

(self emphasis supplied)

57. Hon'ble Apex Court in Prashant Bharti versus State of NCT of Delhi, (2013) 9 Supreme Court Cases 293, has held that inducement for marriage is understandable, if the same is made to an unmarried person, and can be considered, whereas, in the present case, the married woman has taken the plea that she made physical relations with petitioner on the basis of a promise to marry. Relevant paragraphs 16 to 18 of the judgment, are reproduced, as under:

16. The factual position narrated above would enable us to draw some positive inferences on the assertion made by the complainant/prosecuterixagainst 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. 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. 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 the dates under reference and for a period of more than one year and eight months hereaf er, she had remained married to Lalji Po wal. In such a fact situation, the asse tion made by the complainant/prosec terix, that the appellant accused had physical relations with her, on the assurance that he would marry 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 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 appellantaccused, 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 appellantaccused, on the basis of a promise to marry her, stands irrefutably falsified.

17. Would it be possible for the prosecution to establish a sexual relationship between Priya, the complainant/prosecuterix and Prashant Bharti, the appellantaccused, 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 appellantaccused, was made more than one month after the alleged occurrences. It was, therefore, that during the c urse f her medical examination at the AIIMS, a vaginal smear was not taken. Her clo hes were also not sent for forensic examination by he AIIMS, because she had allegedly changed he 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 w uld 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 appellantaccused. For the sake of argument, even if it is assumed, that Prashant Bharti, the appellantaccused 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 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.

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, Priya, the complainant/prosecuterix had alleged, that the appellantaccused 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 dr ve her around in his car. He also offered her a c ld drink (Pepsi) containing a poisonous/intoxicating substance. Having consumed he cold drink, she is stated to have felt ineb ia ed, whereupon, he took advantage of her and started misbehaving with her, and also to ched her breasts. Insofar as the instant aspect of the matter is concerned, the presence f the complainant/prosecuterix, as well as the appellantaccused, at the alleged place of 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. 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:

"19. In the aforesaid sense of the matter, the discrepancy in the statement of Minakshi PW23, pointed out by the learned counsel for the accusedappellant, as also, the reasoning rendered by the High Court in the impugned judgment becomes insignificant. We are satisfied, that the

process by which the accusedappellant came to be identified during the course of investigation, was legitimate and unassailable. The IEMI number of the handset, on which the accusedappellant 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 accusedappellant."

The aforesaid fac ual conclusion, that the two concerned parties we e 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 f 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 appellantaccused 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 appellantaccused 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.

58. Hon'ble Apex Court in Shambhu Kharwar versus State of Uttar Pradesh & Another, AIR 2022 Supreme Court 3901, in paragraphs 13 and 14 of the judgment, has held, as under:

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the chargesheet, the essential ingredients of an ffence under Section 376 IPC. The crucial issue which is to be considered is whe her he allegations indicate that the appellant had given a promise to the second respondent o marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the chargesheet as they stand, the crucial ingredients f the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under Section 482 of CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under Section 376 IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482 of CrPC on a completely misconceived basis.

59. If the facts and circumstances of the present case are seen in the light of the decision of Hon'ble Apex Court in Niam Ahamed versus State (NCT of Delhi), 2023 SCC Online SC 89, then the stand of respondent No.3, qua the fact that the physical relations were made by the petitioner only on the pretext of marriage cannot be accepted as gospel truth. Relevant paragraph 17 of the judgment, is reproduced, as under:

17. Again in Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others (supra), this Court interpreting the Section 90 and the Clause - Sec ndly in Section 375 of IPC, observed as under:

"23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

60. The Hon'ble Apex Court Deepak Gulati versus State of Haryana, (2013) 7 Supreme Court Cases 675, has held that there is distinction between 'rape' and 'consensual sex'. Relevant paragraphs 20 to 24 of the judgment, are reproduced, as under:

20. This Court, while deciding Pradeep Kumar Verma (S pra), placed reliance upon the judgment f the Madras High Court delivered in N. Jaladu, Re ILR (1913) 36 Mad 453, wherein it has been bserved:

"We are of opinion that the expression "under a misconception of fact" is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married…….. "thus … if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person". … Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence."

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misc ncepti n f fact. In order to come within he meaning of the term misconception of fac , he fact must have an immediate relevance." Section 90 IPC cannot be called into aid in s ch a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

22. The instant case is factually very similar to the case of Uday (Supra), wherein the following facts were found to exist:

I. The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting to.

II. She was conscious of the fact that her marriage may not take place owing to various considerations, including the caste factor.

III. It was difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her.

IV. There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix.

23. To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre decided by them. She also waited or him for a long time, and when he finally arrived she went with him to the Karna lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to any one. Thereaf er, she also went to Kurukshetra with he appellant, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at the Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus stand in Kurukshetra, to leave for Ambala so that the two of them could get married in court at Ambala. However, here they were apprehended by the police.

24. If the prosecutrix was in fact going to Ambala to marry the appellant, as stands fully established from the evidence on record, we fail to understand on what basis the allegation of "false promise of marriage" has been raised by the prosecutrix. We also fail to comprehend the

circumstances in which a charge of deceit/rape can be leveled against the appellant, in light of the aforementioned fact situation.

(self emphasis supplied)

61. From the admitted facts, as borne out from the record, it can be said that at the time of alleged physical relations, that too, on the pretext of marriage, respondent No.3, was aware about the fact that her marriage with Gagandeep Joshi, is still subsisting and without divorce, it was not possible for her to marry the petitioner. As such, it cannot be said that respondent No.3 had consented in consequence of a misconception of facts arising from false promise of marriage by the petiti ner. The view of this Court is being guided by the decision of Hon'ble Apex Court in Uday versus State of Karnataka, AIR 2003 SC 1639. Relevant paragraph 25 of the judgment is reproduced as under:

There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met o ten, and it does appear that the prosecutrix permitted him liberties which, if at all, is permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out wi h he appellant to a lonely place at 12 O'clock in the night. It usually happens in s ch cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are over come with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his

promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent."

(self emphasis supplied)

62. In view of the above case law, this Court is of the view that the alleged relationship between the petitioner and respondent No.3, seems to be consensual, as prior to 3. 04.2019, there was no occasion for the petitioner to make a promise to marry, as well as, for respondent No.3 to even consider the alleged proposal of marriage, made by the petitioner.

63. Respondent No.3 had moved out with the petitioner in the length and b eadth of the continent, as well as, in Australia. There is nothing on the record to demonstrate that the alleged relationship was made, by the petitioner, only on account of the fact that respondent No.3 belongs to scheduled caste.

64. Merely, the fact that respondent No.3, belongs to scheduled caste, does not ipso facto prove the ingredients of Section 3(1) of the SCST Act. If the proceedings, in such type of cases, are permitted to continue against the petitioner, it would be not only the abuse of process of law, but, the same would also be travesty of justice, as a grown up married lady, permitted a stranger to cross the sacred line, that too, on the basis of the alleged promise of marriage, to which even, she could not legally and morally, competent to accept, and despite this fact, after the alleged ravishment, they stayed in a Hotel at Delhi and Aurangabad, in the month of January, 2019.

64. Considering the stand of respondent No.3, in her statement, under Section 164 Cr.PC, wherein, she got recorded that around 22.02.2019, she along with her brother and one of their friends, had gone to a road trip, from Shimla to Manali, whe e, petitioner also joined them and stayed there till 24.02.2019 and made physical relations with her, this Court is of the view that the alleged violation by the petitioner was not on account of false promise of marriage.

66. In view of the discussion made above, this Court is of the view that it is a fit case, where, the FIR, as well as, the resultant proceedings, pending before the learned trial Court is liable to be quashed, by exercising the powers under Section 482 Cr.PC.

67. Consequently, the present petition is allowed and the FIR No.143 dated 12.09.2019, registered under Sections 376 and 506 of IPC and Section 3(1) of the SC ST Act, with Police Station Manali, District Kullu, as well as, the proceedings, resultant thereto, are ordered to be quashed.

68. Pending application(s), if any, shall also stand disposed of.