



2025:DHC:6132



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 28.07.2025*+ **CRL.REV.P. 819/2024****JITENDER ALIAS SUMIT**

.....Petitioner

Through: Mr. Ashwani Jha, Ms.  
Kanchan Kumari Jha, Mr.  
Ashish Pratap Singh and Mr.  
Suraj, Advs.

versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. Naresh Kumar Chahar,  
APP for the State with Mr.  
Chandrakant, Adv.

**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner, by way of this petition, seeks setting aside of order dated 15.04.2024 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge (SC-RC), Central District, Tis Hazari Courts, Delhi [hereafter '*Sessions Court*'] in SC No. 511/2023, arising out of FIR bearing no. 128/2023, registered at Police Station Bara Hindu Rao, Delhi, for the commission of offence punishable under Sections 376/313/328/506 of the Indian Penal Code, 1860 [hereafter '*IPC*'].



2. Briefly stated, the facts of the case, as alleged by the prosecutrix, are that the prosecutrix first met the petitioner in the month of February 2019 at Tis Hazari Courts. Thereafter, they began meeting frequently, and the prosecutrix became attracted to the petitioner. The petitioner took care of the prosecutrix, and both of them eventually fell in love. Subsequently, the petitioner proposed marriage to the prosecutrix, and both mutually agreed to get married. The petitioner assured the prosecutrix that he would speak to his family about their marriage. In the year 2020, on one occasion, the petitioner called the prosecutrix on the phone and asked her to come to his house to introduce her to his mother. When the prosecutrix reached the petitioner's house, she found that no one was present there except the petitioner. Upon inquiry, the petitioner informed her that his family members had gone out for some work and would return shortly. Thereafter, the petitioner brought some chips and a cold drink. After consuming a few sips of the cold drink, the prosecutrix noticed an abnormal taste and raised suspicion. However, the petitioner dismissed her concerns sarcastically, stating that he had not manufactured the cold drink himself. After consuming the cold drink, the prosecutrix began feeling dizzy and subsequently lost consciousness. When she regained consciousness after some time, she noticed red spots and scratch marks on her body. Upon getting up from the bed, she observed that she was bleeding and experiencing pain in her private parts, though she was unable to comprehend what had transpired. When she confronted the petitioner about her



condition, he allegedly told her, “From today, you are mine.” Following the said incident in October 2020, the prosecutrix and the petitioner continued to meet at various places, including the Tis Hazari Court premises. The petitioner repeatedly assured her of his love and, despite her refusal, allegedly established forceful physical relations with her. He continued to assure her that they would soon get married. It is further stated that, after some time, the prosecutrix became pregnant. The prosecutrix has alleged that the petitioner gave her certain medicines which resulted in the termination of her pregnancy. In May 2021, the petitioner’s parents visited the house of the prosecutrix and met her parents, following which a Roka ceremony was performed. In June 2022, the prosecutrix again discovered that she was pregnant, and on 07.07.2022, she underwent an abortion at Daima’s Nursing Home, located somewhere in Chandni Chowk, Delhi. On 17.07.2022, the petitioner met the prosecutrix outside the Tis Hazari Court Metro Station and again assured her of marriage. Thereafter, the petitioner’s mother and the prosecutrix’s mother met and mutually agreed to solemnise the marriage on the occasion of Devuthani Ekadashi in the month of November. However, with the passage of time, certain disputes arose between the families of the petitioner and the prosecutrix. On 27.01.2023, the petitioner allegedly attempted to establish physical relations with the prosecutrix, but she refused. Thereafter, the prosecutrix developed a skin infection, for which the petitioner provided her with some medicines. The prosecutrix claims to have been taking those



medicines regularly. After 21.03.2023, the petitioner allegedly started avoiding the prosecutrix and stopped answering her phone calls. On 24.04.2023, the prosecutrix consumed ten tablets of the medicine given by the petitioner for her skin infection, as a result of which her condition became critical. On 27.03.2023, the prosecutrix came to know that the petitioner had already solemnised marriage with another woman on 16.02.2023. The next day, the prosecutrix met the petitioner and told him that she would lodge a complaint against him. At this point, the petitioner allegedly threatened her by pointing a blade towards her and saying that he would kill her. Thereafter, on 01.04.2023, the prosecutrix submitted a written complaint against the petitioner at Police Station K.N. Katju Marg, on the basis of which the present FIR was registered.

3. After completion of investigation, chargesheet was filed before the concerned Court against the petitioner. By way of the impugned order dated 15.04.2024, charges for offence under Sections 376(2)(n), 313 and 506 of the IPC were framed against the petitioner; however, he was discharged for offences under Section 328 of IPC in absence of any medical or scientific evidence.

4. Assailing the impugned order, the learned counsel for the petitioner has vehemently contended that the relationship between the petitioner and the prosecutrix was consensual from the very beginning. It is contended that both of them studied in the same college and after the completion of their studies, they began working as advocates at Tis Hazari Courts. It is submitted that a *Roka*



ceremony, being a traditional ceremony signifying the finalisation of marriage between two individuals, had already taken place, which clearly indicates that the petitioner had no intention of making a false promise of marriage and genuinely intended to marry the prosecutrix. It is further argued that there is no material on record to suggest that the petitioner forced the prosecutrix to terminate her pregnancy, and therefore, the essential ingredients of the offence under Section 328 of the IPC are not satisfied. The learned counsel has also contended that in the absence of any *prima facie* evidence under Section 328 of IPC, there can be no invocation of Section 313 IPC against the petitioner, since the allegation regarding destruction of evidence, i.e., the fetus does not stand substantiated. He further submits that since the entire relationship between the petitioner and the prosecutrix was consensual, the offence under Section 376 of IPC is also not made out. Accordingly, it is prayed that the impugned order passed by the learned Sessions Court be set aside and the petitioner be discharged of all the offences for which he has been charged.

5. On the other hand, the learned APP for the State submits that there is sufficient material on record to frame charges against the petitioner. Attention is drawn to the statement of the prosecutrix recorded under Section 164 of Cr.P.C., wherein specific and detailed allegations have been levelled against the petitioner, including the time, place, and manner in which the petitioner allegedly sexually exploited the prosecutrix on the false pretext of marriage and caused the termination of her pregnancy. It is further submitted that at the



stage of framing of charge, a detailed inquiry into the veracity of the allegations or a mini-trial, as sought by the learned counsel for the petitioner, is impermissible at this stage. It is accordingly prayed that the petition be dismissed.

6. This Court has **heard** arguments addressed on behalf of either side, and has perused the material placed on record.

7. After hearing arguments advanced by both sides and perusing the material on record, this Court is of the opinion that the primary allegation of rape against the petitioner, as per the record, is that he had taken the prosecutrix to his house with the intent to establish physical relations with her. Upon her refusal, the petitioner is alleged to have forcibly established physical relations, while assuring her that he would marry her.

8. As regards the contention of the learned counsel appearing for the petitioner that the relationship was consensual from the inception, and that the performance of the *Roka* ceremony between the parties demonstrates the genuine intent of the petitioner to marry the prosecutrix, it is observed that such arguments cannot be examined in isolation. The contention that the physical relations were consensual because of the promise of marriage, and therefore Section 376 of IPC would not be attracted, must be viewed in the light of the entire sequence of events, and the allegations levelled by the prosecutrix.

9. The record reveals that the petitioner and the prosecutrix had met in February 2019 in connection with some legal matter, as the



petitioner was a practicing advocate. Thereafter, they developed a relationship and eventually fell in love. The prosecutrix has specifically alleged that the petitioner had taken her to his house and had forcibly established sexual relations with her after giving her a cold drink that was allegedly laced with some intoxicant. Upon regaining consciousness, the prosecutrix noticed red spots and scratch marks on her body and experienced pain and bleeding in her private parts. Further, the prosecutrix has specifically alleged that after this incident, when she suspected she might be pregnant, the petitioner brought a pregnancy kit, and upon confirmation of the pregnancy, he gave her certain medicines to terminate the same. At that time, the petitioner had again assured the prosecutrix that he would marry her soon. Thereafter, in August 2021, the families of the petitioner and the prosecutrix met and performed a *Roka* ceremony, during which Rs. 51,000/-, fruits, and other customary gifts were exchanged. Again in May 2022, the families met and exchanged Rs. 51,000/-, fruits, and other items. In June 2022, when the prosecutrix once again suspected a pregnancy, the petitioner brought another pregnancy kit, and after confirming the pregnancy, allegedly compelled the prosecutrix to terminate it. It is specifically alleged that the petitioner forced her to undergo an abortion at Daima's Nursing Home, Chandni Chowk, on 07.07.2022.

10. Subsequently, both families again met and decided to solemnise the marriage in November 2023 on the occasion of *Devuthani Ekadashi*. However, in the interim, the petitioner's mother allegedly



demanding a four-wheeler and other dowry articles. On 27.01.2023, the petitioner is stated to have taken the prosecutrix to a hotel and attempted to establish physical relations with her. Thereafter, in January–February 2023, the petitioner and his family allegedly started ignoring the prosecutrix.

11. On 21.03.2023, the prosecutrix allegedly consumed an overdose of tablets which had been given to her by the petitioner for a skin ailment, following which she had to be admitted to the hospital. After being discharged, the prosecutrix came to know that the petitioner had solemnised marriage with another girl on 16.02.2023. However, even after solemnizing this marriage, the accused kept on meeting prosecutrix and assured her that he would marry her. After getting aware of the same, on 27.03.2023, the prosecutrix confronted the petitioner about his marriage. Initially, he denied it. When she showed him photographs of the wedding, the petitioner allegedly took her to the parking area of Tis Hazari Court and threatened to kill her by pointing a blade at her.

12. During the course of investigation, the Investigating Officer collected relevant documentary and medical evidence. Records from Grover Medical Centre show that the petitioner had taken the prosecutrix there for medical check-ups and had procured an abortion. The medical records from Anjuman Medical Centre and Mother's Care Clinic show that the prosecutrix was about 10–11 weeks pregnant as on 02.07.2022. Notably, the records of Anjuman Medical Centre refer to the prosecutrix as 'J' – wife of Jitender i.e., the



petitioner. Furthermore, the prosecutrix's statement recorded under Section 164 of Cr.P.C. specifically mentions that the pregnancy was terminated at the instance of the petitioner, despite her repeated refusals.

13. From the overall facts and material on record, and the statements of the prosecutrix noted above, it is apparent that the petitioner, while projecting an intention to marry the prosecutrix, had repeatedly established physical relations with her. The *Roka* ceremony and meetings between the families do reflect, to an extent, the petitioner's representations of intent to marry. However, the alleged act of solemnising marriage with another woman on 16.02.2023 without informing the prosecutrix, despite repeated assurances and her continued reliance on his promises, *prima facie* points that the petitioner did not have a genuine intention to marry the prosecutrix since the inception, and the physical relations were established with the prosecutrix on such false promise of marriage. His conduct, therefore, brings the case squarely within the ambit of Section 376 of IPC, as rightly held by the learned Sessions Court in the impugned order. This Court is, thus, in agreement with the view taken by the learned Sessions Court that a *prima facie* case under Section 376 of IPC is made out against the petitioner herein.

14. As far as the offence under Section 313 of the IPC is concerned, this Court is in agreement with the findings of the learned Sessions Court. The medical records obtained from Anjuman Medical Centre and Mother's Care Clinic clearly reflects that the prosecutrix was



pregnant on more than one occasion and that the pregnancies were terminated. These medical records, coupled with the prosecutrix's specific allegations that the petitioner had compelled her to undergo abortions against her will, *prima facie* attract the ingredients of the offence punishable under Section 313 of IPC, for the purpose of framing charge.

15. With respect to offence alleged under Section 328 of the IPC, this Court finds that the learned Sessions Court has rightly discharged the petitioner for the said offence. The record does not contain any medical evidence or forensic report to substantiate the allegation that the prosecutrix was administered any intoxicating or stupefying substance with the intent to cause harm or facilitate the commission of an offence. While the prosecutrix has alleged that the cold drink offered to her by the petitioner had an abnormal taste and that she lost consciousness thereafter, there is no corroborative medical or scientific evidence to establish that any intoxicant or drug was administered to her by the petitioner. Thus, it is well-settled that in the absence of such material, only such allegation, unsupported by medical or forensic confirmation, does not meet the threshold for framing a charge for offence under Section 328 of IPC.

16. Accordingly, this Court is of the considered view that the impugned order is well-reasoned and suffers from no infirmity.

17. The present petition is therefore dismissed.

18. Nothing expressed hereinabove shall tantamount to an



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expression of opinion on the merits of the case.

19. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 28, 2025/A**