

**IN THE COURT OF MS. VRINDA KUMARI,
ADDITIONAL SESSIONS JUDGE-02, SOUTH
DISTRICT, SAKET COURTS, NEW DELHI**

**SC NO. 28 OF 2021
FIR NO. 361/2020
PS SAKET**

IN THE MATTER OF

State

Versus

**Vikesh Dogra
S/o Sh. Lekhraj Dogra
R/o RZ-Q-87A, Bhagat Enclave,
Uttam Nagar, Delhi.**

..... Accused

ORDER ON CHARGE

1. Vide this Order, I shall decide the point of charge in the present case.
2. I have heard detailed arguments on point of charge and have perused the records carefully.
3. I have considered the rival contentions.
4. The case of prosecution is that accused Vikesh sent a friend request to the prosecutrix on 22.03.2016. At that time prosecutrix was working in Public Relations while accused was working in DD News. The official communication soon turned into friendship and later into love affair. Accused proposed the prosecutrix to marry him upon which prosecutrix informed him that

she belonged to *Harijan* Caste which is a Scheduled Caste. The prosecutrix also asked him to reconsider his proposal of marriage on account of caste difference. The accused assured him that he would be able to make his parents agree to their alliance and if they did not agree, he would threaten to commit suicide. In the second week of June 2016, accused took the prosecutrix to H.No.8-H, Block No. H, Pushp Vihar near Chhatth Puja Park, Sector 4, Saket, New Delhi-17 to introduce her to the family of his cousin brother. However, no one was present there and the cousin brother of accused also left. Accused administered some stupefying substance to the prosecutrix upon which she fell unconscious. When she woke up, she felt pain in her private parts and was bleeding. When the complainant threatened to approach police, the accused assured her that he loved her and would marry her. Thereafter, he had repeated physical relations with her. He also took her nude photographs. On 18.05.2018, they both stayed at a guest house of Doordarshan at Himachal Pradesh where the accused made her stay like a married woman. He also applied vermilion in the hair parting of the prosecutrix and tied *mangalsutra*. It is further submitted that during the reception party of elder brother of accused held on 21.12.2019, the prosecutrix met his parents and mother of the accused hugged her. The accused later told the prosecutrix that her mother had approved her. He again assured her that he would inform his parents about her caste soon. They had repeated physical relations till 11.02.2020.

5. During this time, in March 2019 he also took an amount of Rs. 65,000/- from the prosecutrix. The prosecutrix had taken this amount from her father to hand over to accused who wanted to buy a Maruti Baleno car. It is specifically alleged that in January 2020, accused took an amount of Rs. 60,000/- from the prosecutrix to make arrangement for their marriage.

6. The WhatsApp chats show that it was in April 2020 that the accused expressed displeasure of his parents on account of caste of the prosecutrix. Not just this, the later WhatsApp chats also show the deeply ingrained caste bias of the accused himself. Despite humiliating the prosecutrix on account of her caste and saying no to marriage, the accused, who had a stable job, still asked for monetary help from the prosecutrix.

7. In such circumstances, the prosecutrix was constrained to lodge the present FIR.

8. Ld. Counsel for the accused has relied upon ***Pramod Suryabhan Pawar Vs State Of Maharashtra & Anr. VII (2019) SLT 657*** wherein it has been held as follows:

“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 relations 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 of 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. – “Amending Act” ...

(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; ...”

22 Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the

WhatsApp messages and words uttered are accepted on their face, no offence is made out under SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged.”

9. The present case, however, is distinguishable on facts from the above mentioned case law. In the present case, accused, who is an educated man with a stable job and lives in a metropolitan area, expressed his love for the prosecutrix who belongs to the Scheduled Caste Community and engaged in sexual activity with her repeatedly promising to marry her. The FIR shows that first instance of the sexual activity was not with the consent of the prosecutrix. Later prosecutrix continued the physical relationship not just on account of love but also on account of the repeated assurance of the accused that he would be able to get consent of his parents for their alliance by any means. He also assured the prosecutrix that if need arose, he would threaten his parents with suicide. The entire gamut of facts show that the accused was aware from the beginning that caste would be an issue and that his parents would not approve of their alliance. As already discussed above, his later WhatsApp chats exhibit his own deep rooted caste bias. So far as the prosecutrix is concerned, in today's times, it is the natural expectation of an educated independent woman living in a metropolitan area that an educated independent man also living in the metropolitan area would keep his words and would marry her despite caste difference. In the present case, *prima-facie*, it is

apparent that the accused continued sexual activity with the prosecutrix for about four years on false promise to marry and later said no to marriage and shifted the blame on the disapproval of his parents. At the cost of repetition, record shows his own averseness to marrying a girl belonging to the Scheduled Caste Community. *Prima-facie*, the present case does not fall within the ambit of merely breach of promise but misconception of fact that accused would marry her despite the caste differences. It was this misconception perpetrated by accused himself that vitiated her consent. The present case clearly falls within the ambit of section 376(2)(n) IPC.

10. Next issue that arises is whether the accused committed the offences in question and engaged in repeated sexual activity with prosecutrix because of her caste. I would first refer to section **3(1)(w)(i)(ii) of the SC & ST Act, 1989** which provides as follows:

“3. Punishments for offences of atrocities. -(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -
(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled

Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

Explanation.- For the purpose of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence."

11. **Section 3(2)(v) of the SC & ST Act, 1989** provides as follows:

"3. Punishments for offences of atrocities. -(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-
(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be

punishable with imprisonment for life and with fine.”

12. **Section 3(2)(va) of the SC & ST Act, 1989** provides as follows:

“3. Punishments for offences of atrocities. -(2) *Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe- (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”*

The above said provisions of law use the phrase “knowing that” the victim belongs to a Scheduled Caste or Scheduled Tribe Community.

13. In ***Judgment dated 27.04.2021 of Hon’ble Supreme Court of India in Criminal Appeal No 452 of 2021 (Arising out of SLP(Crl) No 1795 of 2021) titled as Patan Jamal Vali vs The State Of Andhra Pradesh***, it has been held as follows:

“59 It is pertinent to mention that Section 3(2)(v) was amended by the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, which came into effect on 26 January

2016. The words “on the ground of” under Section 3(2) (v) have been substituted with “knowing that such person is a member of a Scheduled Caste or Scheduled Tribe”. This has PART C decreased the threshold of proving that a crime was committed on the basis of the caste identity to a threshold where mere knowledge is sufficient to sustain a conviction. Section 8 which deals with presumptions as to offences was also amended to include clause (c) to provide that if the accused was acquainted with the victim or his family, the court shall presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.”

In view of the observations of Hon’ble Supreme Court of India in *Patan Jamal Vali’s* case, present case falls within the ambit of the SC & ST Act, 1989 as the accused knew fully well that the victim belonged to the Scheduled Caste Community.

14. Further, *prima-facie*, the accused, on the false promise to marry, lured the prosecutrix to pay him Rs. 65,000/- to buy a car and Rs. 60,000/- to make arrangements of their marriage. It falls within the ambit of section 420 IPC. There are also specific allegations of criminal intimidation punishable u/s 506 IPC which is a scheduled offence under the SC & ST Act, 1989 attracting the provision of section 3(2)(v) of the SC & ST Act, 1989. Offence punishable u/s 376(2)(n) IPC is punishable with sentence not less

than 7 years but which may extend to imprisonment for life and with fine. Offence punishable u/s 3(2)(va) of the SC & ST Act, 1989 is also made out.

15. Further, at the stage of framing of charge, the Court is only required to see whether the circumstances on record *prima facie* give rise to a grave suspicion against the accused or not. All the contentions of Ld. Counsel for the accused are a matter of trial.

16. In ***Sajjan Kumar Vs. CBI (2010) 9 SCC 368***, Hon'ble Supreme Court of India has held as follows:

“17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be

fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the

existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

17. In view of the above discussion, ***prima facie***, there is **sufficient material on record to frame charge against the accused Vikesh Dogra for the offence punishable u/s (i) 420 IPC; (ii) 376(2)(n) IPC; (iii) 506 IPC; (iv) section 3(1)(w)(i)(ii) of the SC & ST Act; (v) section 3(2)(va) of the SC & ST Act (in respect of section 506 IPC); (vi) section 3(2)(v) of the SC & ST Act (in respect of section 376(2)(n)).**

PRONOUNCED IN OPEN COURT ON THIS 23rd DAY OF MAY 2023

**(Vrinda Kumari)
ASJ-02, South District
Saket Courts, New Delhi.**