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2023:DHC:6617

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 06.09.2023***
Pronounced on: 13.09.2023

\+ **W.P.(CRL) 208/2023 & CRL.M.A. 5217/2023**

S. RAJADURAI ..... Petitioner

Through: Ms. S. Selva Kumari, Advocate

versus

STATE (NCT) OF DELHI & ANR. ..... Respondents

Through: Ms. Rupali Bandhopadhya, ASC for the State with SI Durgesh and Mr. Akshay Kumar, Mr. Abhijeet Kumar, Advocates
Mr. Varun Kumar, Mr. M.D. Jangra and Mr. Shitanshu, Advocates for R-2

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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first time in September, 2021 in Uttam Nagar, Delhi and he had promised to marry her, and on false promise of marriage, he had developed physical relations with her forcibly. It was stated that one month thereafter, the parties got prepared an affidavit (agreement for live-in-relationship) in which the accused/petitioner mentioned himself as bachelor. It was stated that thereafter, she had made him meet her parents in Bihar, however, whenever she had requested to meet his parents, the accused had always made one excuse or the other. It was further stated that in May, 2022, when she had come to know that he was already married and he had concealed this fact from her, thereafter, the accused had again promised her by way of an affidavit that he will divorce his wife within six months and that he had already applied for divorce from his wife. Thereafter, both of them had continued their relationship. It was alleged that on 24.09.2022, the accused had visited her home to meet her but he had intentionally fought with her and had broken her phone and had made physical relationship with her forcibly on the pretext that he would marry her soon. Thereafter, she had become pregnant, but the accused had stopped attending her phone calls, which had resulted into filing of present complaint and registration of FIR.

3. The petitioner by way of this petition states that the respondent no. 2 who has a child and is already married, on the pretext of being estranged from her husband, had "chased the petitioner and had encashed the fact that the young petitioner is staying away from his wife and she had succeeded in getting the petitioner succumbing to her desire". It is stated that respondent no. 2 had herself drafted the

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live-in-relationship agreement and had forged the signatures of the petitioner on the said agreement. However, it is stated that even as per the contents of aforesaid live-in-relationship agreement, the petitioner had agreed to enter into an agreement of live-in-relationship with respondent no. 2 till her earlier marriage is dissolved. It is stated in the petition that as per agreement, the petitioner and respondent no. 2 had also agreed that during the course of their live-in-relationship, if they found each other suitable and compatible, they will explore the possibility of marrying each other by divorcing their respective spouses. It is further stated that respondent no. 2 had gone to petitioner's home at Tamil Nadu, and thereafter, had fabricated an affidavit dated 09.06.2022 forging his signatures on the same. It is stated that she had again forged his signatures on the affidavit dated 09.09.2022 that he will divorce his wife within six months time. It is the case of the petitioner that when he had refused to live with respondent no. 2, she had got furious and had lodged a complaint with his superiors. It is also stated that when she had failed to live with him and her attempt to threaten the wife of the petitioner did not succeed, she had filed the present complaint.

ARGUMENTS ADDRESSED BY THE PARTIES

4. Learned counsel for the petitioner states that the FIR is liable to be quashed since respondent no. 2 herself is married and has a minor daughter. It is argued that her marriage is still subsisting and in spite of that, she had entered into a live-in-relationship with the petitioner which as per petitioner, "disentitles her to the moral right

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to deserve bachelor for her extra marital pleasures", assuming without accepting that petitioner had concealed his marital status from the respondent no. 2. It is further stated that the conduct of respondent no. 2 is against public policy and against the norms of society and thus by any stretch of imagination, no offence as alleged could be said to have been committed. It is further stated that the intentions of respondent no. 2 are malicious whereas the petitioner has a sterling character with no criminal case pending against him. It is also argued that it is clear that even by assuming the prosecution story in its entirety to be true, the offence of rape cannot be established since at the most, consensual sex is what can be concluded. Therefore, it is prayed that present petition be allowed.

5. Learned counsel for the complainant/respondent no. 2, on the other hand, states that the incident dated 24.09.2022 mentioned in the FIR is sufficient to attract ingredients of Section 376 of IPC and therefore, there is no question of quashing of present FIR.

6. This Court has heard arguments advanced on behalf of both the parties and has perused the material placed on record and has also gone through the statements as well as other documents which are filed on record.

ANALYSIS AND FINDINGS

7. In a nutshell, the case of the complainant is that the petitioner herein had established physical relations with her on false pretext of marriage, and he had projected himself as an unmarried man, and when at a later occasion the complainant had got to know that the

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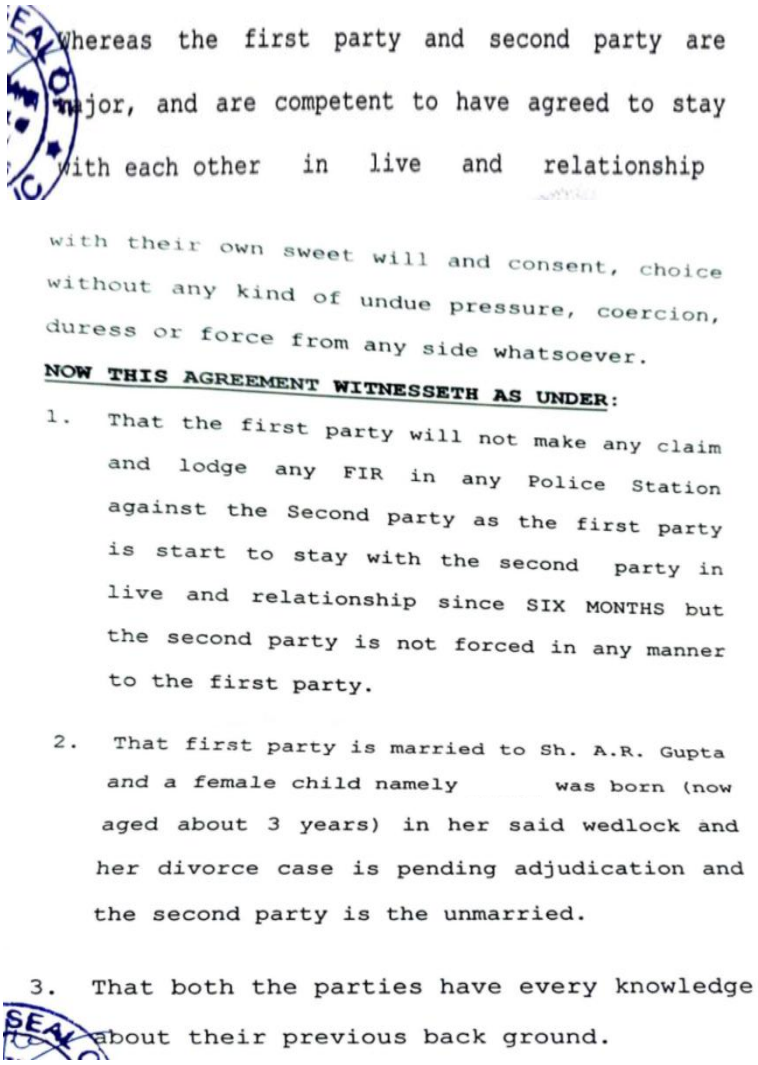
petitioner was already married, the petitioner had again given her assurance that he would obtain divorce from his wife and get married to her.

i. The 'Live-In-Relationship Agreement'

8. The attention of this Court has been drawn towards an alleged 'live-in-relationship agreement' which is notarized and the relevant portion of the same reads as under:



Whereas the first party and second party are major, and are competent to have agreed to stay with each other in live and relationship with their own sweet will and consent, choice without any kind of undue pressure, coercion, duress or force from any side whatsoever.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. That the first party will not make any claim and lodge any FIR in any Police Station against the Second party as the first party is start to stay with the second party in live and relationship since SIX MONTHS but the second party is not forced in any manner to the first party.

2. That first party is married to Sh. A.R. Gupta and a female child namely was born (now aged about 3 years) in her said wedlock and her divorce case is pending adjudication and the second party is the unmarried.

3. That both the parties have every knowledge about their previous back ground.

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4. That both the parties are doing service.

5. That it is agreed between the parties that the first party is living with the second party with her own free will and choice and the second party has not influenced her in any manner whereas the first party assure to the second party that she will not lodge any report in any manner in the concerned police station against the second party and the said live in relation is totally with their own free will.

6. That the second party assure the first party that he will take care maintainable and looking after the said child namely and the second party shall pay the educational expenses of the child as she

9. At the outset, this Court takes note of the fact that the complainant in the FIR has referred to and relied upon the aforesaid agreement to contend that petitioner had started living with her and had established physical relations on false pretext of marriage. The petitioner, on the other hand, states that his signatures on the agreement have been forged by the complainant, however, he states that since complainant has relied upon the said agreement in the FIR, even a perusal of the same would reveal active consent on part of petitioner and non-existence of any promise to marry on part of petitioner.

10. A perusal of the contents of this agreement dated 01.02.2022 reveals as under:

i. The introduction to the agreement records that the parties claimed that they are major and are competent to agree to

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stay with each in live-in-relationship with their own sweet will and consent, choice and without any undue pressure, coercion, duress or force from any side whatsoever.

ii. The first paragraph makes it clear that both the petitioner and complainant understood as to what they were entering into. They were also aware that they were entering into live-in-relationship being competent and major to do so. It also mentions that the complainant will not lodge any FIR or file any claim in any police station against the petitioner herein and that the petitioner has started living with her in live-in-relationship but he has not forced her in any manner.

iii. The second paragraph clearly mentions that the complainant is already married to one 'A' and has a daughter aged about three years and that her divorce proceedings are pending adjudication and that the petitioner is unmarried.

iv. The third paragraph mentions that both the parties have every knowledge about their previous background.

v. The fifth paragraph records that the complainant was living with the petitioner out of her own free will and the petitioner had influenced her in any manner whatsoever and thus, respondent no. 2 would not file any complaint against him.

11. This document, execution of which is not disputed by the complainant/respondent no. 2, points out that she herself has signed

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the document stating therein that she had entered into the relationship without being influenced in any manner whatsoever by the petitioner herein. However, at this stage, **it is clarified** that this Court is not examining the legal validity of agreement in question, but only analyzing the case of complainant herself who had relied upon the said agreement vide which the parties had allegedly agreed to enter into a live-in relationship.

12. Even if it is the contention of the petitioner that the complainant has forged his signatures on the live-in-relationship agreement, the same does not inspire truth on the face of it since in case she would have forged the signatures on live-in-relationship agreement, there was no need for her to write that he is unmarried. Further, if she would have forged the signature of the petitioner on the agreement, then she could have also mentioned that the petitioner had promised to get married to the complainant.

ii. Intricacies of Legal Framework and Boundaries of Personal Lives

13. This Court also notes that in the present case, a unique set of circumstances has come to the light, necessitating an examination of the boundaries between personal lives of the individuals and the intricacies of legal framework. Though the complainant herein had lodged a complaint alleging commission of acts of rape, contending that the accused had engaged in sexual relations with her under the false pretext of marriage, it is noteworthy that both the complainant

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and the accused were, at the time of the alleged offence, already married to their respective spouses. As per the case of complainant, she and the petitioner herein had entered into a 'live-in-relationship' agreement, the details of which have already been discussed in the preceding paragraphs.

The Essence of Live-in-Relationship

14. A live-in relationship, in essence, denotes a cohabitation arrangement where two individuals choose to live together in a domestic setting, but in the absence of a formal marriage. In the Indian statutory laws, the concept of 'live-in relationships' remains undefined and lacks specific legal recognition. However, the Courts have time and again discussed the nature of such relationships keeping in the mind the constitutional guarantees of equality and personal liberty.

Dimensions of Live-in-Relationship

15. The Hon'ble Apex Court in case of ***Lata Singh v. State of U.P.*** *(2006) 5 SCC 475* had held that a girl who is a major is free to marry anyone she likes or 'live with anyone she likes'. Moreover, in ***S. Khushboo v. Kanniammal*** *(2010) 5 SCC 600*, the Hon'ble Apex Court had observed that no offence is committed if two adults willingly engage in sexual relations without there being a martial setting, though with obvious exception of 'adultery' as defined under Section 494 of IPC. In reference to observation of Hon'ble Apex Court in case of ***S. Khushboo*** *(supra)*, it is crucial to note that

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Section 494 of IPC has now been struck down and declared unconstitutional in case of ***Joseph Shine v. Union of India*** *(2019) 3 SCC 39* by the Constitution Bench of Hon'ble Apex Court, being arbitrary, gender discriminatory, encroachment into women's identity, dignity, liberty, privacy, sexual autonomy and freedom to make independent choice in matters of sexuality. Thus, no offence can be said to be committed it sexual relations are established between two adults willingly, irrespective of their marital status.

16. In ***D. Velusamy v. D. Patchaiammal*** *(2010) 10 SCC 469*, it was expressed by the Hon'ble Apex Court that a new social phenomenon had emerged in our country commonly known as live-in-relationship and considering the same, the Legislature had taken a step forward by incorporating the term 'relationship in nature of marriage' in definition of domestic relationship under Protection of Women from Domestic Violence Act, 2005. For the purpose of interpretation of 'relationship in nature of marriage', the Court had further laid down certain requirements, akin to a common law marriage, which must be fulfilled to fall under the meaning of 'relationship in nature of marriage'.

Distinction between 'Live-in-Relationship' and 'Relationship in Nature of Marriage'

17. However, it is important to recognize the **distinction between a 'live-in-relationship' and 'relationship in nature of marriage'**. While 'relationship in nature of marriage' is one where the parties hold themselves out to society as being akin to spouses for a

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significant period of time and are otherwise qualified to enter into a legal marriage [Ref: ***D. Velusamy*** *(supra)*], Whereas 'live-in-relationship' may involve situations where two adults willingly live together without any formal commitment for getting married or where the commitment may be for a short-term arrangement only to assess compatibility with a partner and understand each other or any other reason, without having any intention to create a lifelong relationship or entering into a formal marriage. In many cases of live-in relationships both the parties may be unmarried or either of them may be married or both may be married to their respective spouses.

iii. Rape on False Pretext of Marriage vs. Live-in-Relationship Agreement

18. In light of aforesaid discussion, when the present case is examined from the judicial lens, the case of complainant now that she was forced to enter into this relationship on false pretext of marriage loses its merit in face of the agreement signed by her. It shows that the petitioner herein had not influenced her in any manner to enter into a live-in-relationship with him and understanding the same, the complainant had mentioned that there was no pressure or influence by the petitioner for her to enter into the relationship and that she will not lodge any complaint with police on this pretext.

19. It is also important to note that though the complainant states in the FIR that petitioner had entered into a relationship with her and had established physical relations on false promise of marriage and they had executed the agreement to live-in, **the agreement**, on the

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other hand, **does not refer to any such promise related to 'marriage'**, nor does it mention that it was agreed between the parties that in case it is found that petitioner is already married, the respondent no. 2 will be able to take any action against him, or that in case the accused will refuse to marry her, he will face action by way of a complaint filed by her. Rather, the agreement which is not disputed by the complainant, points out to one inference alone that the parties were willing to live with each other being major who had understood each other's background.

20. In such circumstances, this Court deems it most appropriate to refer to the decision of Hon'ble Apex Court in case of ***Shambhu Kharwar v. State of U.P.*** *2022 SCC OnLine SC 1032*, wherein while quashing an FIR under Section 376 of IPC where the accused was alleged to have raped the complainant on false pretext of marriage, the Hon'ble Apex Court had made the following important observations:

> "...8. In *Bhajan Lal (supra)* this Court formulated the parameters in terms of which the powers in Section 482 of CrPC may be exercised. While it is not necessary to revisit all these parameters again, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:
>
> > "102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
> >
> > (2) Where the allegations in the first information report and other 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

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except under an order of a Magistrate within the purview of Section 155(2).

[…]

(7) Where a criminal proceeding is manifestly attended with mala fide and/or 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 personal grudge."

9. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra*[6] a two Judge Bench of this Court while dealing with similar facts as the present case reiterated the parameters laid down in Bhajan Lal (supra) held that:

"13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

(emphasis supplied)

10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

"375. Rape - A man is said to commit "rape" if he -

[…]

under the circumstances falling under any of the following seven descriptions

Firstly …

Secondly. - Without her consent.

[…]

Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

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> Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
>
> xxx
>
> 90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or…"

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*[7] a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in *Sonu @ Subhash Kumar v. State of Uttar Pradesh*[8] observed that:

> "12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action…
>
> […]
>
> 14. […] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled…
>
> […]
>
> 16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving

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> it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act…
>
> […]
>
> 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.
>
> (emphasis supplied)

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent.

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 charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to 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 charge-sheet as they stand, the crucial ingredients of the offence

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> 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…"

21. Thus, the agreement in question which has been placed on record, relied upon by the complainant herself, rather points out that the complainant herein being aware of her own marital status was aware that she was entering into a relationship, known in common parlance as live-in relationship, where two consenting adult partners decide to live together, with or without sexual relationship. It also indicates that she as an adult did not have any inhibition to live with the petitioner and to maintain relationship with him since there is no whisper of the accused having promised marriage to her.

22. Having examined the records of the case, this Court is of the opinion that in this case, the complainant was a major who was already married and blessed with a daughter, whose marriage was going through a tough time and the litigations and proceedings were pending in a court of law. She being a major had entered into a relationship with the present petitioner out of her own free will which she does not dispute. However, it is her case that the petitioner had initially informed her that he was unmarried and had mentioned the said fact in the live-in-relationship agreement, and they had started living together since the petitioner had promised to marry her. The agreement on the other hand, does not refer to any such promise

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related to ‘marriage’ or any other incidental details in relation to any intention of marriage between them.

23. However, the complainant thereafter alleges that when she had got to know about the factum of petitioner being already married, she had confronted him and the petitioner had then sworn on affidavit that he would obtain divorce from her wife within six months and get married to the complainant. The petitioner, on the other hand, contends that the affidavits referred to by the complainant are forged and fabricated. Thus, it is the own case of the complainant that even when she had come to know about the marital status of the petitioner, she had gone to his native village, and as per the petitioner, she had created a scene there. However, the complainant herself states that after getting assurance that the petitioner will divorce his wife within six months, she had again continued with their relationship. Therefore, by this time, she knew that the petitioner is married. She herself was going through the adjudication of her own divorce petition and would have known that the grant of divorce within six months could not have been in the hands of the parties since the same is a complex legal process. The contention of the complainant herself is that the accused had come to her house after she having come to know about his marital status, and again had established sexual relationship on the false pretext of marriage. Her decision to continue with the relationship after coming to know about the same, is nothing but a pointer towards her consent towards maintaining the relationship with the accused despite knowing that they both were

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married to two other partners and they could not have got legally married to each other without a legal separation.

24. *Be that as it may*, once the complainant/respondent no. 2 herself was not legally divorced and is not so till date, the petitioner could not have married her as per law. As observed earlier, it was also not mentioned in the agreement that they were living in or maintaining relationship with each other due to a promise of marriage by the petitioner/accused.

25. This Court is also constrained to express that while perusing the contents of the present petition and written submissions filed on behalf of petitioner, the Court encountered that several derogatory remarks as well as inappropriate language was used in context of the complainant, some examples of which are extracted hereinunder:

> "The very fact that the Complainant herself is married with an infant daughter and that marriage is still subsisting and in spite of that she indulged in a live in relationship with the Accused disentitles her the moral right to deserve a bachelor for her extramarital pleasures."
>
> "Rape and other offences are an offence against the public and hence state is the complainant, however, the conduct of the Complainant herself is against the public policy and against the norms of the society, and thus by any stretch of imagination, a crime cannot be said to have taken place"
>
> "The Complainants hands and intentions are unclean. Whereas the Accused has a sterling character without any other complaint or criminal case against him except the false and fabricated case which has been filed against him"

26. The derogatory language used by the petitioner in this petition as well as written submissions falls short of decency expected in the

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legal pleadings. The legal ethics necessitate refraining from the use of such derogatory or offensive language as has been used by the petitioner in the petition as well as written submissions and oral submissions. While exercising judicial restraint, this Court does not wish to record any further observations in this regard, however, this Court observes that use of derogatory and offensive language should be avoided while filing any pleadings in a Court of law, whether against a man, woman or any gender.

LEGALITY, MORALITY, JUSTICE & COURTS: ARGUMENT OF ISSUE OF MORALITY RAISED BY PETITONER'S COUNSEL

27. This Court is posed with an argument raised on behalf of the petitioner regarding the conduct of complainant herself being immoral and against the public policy and norms of the society.

i. Legality vs. Morality: A Legal Conundrum

28. This Court has been asked to give a finding on the **argument addressed regarding the issue of morality of such relationships** and specifically some arguments which could have been better avoided against the complainant/respondent no. 2 regarding her moral behavior and duty as a woman. However, **this Court is neither authorized as a Court of law nor is commenting**, despite such argument being raised before it, about the issue of morality or immorality of such relationships, since it means **different things to different people and the Courts of law cannot impose their own**

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perception of morality on individuals who are adults and make free adult choices if such choices are not illegal or an offence under the present framework of law.

29. The institution of marriage is founded upon the principles of fidelity and commitment, and engaging in extra-marital relationship may be viewed as breach of certain fundamental principles of marriage. In cases where two individuals, married to their respective partners, enter into a live-in relationship outside the limits of their marital bonds, they are expected to, from the point of view of the reasonable person, be aware of consequences of the same.

30. Individual adults are free to make decisions even those that might not align with societal norms or expectations, however, in those cases they have to remain ready to face potential consequences of such relationships. Needless to say, individual free choices like these will invite individual responsibilities and consequences. **Though, as per various theories of law and jurisprudence, it is believed that the law by its inherent nature may have an element of internal morality of its own, there is nothing such as legal morality to decide the cases as the present one. Moral wrongdoing from the societal perspective and legal criminal wrongdoings are two separate issues.** Though some in the society may heavily be critical of the conduct of live-in relationship of two married individuals, many others may not.

31. In many legal theories evolving in the jurisprudence of the issue in question which continues to develop in the hands of the judges and lawyers, the Courts and the judges cannot adhere to the

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theories of being legal moralists. **Morality unless provided by law cannot be implemented through law. Similarly, immorality cannot be punished by law unless so provided by a statute**.

32. Every act of perceived immoral conduct by societal standards may not be criminal within the parameters of the law. The conduct of the parties in the present case may or may not be considered morally correct. Two consenting adults, although competent to exercise their freedom of choice, entered into a sexual union and termed it a live-in relationship. Both of them knew that they were not eligible to marry each other, and therefore, their actions, while may be considered immoral by some, do not, in the eyes of the law, meet the requirements of Section 376 of IPC as evident from the record, and hence cannot attract criminality. **Courts of law cannot serve as legal moralists preaching morality**. They must critically examine the criminal aspects derived from the facts of each case.

33. The **Courts cannot inject morality** into existing laws and must apply them as they are. The Judges cannot indulge in passing moral judgments against a person based on one's gender. The Courts will not be transgressing their authority, holding in the process of deciding a case that due weightage is to be given to the fact that women can make choices as equals, and we must respect these choices irrespective of the notion of age old responsibility of carrying the **burden of morality only on their shoulders being females**. But at the same time, the Courts will also not ignore that women will be responsible for the repercussions of the choices they make.

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34. The Courts can achieve justice by treating people of all genders in similar circumstances alike unless otherwise provided for by law. **The criminality in a case cannot depend upon appraisal by a judge of morality according to him. The objectivity of the judges is the key to fairness of justice and the decisions have to be objectively determined according to the law of land and not by moral principles of the judge concerned**. **Even if it is demonstrated convincingly that an act may be socially undesirable, this Court does not find it its business to say so, unless it has caused harm or has element of criminality**.

35. **Statutory interpretations cannot be replaced by moral judgments.** When the law contains a moral element, the Court is competent to decide it on the moral basis, however, in a purely legal way. It **cannot substitute the statutory law and its ingredients by incorporating its own moral concerns and substituting criminality in a case where no statute makes it criminal but judge's own sense of morality makes it so**.

ii. Legal Boundaries and Live-In Relationships: Navigating the Interplay of Law and Society

36. Courts can provide protection only for acts for which lawful protection is available through the legal system. **Rule of law which is the beacon light and the guiding star** driving its light from constitution of India and the statute does not extend its benevolence and protection to people who voluntarily enter into unions or acts for which protection of law is not available. In this regard, a sexual

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relationship between two individuals, legally married to other partners, cannot be considered an act for which legal protection is available. For example, if an unmarried person is induced into a sexual relationship on the false pretext of marriage by someone whom the victim believes to be legally eligible for marriage, it may constitute an offence under Section 376 of the IPC. This is because the victim could have been under the impression that the other person was legally eligible to marry.

37. However, when the victim herself is not legally eligible to marry someone else due to her existing marriage to another partner, she cannot claim to have been induced into a sexual relationship under false pretext of marriage. Thus, the protection and remedies available under Section 376 of the IPC cannot be extended to a victim who was not legally entitled to marry the person with whom she was in sexual relationship with. A case can be made out under Section 376 of IPC, if the victim can prove that she was induced into a sexual relationship under false pretext of marriage by the other party being legally eligible to enter into a marriage with such person.

38. The present case involves two married individuals who entered into a sexual relationship even though they were both ineligible to lawfully marry each other. They willingly engaged in a sexual union under the pretext of a live-in relationship. In light of the judgment in ***Joseph Shine*** *(supra)*, which has struck down Section 494 of IPC, their actions can no longer be considered as an offence. However, having made the choice to enter into such a relationship, they cannot now seek the protection of the law.

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39. Live-in relationship between two consenting married adults, who are married to different partners, has not been made criminal or legislated against. While concluding that legal enforcement of morals has not been legislated against, and cannot be a subject matter of any legal morality preached through a judgment. This Court, therefore, holds that the parties herein have the right to determine their own choices, life, and actions, but at the same time, should remain conscious of the repercussion it invites from their partners and its effect on their marriage. Repercussions, if any, in such cases can befall such persons from their respective legally married partners, as provided under law. Although law and morals are subject to constant renewal and change, they cannot be the determining factors in attaching criminality, as the law does not provide for it.

40. **It would be a dangerous proposition to attach criminality to acts that have not been legislated against on the basis of perceived morality. Judges, as individuals, may have different notions of morality, which cannot be imposed on any party. Therefore, this Court is of the opinion that although the immorality of the act on the part of the female partner was argued at length before this Court, the same standard applies to the male partner, and no distinction should be made based on gender, as doing so would perpetuate misogynistic thinking**.

CONCLUSION

41. As discussed earlier, in the present case, the complainant legally married to another person, voluntarily entered into a live-in

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relationship with the petitioner, initially allegedly believing him to be unmarried, as stated in their agreement. However, upon discovering his marital status, she confronted him, and he allegedly promised to divorce his wife and marry her. The complainant continued the relationship, aware of both parties' marital status, indicating her consent to maintain the relationship despite legal obstacles to marriage without divorce. Further, the 'live-in relationship agreement' did not mention a promise of marriage by the petitioner. This Court observes that a critical aspect of this case is the complainant's marital status; she was not legally divorced from her previous partner. Given this, it becomes evident that the petitioner could not have entered into a legal marriage with her. Consequently, there was no valid basis for the complainant to entertain the notion of promise of a marriage from the petitioner, as she, by virtue of her existing marriage, was ineligible to marry the present petitioner.

42. As regards other offences mentioned in the FIR, there are no allegations of mischief under Section 427 of IPC, of outraging the modesty under Section 509 of IPC, or of criminal intimidation under Section 506 of IPC, and there is nothing on record to suggest the commission of same. Even otherwise, the learned Trial Court *vide* order dated 10.04.2023 had framed charge only under Section 376 of IPC against the petitioner herein and charges were not framed under Sections 323/427/506/509 of IPC.

43. Thus, in view of the foregoing discussion, the FIR bearing no. 725/2022, registered at Police Station Bindapur, Delhi for the

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offences punishable under Sections 376/323/506/509/427 of IPC and all consequential proceedings emanating therefrom are quashed.

44. Accordingly, the present petition stands disposed of alongwith pending applications, if any.

45. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 13, 2023/zp