

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.46 OF 2020

Ujwal s/o Sureshrao Thakre, aged
about 30 years, occupation : service, r/o
at post Jalalkheda, tahsil Narkhed, district Nagpur. **Applicant.**

:: V E R S U S ::

1. The State of Maharashtra, through
its Police Station Officer, Police
Station Gittikhadan, taluka and district
Nagpur.

2. XYZ, Crime No.....
311/18, Police Station Gittikhadan,
District Nagpur. **Non-applicants.**

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Shri Tejas Deshpande, Counsel with Shri A.D.Deshmukh, Counsel for the
Applicant.

Shri S.G.Karmarkar, Counsel for Non-applicant No.2.
Shri M.K.Pathan, Additional Public Prosecutor for the State.

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CORAM : **V.M.DESHPANDE & AMIT B.BORKAR, JJ.**

DATE : **APRIL 13, 2022**

ORAL JUDGMENT (Per : Amit B.Borkar, J.)

1. Heard learned counsel Shri Tejas Deshpande with learned
counsel Shri A.D.Deshmukh for the applicant, learned counsel Shri
S.G.Karmarkar for non-applicant No.2, and learned Additional Public
Prosecutor Shri M.K.Pathan for the State. **RULE.** The Rule made

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returnable forthwith. Heard finally by consent of learned counsel for respective parties.

2. By this application, under Section 482 of the Code of Criminal Procedure, the applicant challenges registration of First Information Report on 15.7.2018 with Gittikhadan Police Station, Nagpur against the present applicant for offence punishable under Section 376 of the Indian Penal Code.

3. Non-applicant No.2 lodged the First Information Report alleging that on 16.5.2013 the applicant on a promise of marriage established forceful sexual intercourse with her. It is also alleged that relationship between the applicant with her was till year 2018. It is also alleged that the applicant refused to marry her. According to her, when she got an knowledge about engagement of the applicant with another lady, she lodged the First Information Report.

4. On 13.1.2020, this Court (Coram : P.N.Deshmukh and Pushpa V.Ganediwala, JJ.) issued Noticed to non-applicants.

5. In pursuance to Notices issued, non-applicant No.1/State of Maharashtra filed its reply stating in it that investigating agency recorded statements of witnesses and investigation is almost complete.

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It is stated in the reply that the applicant established forcible sexual intercourse with non-applicant Non.2 on a false promise of marriage.

6. Having carefully analyzed the First Information Report and gone through the reply on behalf of the prosecuting agency, following factual scenario appears :

(i) that the applicant was in relationship with non-applicant No.2 from year 2013 to 2018, and

(ii) that the applicant on a promise of marriage established forceful sexual intercourse with non-applicant No.2

7. At this stage, it would be useful to refer Judgment of the Honourable Apex Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra**, reported at **[(2019)9 SCC 608]** wherein the Honourable Apex Court in paragraph Nos.16 and 18 observed as under:

“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

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giving 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. Section 90 IPC cannot be called into aid in such 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.” (Emphasis supplied).

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.”

8. In this view of the matter, we are, therefore, satisfied that continuation of proceedings against the applicant would amount to abuse of process of law. We, therefore, pass following order:

ORDER

(1) The criminal application is allowed.

(2) First Information Report dated 15.7.2018 registered with Gittikhadan Police Station, Nagpur against the present applicant for

Judgment

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offence punishable under Section 376 of the Indian Penal Code is hereby
quashed.

Rule is made absolute in aforesaid terms.

JUDGE

JUDGE

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by BHUSHAN
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