

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

CRIMINAL APPLICATION (APL) NO. 465 OF 2022

1. Pankaj s/o Shamrao Mohade
Aged about 28 years, Occ: Service,
R/o Mukkam Ambashi, Tq. Patur, Dist.
Akola **...APPLICANT**

---VERSUS---

1. State of Maharashtra,
Through Police Station Officer,
Police Station, MIDC Akola, District Akola
2. XYZ (Victim)
Thr. Complainant/Informant
In Crime No.71/2022 registered
with Police Station, MIDC, Akola.
Tq. Akola Dist. Akola. **--NON-
APPLICANTS**

Shri S.V. Sirpurkar, Advocate for the applicant.
Shri M.K. Pathan, Additional Public Prosecutor for Non-applicant No.1/State.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 11th APRIL, 2022.

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report bearing No.71 of 2022 dated 13.02.2022 registered with the non-applicant no.1 – Police Station for the offence punishable under Section 376(2)(n) of the Indian Penal Code.

4. The First Information Report (FIR) came to be registered against the applicant with the accusations that applicant made forcible sexual intercourse with the non-applicant no.2 on the promise of marriage and thereafter he refused to marry with her.

5. During the course of investigation the applicant and non-applicant no.2 have married. The applicant has therefore challenged registration of FIR.

6. The non-applicant no.2 is present in the Court and stated that she has performed marriage with applicant.

7. We have considered the allegations made in the FIR and we are satisfied that the allegations in the FIR even if presumed to

be correct, the same will be covered by the authoritative pronouncement in the case of **Pramod Suryabhan Pawar Vs. The State Of Maharashtra** reported in **2019 (6) SCC 608**, wherein in paragraphs 16 and 18 held 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 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.

18. To summaries 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 view of amicable resolution of dispute between the applicants and non-applicant no.2, there is no impediment for quashing the First Information Report against the applicant.

9. We therefore pass the following order :

(i) The application is allowed.

(ii) Rule is made absolute in terms of prayer clause (1),

which reads as under:

“Quash and set aside the F.I.R. vide Crime No.71/2022, dated 13/02/2022 registered by respondent no.1-Police Station MIDC, District Akola, against the applicant for the offence punishable under Section 376(2)(n) Indian Penal Code (Annexure-1)”

JUDGE

JUDGE

Wagh