

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4009 OF 2024**

Mr. Adithya Krishnan,
Age 27 years, Indian Inhabitant,
Occ.: Service, Res. At – M 12/103,
Hills & Dales, Phase-III,
Undri, Pune – 411 060.

.....Petitioner

Vs.

1. The State of Maharashtra

2. XYZ

.....Respondents

Mr. Sahim D. Ansari for the Petitioner.

Ms. Mahalakshmi Ganapathy, A.P.P for Respondent No. 1-State.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**

RESERVED ON : 24th SEPTEMBER, 2024.

PRONOUNCED ON : 7th OCTOBER, 2024.

JUDGMENT (*Per Dr. Neela Gokhale, J.*) :

1) The Petitioner seeks to quash Special Case No. 441 of 2024 pending on the file of Special Sessions Court, Shivaji Nagar, Pune, arising out of FIR No. 135 of 2024 dated 8th February 2024 registered with Kondhwa Police Station, District-Pune for the offenses punishable under Sections 376(2)(n) & 420 read with 34 of the Indian Penal Code and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2) Facts of the case in brief are as under :

2.1) In the year 2022, while the Respondent No. 2 was working in a IT Company named Publicis, Mumbai, she became acquainted with the Petitioner as a co-worker. The relationship grew into friendship and thereafter he proposed marriage to her. The Petitioner also met the Respondent No. 2's parents.

2.2) On 12th December 2022, the Petitioner's parents had gone to Mumbai. The Petitioner repeatedly called the Respondent No. 2 to his house and on 14th December 2022, he took her to home and despite her resistance, established sexual relationship with her. It is alleged that, the Petitioner raped her. She had specifically and expressly refused to consent to the sexual relationship,

2.3) In February 2023, the parties decided to get married with the consent of their respective parents. The Petitioner's parents were aware that, the Respondent No. 2 belongs to the Scheduled Caste Community and knowing this, they performed engagement ceremony on 23rd June 2023 at Ramkrishna Hall, Camp, Pune. The entire expenditure of the ceremony was borne by the Respondent No. 2's parents. Her father also gave Rs. 2,00,000/- in cash to the Petitioner. His mother repeatedly told her that, despite her being of Scheduled Caste Community, they had accepted her since the Respondent No. 2 was good looking and had a job which paid good salary.

2.4) The Petitioner used to always take her to the Residency Business Hotel, Koregaon Park and forcibly rape her. When she resisted, he assured that he would marry her. Later, he insisted that, the entire expenses of the marriage to the tune of Rs. 4,00,000/- shall be borne by the Respondent No. 2's parents. The Petitioner and his parents also demanded that the Respondent No. 2's parents shall gift expensive sarees, 8 tolas gold etc. for the marriage. They bought a mangalsutra of 8 grams gold and demanded that her parents pay Rs. 30,000/- for the same. Further unreasonable demands in respect of dowry etc. were made.

2.5) Quarrels ensued between the parties regarding the demands of dowry and the Petitioner also dug up quarrels with her on petty issues. Ultimately on 12th January 2024, the Petitioner messaged her that he was unable to marry her. The Respondent No. 2 and her parents tried to convince him otherwise but he refused to even speak to them. Finally on 14th January 2024, the Petitioner called the Respondent No. 2 and her family members to Empress Gardens, Wanorie. His parents told them that, the Petitioner would not marry her. The Petitioner himself also refused to marry her and said that, she can do what she likes but he would never marry her. The Respondent No. 2 was aggrieved that, she was compelled to have sexual relationship with the Petitioner on an assurance of marriage when all along the Petitioner had no intention to keep the promise. Thus the Respondent No. 2 filed the impugned FIR.

3) Mr. Sahim Ansari, learned counsel appears for the Petitioner and Ms. Mahalakshmi Ganapathy, learned A.P.P represents the State.

4) Mr. Ansari submits that, the present case is fit to be compounded and no useful purpose will be served to continue prosecution. He contends that, there was a consensual relationship between the parties and no offence is made out. The parties are adults in a love relationship and were to marry. It was only because of certain issues between them that he was compelled to call off the marriage. He submits that, there is no intention to cheat and the Respondent No. 2 was of an understanding age and was well aware of the consequences of consenting to the relationship. Mr. Ansari also drew our attention to the whats-app chats on record indicating a consensual relationship. He thus submits that, the FIR is only a tool to blackmail him and extort money from him. He thus urged the Court to quash the criminal proceedings.

5) *Per contra* Ms. Ganapathy, learned A.P.P. took us through the investigation record. She read out the statement of witnesses including that of the Respondent No. 2 herself, her siblings namely sister Ganga and brother Raju amongst others. According to her, all the witnesses have corroborated the story of Respondent No. 2. Ms. Ganapathy also took us through the whats-app chats between the parties. The statement of Hotel Manager in which the Petitioner had taken the Respondent No. 2 is also on record. She thus submits that, the record of investigation clearly indicates

the relationship between the parties but it is also evident that, the same was on the assurance of the Petitioner and his parents that the Petitioner will marry her. Ms. Ganapathy thus urged the Court to dismiss the Petition.

6) We have heard the counsels and perused the record with their assistance.

7) The thrust of the arguments advanced by Mr. Ansari appears to be that, the Petitioner fully intended to marry the Respondent No. 2 and it is only because of quarrels between them that he had second thoughts and finally broke the relationship. Thus Mr. Ansari attempts to establish that, this is a case of a mere breach of promise and not that of giving a false promise to marry. We have carefully read the FIR and *prima facie* appreciated the purport of the statement of witnesses. It is evident from the statements of the Respondent No. 2 herself and her siblings that there were demands of dowry and valuable ornaments and gifts to be given to the Petitioner and his parents at the time of marriage and it was this inability of the Respondent No. 2 that led the Petitioner to call off the marriage. The whatsapp chats between the parties also reveal that, the Respondent No. 2 is desperate to convince him to marry her as it was on this basis and promise that she had physical relationship with him, *albeit* absolutely against her consent and wishes. This itself evinces confidence in the story of the Respondent No. 2.

8) It is evident from the contents of the FIR that, the sexual

relationship was purely on the assurance of the Petitioner to marry the Respondent No. 2. Mr. Ansari however requires us to test his defence that, he fully intended to marry her when they had sexual relationship but only because of her quarrelsome nature that he was compelled to call off the marriage. We cannot at this stage analyse the defence of the Petitioner but are required to look into only the averments in the FIR and ascertain *prima facie* whether the alleged offence is disclosed from its bare reading. We cannot proceed to appreciate the evidence of the parties to establish intent of *mala fide* and conduct a mini trial at this stage.

9) Admittedly, there existed a physical intimate relationship between the parties. As per the statement of the Respondent No. 2, she resisted the sexual relationship but did not complain of the forcible actions of the Petitioner simply because he had promised to marry her. From the very outset, the Petitioner and his parents were aware of the caste of the Respondent No. 2 as well as her financial status and agreed for the marriage. It is only on the ground of non-fulfillment of demands of dowry that the marriage was called off. This is nothing but constructive cheating by the Petitioner and his parents as against a breach of promise on a flimsy ground of quarrelsome nature of the Respondent No. 2. Right from the beginning, the Petitioner had no intention to marry her.

10) In the case of *Shambhu Kharwar Vs. The State of Uttar Pradesh*

*and Another*¹, the Supreme Court has explained the concept of the word ‘consent’ relatable to the commission of the said offence as under :

“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:

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*

1. (2022) SCC OnLine SC 1032.

consequence of such fear or misconception; or...”

11) The Supreme Court held in the case of *Sonu @ Subhash Kumar Vs. The State of Uttar Pradesh and Another*² 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 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

2. 2021 SCC OnLine SC 181.

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) The present case is not one of those cases where there is a *bona fide* intent of the Petitioner to marry the Respondent No. 2 and on that assurance, the parties enjoyed intimate relationship but unfortunately the same did not fructify in a marital tie. It is in such type of cases that, the Apex Court has distinguished between giving a false promise to marry and committing a breach of promise to marry. The former invites prosecution while the latter may result in acquittal or quashing. We are of the considered opinion that, the facts in the present case are quite distinct from the case of a mere breach of promise to marry. The consent of the Respondent No. 2 to the sexual relationship, even if presumed to be given, is vitiated by the ‘misconception of the fact’ which was that the Respondent No. 2 believed that the Petitioner would marry her.

13) Mr. Ansari sought to argue that the Court cannot rely upon only on the statement of Respondent No. 2 and must also consider the defence of the Petitioner. This contention of the Petitioner is stated here only to be rejected. It is settled law that in its extra ordinary jurisdiction under Article 226 of the Constitution of India, the High Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that inherent powers of this Court do not confer an arbitrary jurisdiction on the Court.

14) The Supreme Court in the case of *Priyanka Jaiswal V/s. The State of Jharkhand and Others*³, while dealing with the similar issue, has held as follows :

“13. ...This Court in catena of judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the Court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini-trial, nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside...”

15) In the case of *Bharwada Bhoginbhai Hirjibhai Vs. The State of*

3. Criminal Appeal No. 2344 of 2024 dated 30th April 2024 (neutral citation 2024 INSC 357).

*Gujarat*⁴, the Apex Court has observed as under :

“In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Viewing the evidence of the girl or the women, who complains of rape or sexual molestation with the aid of spectacles fitted with the lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.”

16) Considering the circumstances in the case, the allegations in the FIR and the settled legal position, we find no justification to quash the FIR impugned herein.

16.1) In view thereof, the Petition is dismissed.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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4. 1983 SCC (3) 217.