



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

CRIMINAL APPLICATION NO.1474 OF 2022

Vaibhav s/o Devidas Deshpande, age :
25 years, Occ. Student, R/o Sandol, Tah.
Chakur, Dist. Latur, - 413518. Presently
at, C/o Gangahdar Tidke, Plot No. 257,
Lokmanya Nagar, Hingna Road, Nagpur.

... APPLICANT

VERSUS

1. State of Maharashtra, through
PSO, Police Station, Sadar, Dist.
Nagpur.
2. XYZ , Through Complaint PS.O.
Sadar, Nagpur. Crime No.338/22.

... NON-APPLICANTS.

Shri Sahil Mate, Advocate for the applicant.
Shri Nikhil Joshi, Addl.PP for the State.
Shri Prakash S. Tiwari, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 26.04.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of

learned Counsel appearing for the parties.

3. This application once again occasioned us to decide on facts and circumstances, whether it is a case of mere 'breach of promise', or a case of 'false promise' made with deceitful means to obtain consent of the victim for sexual intercourse. We have undertaken the said exercise to the limited extent to find out whether a *prima facie* case is made out for continuation of prosecution. Needless to say, that we have considered the *prima facie* case within the bounds and settled norms about invocation of inherent powers of this Court in terms of Section 482 of the Code of Criminal Procedure (CrPC).

4. By this application, the applicant boy seeks to quash registration of First Information Report (FIR) and charge-sheet relating to crime No.338 of 2022 registered with the Sadar Police Station, Nagpur City for the offence punishable under Sections 376(2)(n) of the Indian Penal Code, Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5. Shorn all details the prosecution case is that, the informant lady aged 26 years has lodged the report on 13.08.2022 alleging that the applicant has committed sexual intercourse against her will and

without her consent. It is her case, that under false pretext of marriage, her consent was obtained for establishing sexual relations and thus, the consent obtained by misconception of fact vitiates amounting to the offence of rape.

6. The prosecution case emerges from the FIR that in the year 2015, the victim was studying in IInd year of Bachelor of Engineering Course at Nagpur. The applicant boy was also taking education in the same Engineering college. The applicant boy was hailing from District Latur. Since both were studying in the same College, they got acquainted with each other. In course of time their casual acquaintance turned into love relationship. The applicant expressed his desire to marry to the victim. At the relevant time, the applicant was staying at rented room at Nagpur. On 01.06.2016, the applicant took the victim to his rented house, expressed his desire to marry and had established sexual relations against her consent.

7. It is the victim's case, that their love affair was known to the parents of the applicant and they have also consented for marriage. In the year 2018, the applicant took admission in the Rasoni College, Nagpur for B.Tech. Course. He has shifted his residence in a rented flat at Wanadongri area of Nagpur. At said place also on an often they had sexual relations as the applicant continued to assure for marriage. In

the year 2018, the applicant's father went to the house of the victim at Bhandara to meet her parents. They had a discussion about the proposed marriage. The applicant's mother enquired about the offerings which would be given to the groom in the marriage. The family members of the victim expressed that there was no such a tradition and thus, nothing would be offered in the marriage. The applicant was saying that they would marry after completion of his education. In the month of April 2021, the applicant's mother died and thus, they could not marry. Later, in the month of November 2021, the applicant again came to the victim's house at Bhandara and discussed with her parents about the marriage. It was agreed that engagement ceremony would be performed in the month of December 2021. The applicant stated that they would marry after getting a job for livelihood.

8. It is the prosecution case, that in the month of April 2022, the applicant came to Nagpur. At that time he avoided to talk about the marriage. On 29.06.2022, the applicant met the victim, her parents and conveyed that he was to marry with another girl on 05.07.2022. He also conveyed that since his father suffered heart attack, he has succumbed to wishes of his father and reluctantly agreed to marry with another girl. However, he clarified that though as per the family wishes

he is marrying with another girl, however he is in love with the victim and would continue to love her.

9. On 01.07.2022, the victim along with her mother went to the applicant's native place at Latur to raise a grievance to concern police. The applicant and her father were called at the Police Station, where the applicant expressed his willingness to marry with the victim and broke his proposed marriage with another girl. It was decided that they would marry soon at Nagpur.

10. It is the prosecution case, that on 07.07.2022 the victim returned to Nagpur and then perceived that the applicant is avoiding for marriage. The applicant has refused for marriage by saying that the victim belongs to a member of lower caste, therefore, she has lodged the report. On the basis of said report regarding commission of cognizable offence, crime was registered. The Police carried investigation and on completion, charge-sheet has been filed.

11. Learned Counsel for the applicant submitted that the allegations made in the FIR at its face do not indicate that the applicant gave false promise with no intention to perform. There is no material to indicate that promise of the applicant was false since inception and on such promise, he engaged into the sexual relations. It is submitted that

the sexual relations were with consent and thus, the offence under Section 376 of the IPC would not attract. According to the applicant, the material on record is insufficient to establish that the applicant engaged in sexual relations with the victim on false promise to marry and her consent was under misconception of fact. In order to substantiate said contention, the learned Counsel for the applicant relied on the following decisions :

- (i) Uday vs State of Karnataka (2003) 4 SCC 46;
- (ii) Deelip Singh Alias Dilip Kumar vs. State of Bihar (2005) 1 SCC 88;
- (iii) Deepak Gulati vs State of Haryana (2013) 7 SCC 675;
- (iv) Prashant Bharti vs State (NCT of Delhi) (2013) 9 SCC 293;
- (v) Pramod Suryabhan Pawar vs State of Maharashtra and anr. (2019) 9 SCC 608;
- (vi) Dr. Dhruvaram Murlidhar Sonar vs State of Maharashtra and ors. (2019) 18 SCC 191;
- (vii) Sonu Alias Subhash Kumar vs State of Uttar Pradesh and anr. (2021) 18 SCC 517;
- (viii) Shambhu Kharwar vs State of Uttar Pradesh and anr. (2022) SCC 1032;
- (ix) Mandar Deepak Pawar vs State of Maharashtra and anr. (2022) SCC 2110.

13. The learned Counsel for the applicant would submit that the victim was well grown-up lady and at the relevant time was

studying in the course of Bachelor of Engineering. She was educated having a good-deal of understanding to differentiate good or bad. The victim was in deep love with the applicant from 2nd year of her Engineering course and out of intimacy, both have agreed to marry and maintained physical relations for next two years. The applicant specifically denied that under false promise to marry, he had enjoyed sexual relations. It is emphasized that though at initial stage both agreed to marry, however by change in circumstances, later on, the applicant could not marry for variety of reasons. The point made to be canvassed that there is distinction in between mere breach of promise and a false promise with no intention to perform. According to the applicant, the contents of FIR does not make out that since inception there was deceitful intention and the victim gave consent only by relying on promise to marry. Rather, it was a wish of passionated young loving couple who have catered their physical needs by maintaining relationship.

12. *Per contra*, the learned Counsel for the victim would submit that *prima facie* offence has been made out on the basis of the facts stated in the FIR itself. It is apparent that the applicant has established sexual relations with the victim on false promise to marry and as such, the consent based on misconception amounts to absence of consent. It

is submitted that after enjoying sexual relations the applicant has bluntly denied for marriage by expressing to marry with someone else. It is emphasized that the change of mind was after establishing the sexual relations and thus, it is a case of obtaining consent for sexual relations by deceitful means. The learned Counsel for the informant also reminded us the self imposed limitations on this Court while invoking the inherent powers. It is submitted that at this stage, neither the Court can venture into the arena of appreciation of evidence nor consider the defence version. Learned Addl.PP had endorsed the above submission.

13. Learned Addl.PP relied on the decision of this Court in case of *Navneet s/o Ashok Bangalkar vs. State of Maharashtra and anr. (In Criminal Application No.853/2021)* dated 22.12.2021 to contend that under similar circumstances, this Court has declined to quash the criminal prosecution by expressing that the situation requires a full-fledge trial. The said case is distinguishable on facts. It was not a case of long standing relationship between two adults. The facts indicate that it was a case of arranged marriage, wherein both got engaged on 22.02.2021 and fixed their marriage on 13.04.2021. However, due to pandemic situation, the marriage was postponed. In the meantime, the couple went to a resort for the party, where the boy under drunken

condition forcibly established the sexual relations by repeating that within few days they would marry but later on refused to marry. The decision in said case was totally based on given facts. It was not a case that there was a long standing relationship between youths. The accused took disadvantage of loneliness of the victim in resort and established relations stating that within few days she would be his wife. The facts being distinct, the said decision would not assist the applicant.

14. The learned Counsel for the informant further relied on the decision of the Supreme Court in case of *Anurag Soni v. State of Chhattisgarh AIR 2019 SC 1857* with special emphasis to paragraph 14 of the decision. It was the appeal against the order of conviction. On given facts, it was held that the prosecution has been successful in proving that from the very beginning the accused never intended to marry the prosecutrix, he gave false promise to marry and on such a false promise, he had physical relations. In said context, it is held that the prosecutrix gave consent relying on the false promise to marry and therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and it vitiates. There can be no dispute regarding said proposition of law that if since inception, there was a deceitful intent and the woman's consent was obtained under

misconception then the consent vitiates.

15. The informant further relied on the decision of the Supreme Court in case of *Karthi alias Karthick vs. State, Rep. by Inspector of Police, Tamil Nadu 2913 AIR SCW 4315*, wherein also on the basis of facts, it has been held that the order of conviction recorded by two courts below, was well justified as it was a case of obtaining consent of a woman under false promise. The prosecution has proved that the accused a neighbourer had forcibly entered into the house of the victim and finding her alone, by gagging her mouth raped her by giving the promise of marriage. In such a factual scenario, the conviction was upheld.

16. The next reliance is on the decision of the Supreme Court in case of *State of U.P. vs. Naushad AIR 2014 SC 384*, wherein the principle is reiterated that if the consent is given by the prosecutrix under a misconception of fact, it vitiates. Our attention has been invited to paragraph 13 of the decision, which speaks that offence of rape is against a dignity of women and it is against the Society. Lastly, reliance is placed on the decision of the Supreme Court in case of *Rajkumar vs. State of Karnataka and anr. 2024 SCC OnLine SC 257*, wherein it is held that the relationship may be consensual at the beginning but the

same state may not remain so for all time to come. When one of the partners show their unwillingness to continue with such relationship, the character of such a relationship as it was when started will not continue to prevail.

17. We may take a note of the decision of the Supreme Court in case of *Pramod Suryabhan Pawar vs State of Maharashtra and anr. (2019) 9 SCC 608* in which the Court took a review on earlier decisions and summarized the position in paragraph 18, which is reproduced as below :

“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.”

18. The applicant has further relied on the decision of the Supreme Court in case of *Deepak Gulati vs. State of Haryana – [2013] 7 SCC 675*, with a special emphasis on paragraph no.21 of the

judgment, which reads as under :

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

19. The Court shall examine all the facts to conclude that sexual intercourse was on account of relationship or her consent was

solely due to misrepresentation made by the accused. Likewise, it is also to be seen whether though accused genuinely desired to marry, but, the circumstances which could not have foreseen or beyond his control were such that they could not marry.

20. The learned Counsel for the applicant relying on the decision of the Supreme Court in case of ***Dr.Dhruvaram Murlidhar Sonar .vrs. State of Maharashtra and others – [2019] 18 SCC 191***, would submit that sexual intercourse without any misconception created by the accused does not constitute an offence of rape. Particularly he laid emphasis on paragraph no.23 of the decision, which reads as below :

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an

accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

In said case the Supreme Court has considered its earlier pronouncement in case of *Uday .vrs. State of Karnataka – [2003] 4 SCC 46*, case of *Deepak Gulati [supra]*, and reiterated the principle that there is a clear distinction between rape and consensual sex. It was considered that there can be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misconception created by the accused or the circumstances are beyond his control. It is expressed that the Court shall very carefully examine all the aspects in like cases.

21. Certainly it needs to be examined whether false promise itself must be of immediate relevance or bear a direct nexus to the woman’s decision to engage in sexual act. In said case the facts were such that both were knowing each other from years together, they use to meet regularly, travelled long distance, resided in each others house on multiple occasions, engaged in sex regularly for a period of 5 years.

In such a background it has been held that consent was not actuated by misrepresentation, which is a conclusion drawn on the given facts.

22. The learned Counsel appearing for the accused also relied on the decision of Supreme Court in cases of *Sonu @ Subhash Kumar .vrs. State of Uttar Pradesh – AIR 2021 SC 1405* and *Shambhu Kharwar .vrs. State of Uttar Pradesh – AIR 2022 SC 3901*, wherein the earlier law laid down in case of *Pramod Pawar [supra]*, has been reiterated and the decisions where on the basis of facts of those cases.

23. Section 375 of the Indian Penal Code defines the offence of ‘rape’ and enumerates 6 descriptions of the offences. The first two are relevant i.e. first clause operates where the woman is in her senses, capable of consenting but, the act is done against her will and the second clause operates where the act is done without her consent. The expression ‘against her will’ means that the act must have been done in spite of the opposition of the woman. Obviously, the consent is an act of reason coupled with deliberation.

24. Section 90 of the Indian Penal Code defines “consent known to be given under fear or misconception”, which reads as below :

“Section 90 – Consent known to be given under fear of 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”

25. Section 90 of the Code, though does not define the term ‘consent’, but, in negative manner it describes what does not amount to consent. True, consent may be express or implied, must actuated, obtained through deceit or fraud. If the consent is given under misconception of fact, it vitiates. In order to come out from the clutches of Section 375 of the Indian Penal Code, the consent requires voluntary participation and not on some deceitful misrepresentation. In case at hand undoubtedly there was no resistance for physical intercourse but, as per the victims case she gave consent as the accused assured for marriage.

26. There is no straight jacket formula for determining whether the consent given by the prosecutrix to sexual intercourse is voluntarily, or whether it is given under a misconception of fact. The test laid down by the Courts provide at best guidance for considering a question of consent, but the Court must, in each case, consider the facts before it and the surrounding circumstances before reaching a conclusion,

because each case has its own peculiar facts, which may have a bearing on the question whether the consent was voluntarily, or was given under misconception of fact. In the light of exposition of law in various decisions as delineated above, we have examined the factual aspect.

27. We have examined the material on record to assess whether the prosecution has made out a *prima facie* case. Though there are self imposed restrictions on this Court however the entire material, surrounding circumstances and *prima facie* worth and its overall effect needs to be looked into. Otherwise, there would be failure of justice as in most of the cases, the ingredients of cognizable offence are spelt out. Therefore, the examination by judicial mind is necessary on set parameters to see whether *prima facie* case exists.

28. It emerges from the FIR itself that both are well educated studying in the Engineering College. They fall in love early while studying in 2nd year of the Engineering course. The applicant expressed his desire to marry, which was followed by establishing sexual relations for the period of near-about two years. It is the prosecution case itself, that they maintained sexual relations during the period of the year 2016 to 2018 only. It is not a case that thereafter also they continued physical relations. The history given to the Medical Officer equally

spells out that they had sexual relations prior 2 to 3 years. The core issue is whether since inception the applicant gave promise with deceitful intent to obtain the consent of the victim for sexual relations. To constitute the offence the promise of marriage must have been false promise, given in bad faith and with no intention of being adhere to at the time it was given. In the above referred case of *Dr. Dhruvaram Sonar (supra)*, the Supreme Court has carved out a distinction between mere breach of promise and not fulfilling a false promise. The case in hand poses a question whether the facts indicate that it is a case of mere breach of promise or a false promise made since inception with *mala fide* motive to sexually exploit the victim. In this regard, we have to carefully examined all the facts and surrounding circumstances.

29. It is the victim's case that during the year 2016 to 2018, they had physical relations rather as per her case the accused expressed his desire to marry, which resulted in giving the consent for physical relations. Be that as it may, entire chain of circumstances are to be looked to *prima facie* asses whether it was a case of false promise. As per the prosecution case, the love relationship was made known to the parents of the applicant boy and they were also agreeable for the marriage. Moreover, in the year 2018, the applicant's parents resident of Latur, went to the house of the victim at Bhandara to fix the

marriage. The mother of the applicant gone one step ahead by inquiring as to what would be the offerings given in the proposed marriage. The report indicates that the applicant was repeatedly expressing that after completion of education they would marry.

30. The informant stated that as in the month of April 2021, the applicant's mother died they could not marry in proximity. Further it is the prosecution case, that in the month of November, 2021, the applicant came to Bhandara, met her parents and expressed that they would undergo engagement ceremony in the month of December 2021 as he is expecting to get a job. The report states that however on 05.07.2022, the applicant first time refused to marry by saying that his father suffered heart attack and as per his father's wish, he was required to marry with someone else. The victim went to Latur Police Station in July 2022, where again the applicant cancelled his marriage with another girl and shown his willingness to marry with the victim but later on, refused to marry.

31. The above entire scenario indicates that at very early age young students fall in love, decided to marry and maintained physical relations for two years. Time and again, the steps were taken to settle the marriage. Notably, it was not a clandestine transaction since the

applicant boy has disclosed his relationship and desire to marry to his own parents. Moreover, the applicant's parents came from Latur to Bhandara to settle the marriage and they had a talk about the mode and manner of marriage. The victim stated that the applicant desired to marry after completion of education, which is a quite natural feelings. The victim herself stated that as in the meantime, the applicant's mother died, they could not marry. Thereafter also the applicant came to her house and they decided to undergo engagement ceremony in the month of December 2021.

32. It is evident that the applicant was willing to marry with the victim as everything was in order for 2 to 3 years. Family of both were made aware and also they had a talk about marriage and decided to perform the marriage after completion of education. However, it reveals that the things changed after April 2022. The applicant specifically came with a case that the victim's behaviour has changed. She used to abuse him, pressurize and was harassing him by repeated calling and therefore, he has lodged the report to the Police on 16.07.2022 (page 28A) expressing that the victim may implicate him in a false case. The entire chain if taken together discloses that, for first 3 years everything was smooth as both of them wanted to marry each other. Both families were agreeable to the marriage, met each other and decided to perform

the marriage. In the circumstances, it is difficult to hold that since beginning the applicant was having deceitful intent while expressing his desire to marry. Rather it reveals that he was intending to marry, his intention continued for three years but for some or other reason the marriage was not materialized.

33. Pertinent to note that after the year 2018, they had no physical relationship. The informant never stated that after denial for marriage, the applicant still had established sexual relations. It emerges that the victim was a grown-up girl studying in the Engineering college. She was in love with the applicant. Since beginning she was aware that they belongs to different caste. The victim had sufficient intelligence to understand the significance and moral quality of the act, she was consenting for the relations. Under hope to marry both maintained relations for two years. Efforts were also made by families to fix the marriage during initial two years. All these things are sufficient to indicate that both had agreed to marry, though the applicant expressed his desire to marry however it cannot be said that, his intention was to deceive since inception. Rather it emerges that after few years the marriage was not materialized for one or other reason. The victim herself has admitted that twice or thrice they decided to marry but due to educational reason, death of mother of the applicant and heart

ailment of the applicant's father, the marriage was not performed.

34. This Court is invested with inherent powers with a sole object to prevent the abuse of the process of Court and to secure the ends of justice. Exercise of powers under Section 482 of the Code are permissible when the material placed on record was sufficient enough to come to the conclusion that a case, even if it went to trial would not culminate into the conviction. Reading of the FIR coupled with the material collected during the charge-sheet, *prima facie* shows that it is not a case of obtaining a consent of victim by giving a false promise to marry. The prosecution case even if taken at its face value it does not constitute the ingredients of the offences charged with. The case squarely falls under the category of 1, 3 and 5 as laid down by the Supreme Court in case of State of *Haryana vs. Bhajan Lal AIR 1992 SC 604*, which reads as below :

"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.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

***.

5. *Where the allegations made in the FIR of complaint are to absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”*

35. We have examined the entire material with circumspection and are of the considered opinion that, the prosecution case even if accepted, at its face value, does not make out an offence of rape. In the circumstance, continuation of prosecution amounts to abuse of the process of Court.

36. In view of the above, the application is allowed. We hereby quash and set aside the Charge-sheet bearing No.132 of 2022 arising out of First Information Report (FIR) and charge-sheet relating to crime No.338 of 2022 registered with the Sadar Police Station, Nagpur City for the offence punishable under Sections 376(2)(n) of the Indian Penal Code, Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

37. The application stands disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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