

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61025 of 2023

Arising Out of PS. Case No.-186 Year-2023 Thana- BHABHUA District- Kaimur (Bhabua)

Kumar Rishiraj S/O- Late Lalan Prasad R/O- Village- Dhai Bigha, P.S.-
Narhat, Dist.- Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar Patna.
2. Sunita Kumari D/O- Late Brijnandan Prasad R/O- Village- Ghostama, P.S.-
Kadirganj, Dist.- Nawada. At Present Circle Inspector Officer Ghainpur,
P.S.- Ghainpur, P.O- Ghainpur, Dist.- Kaimur (Bhabhua)

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Hansraj, Advocate Mr. Davendra Kumar Pandey, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Manoj Kumar Ambastha, Advocate Mr. Uday Pratap Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 20-01-2025

1. This application has been filed for quashing of the First Information Report vide Bhabhua P.S. Case No. 186/2023 dated 06.03.2023, arising out of Complaint Case No. 1443/2022, registered for the offences under Sections 376, 420, 406, 120-B, 34 of the Indian Penal Code.

2. The prosecution case, in brief, is that in the year 2015, informant was appointed as Constable in Bihar Police and on 08.11.2015, she has joined her duty at Rohtas District Police Line, Dehari and from there, she was deputed to Sasaram Court. The petitioner was also deputed at Model Police Station, Sasaram. Informant was residing at Dehri and used to do her duty at Sasaram, and she met with the petitioner. The informant alleged



that the petitioner established physical relationship with her on the pretext of marriage and thereafter the petitioner denied marrying her.

3. It has been submitted by the learned counsel for the petitioner that on the basis of the complaint filed by the complainant/informant, police instituted a case *vide* Bhabhua P.S. Case No. 186/2023 dated 06.03.2023. He further submits that the petitioner is innocent and has not committed any offences as alleged in the FIR. On perusal of the FIR, it appears that the police have registered the FIR under the same sections as mentioned in the complaint which is false and fabricated. He further submits that the informant was in a relationship with the petitioner since 2015 and petitioner had broken up with her in 2018 after being selected on the post of Sub-Inspector, but she has brought the case in the year 2023.

4. Learned counsel for the petitioner further submits that the informant is a married lady and the name of her husband is Ajay Kumar and they have one child namely Hritik Raj. The informant has not stated anywhere in her complaint that she is a married woman. He further submits that petitioner never established physical relationship with her on the pretext of marriage. There was only formal acquaintance between the



petitioner and the informant as they both belong to the same hometown.

5. The learned counsel for the petitioner has further submitted that the Hon'ble Supreme Court in the case of ***Pramod Surybhan Pawar vs. State of Maharashtra, (2019) 9 SCC 608*** has held that mere breach of "Promise to Marry" does not constitute any offence of rape under Section 376 of the Indian Penal Code. It is held that promise of marriage must have been given in bad faith and it must have immediate relevance to the decision to engage in the sexual act.

6. Learned APP for the State has vehemently opposed the prayer for quashing of the FIR and has submitted that the petitioner has established physical relationship with the complainant/informant on the pretext of marriage and, therefore, the present case is not a fit case for quashing of the FIR.

7. Learned counsel for the informant has appeared but no counter affidavit has been filed to deny the specific pleading made in paragraph no. 08 of the writ petition i.e. the complainant/informant is married to one Ajay Kumar and is having one child namely Hritik Raj aged about 7 years.

8. I have considered the submissions of the parties.



9. From reading of the complaint/FIR, it appears that the complaint was filed in the year December 2022 and the date of occurrence was mentioned as 2015 to 18.12.2022. Thereafter, the case was referred to the police station for registration of an FIR under Sections 156(3) of the Cr.P.C., in which charge-sheet was submitted and cognizance was taken.

10. From reading of the complaint/FIR, it appears that while being posted together, the complainant may have been in a relationship with the petitioner and has filed this case making allegation of rape i.e. having physical relationship with the complainant on the pretext of marriage but there is no mention in the complaint by the complainant/informant that she is a married lady and in the present proceedings also, she has also not denied the statement made in the paragraph no. 08 of the petition.

11. From reading of the allegation levelled in the FIR, in my opinion, the present dispute appears to be a dispute between two grown up persons who might have been in a relationship and for that a criminal prosecution cannot be launched that too for committing a rape etc.

12. The Hon'ble Supreme Court in the case of ***Mahesh Damu Khare vs State of Maharashtra & Anr, 2024 SCC OnLine SC 3471***, while considering such a case has held as follows:-



19. Section 375 of the IPC clearly postulates that a person is said to have committed rape if he performs any of the sexual acts mentioned under sub-clauses (a), (b), (c) and (d) without the consent of the woman. As mentioned above, in terms of Section 90 of the IPC, if the consent is given under a misconception of fact, such a consent is no consent in the eyes of law and cannot be considered to be wilful and voluntary consent.

20. Keeping this aspect in mind as to what amounts to consent with reference to Section 375 of the IPC, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in the case of *Shambhu Kharwar v. State of Uttar Pradesh*⁴ as follows:—

“11. In Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608, 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 (2021) 18 SCC 517, 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 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)

21. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in *Niam Ahmed v. State (NCT of Delhi)*⁵,

“20. The bone of contention raised on behalf of the respondents is that the prosecutrix



had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376.”

22. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.



23. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 of IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to the case of “*Deepak Gulati v. State of Haryana*”⁶, in which it was held as follows:

“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.”

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the



victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. 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)

24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

25. In the present case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant. Making an allegation of non-fulfilment of promise to marry without undue delay by the promisee would, on the other hand, be an indicator of a false promise being made from the initial stage. In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false promises to marry her on the basis of which she also continued to have physical relationship with him.

26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:

(i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been



in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.

(iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

(iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.

(v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.

In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the



relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurrer or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

30. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.

31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.

32. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.



13. In view of the law laid down by the Hon'ble Supreme Court, in the present case, it is important to consider that whether any offence is made out against the petitioner or not. The petitioner and the complainant/informant while being posted at the same place became acquainted with each other in the year 2015 because both the petitioner and complainant/ informant belong to the same district and they have started having physical relationship.

14. It is an admission by the complainant/ informant that they were in physical relationship since 2015 without any protest by the complainant/informant. The physical relationship was continued for a long time and during the subsistence of that relationship, the complainant/ informant has given a certain amount of money for financing the motorcycle of the petitioner.

15. The only allegation made by the complainant/informant is that the petitioner established physical relationship with her only with a promise to marry. The complainant/ informant is a literate person, a Constable in the Bihar Police and she is not naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the petitioner and it appears that the allegation of false promise has



been made only after the petitioner was transferred to a different district and he discontinued the relationship.

16. Though there is no positive denial by the complainant/ informant that she is a married lady having one child but considering the fact that she has not filed any counter affidavit, the statement of the petitioner that the complainant/informant is a married lady with a child appears to be true and the complainant/informant has knowingly not filed any counter affidavit which would have further weakened her case.

17. From the discussions above, the allegations made in the complaint/FIR and the material collected during investigation, it appears that the petitioner and the complainant/informant were in a relationship for a long time i.e. almost seven years and there was no insistence of marriage which indicates that no promise was made by the petitioner to marry the complainant/ informant and the relationship was a consensual relationship. The relationship between the two was not a relationship based on false promise but it is a consensual relationship and there is no false promise of marriage by the petitioner.

18. As the complainant/ informant is a married lady with a child and is working as a Constable in Bihar Police, the promise of false marriage initially by the petitioner for entering into a



relationship with the complainant/ informant does not arise. It is important to see that both the parties were in a relationship for a long time i.e. almost for seven years and there was no protest by the complainant/ informant and in such a situation, no offence of rape is made out against the petitioner.

19. So far as the other offences are concerned, I am of the view that since no offence of rape is made out against the petitioner and in my opinion, this is a mala-fide prosecution only to harass the petitioner. The other allegations are also without any basis and the same cannot be sustained.

20. In that view of the matter, this application is allowed. Accordingly, the entire prosecution and the First Information Report *vide* Bhabhua P.S. Case No. 186/2023 dated 06.03.2023, arising out of Complaint Case No. 1443/2022, registered for the offences under Sections 376, 420, 406, 120B, 34 of the Indian Penal Code is hereby quashed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
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