



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3032 OF 2023

Popat Asaram Munde,
Age-29 years, Occu:Business,
R/o-Chardari, Taluka-Dharur,
District-Beed.

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Wadwani Police Station,
Beed,

2) X. Y. Z.

...RESPONDENTS

...
Mr. Ameya N. Sabnis Advocate for Applicant.
Mr. A.D. Wange, A.P.P. for Respondent No.1.
Mr. Prasanna Kutti Advocate for Respondent No.2 (**Appointed**).
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE : 14th FEBRUARY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the proceedings in R.C.C. No. 64 of 2023 pending before the learned Judicial Magistrate First Class, Wadwani, District-Beed, arising

out of the First Information Report (for short "the FIR") vide Crime No. 115 of 2023 registered with Wadwani Police Station, District-Beed on 31st May 2023, for the offence punishable under Sections 376(2)(n), 323 of the Indian Penal Code.

2. Heard learned Advocate Mr. Sabnis for the applicant, learned APP Mr. Wange for respondent No.1 and learned Advocate Mr. Kutti, appointed to represent the cause of respondent No.2.

3. Learned Advocate for the applicant has taken us through the contents of the charge-sheet including the FIR. He points out that respondent No.2, who had filed the FIR on 31st May 2023, is 19 years old girl i.e. major and taking into consideration her contents in the FIR, it can be seen that it is a consensual act. The girl was preparing for the recruitment in police department and applicant and the informant were in relationship since 11th February 2023. They had gone to Wadwani and then to the police recruitment ground at Mira Bhayandar, District-Thane, then to Mumbai and then to Satara, where they had stayed for about 2 to 3 days, where they had sexual intercourse with each other and then she says that when they came back and later on she came to know that the applicant is performing marriage with

another girl, then she had contacted the girl with whom the applicant was supposed to marry and thereafter the applicant had performed marriage with the another girl. Here, there is no question of taking consent by fraud or misrepresentation as they had entered into the relationship voluntarily. Ingredients of the offence under Section 375 of the Indian Penal Code are not made out and therefore, there is no question of punishment under Section 376(2)(n) of the Indian Penal Code with Section 417 of the Indian Penal Code. He, therefore, relies on the decision in ***Nitin B. Nikhare vs. the State of Maharashtra and another*** [Criminal Appeal No(s).----- of 2025 (Arising out of SLP (Crl.) No.1889/2024], by the Hon'ble Supreme Court decided on 21st January 2025, in which the decision of the Co-ordinate Bench at Principal Seat, Mumbai in Criminal Application No.850 of 2022, decided on 19th October 2023 was challenged. In this case the catena of Judgments were considered, wherein the mere fact that physical relations were established pursuant to a promise to marry were held to be not amounting to rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said

promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Learned Advocate also relies on the decision in *Mahesh Damu Khare vs. State of Maharashtra and another, 2024 SCC OnLine SC 3471*, wherein also the catena of Judgments were considered and it has been observed in Paragraph No.24 as under:-

“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.”

4. Per contra, the learned APP as well as learned Advocate appointed to represent the cause of respondent No.2, strongly opposed the application and submitted that the prosecutrix was only 19 years of age, though major, was still taking education. The facts of the case reveal that in fact the applicant's mobile number was not known to the informant, yet he had given her wishes on the occasion of new year on 1st January 2023 and therefore, she called him and asked him as to how he knows her. Thereupon the applicant disclosed his identity and told that he is

her relative. Thereafter they continued their conversation. On 16th January 2023, the applicant asked her to come on Bus Stand. They had taken food in the hotel where he expressed his love for her and promised to marry. She told that she would take permission from her parents and will let him know. Thereafter they met on 11th February 2023 and it appears that she was at a different place than her village, where she was taking education and was residing in the room. He had then taken her to a utensils shop, which he disclosed that it is owned by him. They had slept in the shop at night time. Though she was resisting, under the promise to marry he had sexual intercourse with her. Thereafter on the next day itself i.e. on 12th February 2023, they had gone to police ground at Mira Bhayandar and then to Mumbai. She says that they had no sexual intercourse there but then on 13th February 2023, after her test on police parade ground, the applicant took her to Satara where they reached in the morning of 14th February 2023. They were there till 16th February 2023 in a lodge, where again under the promise to marry, he had sexual intercourse. Even at that time she had asked as to when they are going to marry. At that time the applicant told that after her recruitment papers are over, he would ask her parents. On 17th February 2023, they again went

to Mumbai and then they again went to Satara where they stayed till 20th February 2023 and there also there was sexual intercourse. Applicant left her to Beed on 21st February 2023. She has specifically stated that in March and April, 2023 on two occasions and on 9th May 2023 the applicant had taken her to his utensil shop at Wadwani. When she asked him about marriage, at that time he had assaulted her and had forcible sexual intercourse with her and then on 26th May 2023, she came to know that the applicant is going to perform marriage with another girl on 1st June 2023. All these events would show that the applicant had no intention to fulfill his promise but the consent or the promise was only for sexual intercourse and therefore, that cannot be a consent within the terms of Section 90 of the Indian Penal Code. Learned Advocate for respondent No.2 relies on ***State of U.P. vs. Naushad, 2013(16) SCC 651*** and ***Anurag Soni vs. State of Chhattisgarh, 2019(13) SCC 1***, wherein it is held that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception

of fact as per Section 90 of Indian Penal Code and, in such a case, such a consent would not excuse the offender and it can be said that he has committed offence as defined in Section 375 of the Indian Penal Code for which he can be convicted under Section 376 of the Indian Penal Code.

5. Here, though the entire charge-sheet is produced, it can be seen that till 30th May 2023, the informant – prosecutrix had not disclosed anything to her parents. In such cases there will be very less direct evidence and therefore, we will have to consider the FIR. The contents of the FIR show that the applicant and respondent No.2 started talking with each other on 1st January 2023, that too on phone without informant seeing the applicant. They met for the first time on 16th January 2023 and on 26th May 2023, she came to know that the applicant would be performing the marriage with another girl on 1st June 2023. Unfortunately, the investigating officer has not recorded the statement of the girl with whom the applicant has performed marriage or any other person's statement as to when the applicant's marriage with the said girl was settled. She can be called for evidence under Section 311 of the Code of Criminal Procedure, or any other person can also be called.

6. Informant says that she got knowledge on 26th May 2023, that the applicant is going to perform marriage with the girl on 1st June 2023. Thereafter the informant had met the said girl and told about the promise that was made by the applicant to her and also told that she should not marry the applicant. But then it is stated that the applicant performed the marriage with the said girl on 28th May 2023. That means, as it appears, the applicant got the marriage preponed. Of course, he may come with his own explanation, but at this stage when those statements have been made, there is no explanation as to what was the reason for the preponement of the marriage. Thus, taking into consideration the dates and events, it can be seen that it is not a very long relationship and certainly from the contents of the FIR, it is clear that only upon the promise to marry, there was sexual relationship. Of course, the informant has stated each time when there was sexual intercourse, that she had resisted. Now she went along with applicant at so many places, need not be taken against her at this stage. Certainly, in *State of U.P. vs. Naushad*, (supra), *Anurag Soni vs. State of Chhattisgarh*, (supra), *Nitin B. Nikhare vs. the State of Maharashtra and another*, (supra) and *Mahesh Damu Khare vs. State of Maharashtra and another*, (supra), on the basis of facts in each case then it has been

arrived at, as to whether the physical relationship was on the basis of false promise of marriage or not. Here, when the applicant and the informant had returned on 21st February 2023 and immediately thereafter within three months she comes to know that the applicant is going to perform marriage with another girl, then there is necessity of evidence to prove that since beginning the applicant had no intention to keep his promise. We are also considering the aforesaid point of preponement of marriage for that purpose. When certainly case is made out for evidence, we are of the opinion that this is not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

7. The Application stands rejected.

8. The fees of learned Advocate Mr. Kutti, who has been appointed to represent the cause of respondent No.2 is quantified at Rs.10,000/- (Rupees Ten Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE