



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

CRIMINAL APPLICATION (APL) NO.240 OF 2021

APPLICANT : **Mukunda @ Akash S/o. Sanjay Pardhe,**
Aged about : 25 Years, Occ: Service, R/o.
Pandav Ward, Vinjasan, Bhadrawati,
Chadrapur, Currently residing at, CRPF Unit
No.140, Ambassa, Tripura.

..VERSUS..

NON-APPLICANTS : 1. **State of Maharashtra,**
Through Police Station Bhadrawati,
District Chandrapur.
2. XYZ, in Crime No.609/2020, Police
Station Bhadrawati, District Chandrapur

Mr Sahil Dewani, Advocate for Applicant.
Ms Swati Kolhe, Addl. P. P. for Non-Applicant/State.
Ms Shubhada K. Phaltankar, Advocate for Non-Applicant No.2.

CORAM : **URMILA JOSHI-PHALKE AND**
NANDESH S. DESHPANDE, JJ.

RESERVED ON : **10th NOVEMBER, 2025.**

PRONOUNCED ON : **19th NOVEMBER, 2025.**

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

. Heard.

2. **Admit.** Heard finally with the consent of learned
Counsel for the parties.

3. The applicant has approached this Court by filing
the present application under Section 482 of the Code of

Criminal Procedure, 1973, seeking to quash the First Information Report dated 25.12.2020, registered as crime No.0609 of 2020 at Police Station Bhadrawati, District Chandrapur, for offense punishable under Sections 376(2)(n) and 417 of Indian Penal Code,1860. The applicant has further prayed for quashing of the charge-sheet/Final Report Form bearing No. 45 of 2024 dated 27.05.2024.

4. It is the case of the non-applicant No. 2 and as per the contents of the First Information Report that she came in contact with the applicant sometime in June - 2019 through Facebook and thereafter, both started communicating over phone calls and gradually developed affection for each other. It is alleged that on 26.08.2019, the applicant came to Bhadrawati and took the non-applicant No.2 to a lodge where, on the promise of marriage, he established physical relations with her.

5. The report further alleges that on the following day, the applicant called non-applicant No.2 and refused to marry her on the ground that his family members were not in favour of their relationship. It is then stated that two days thereafter, the

applicant again contacted non-applicant No.2 and expressed that he could not live without her and within the next one or two days called her to his house where again, on the pretext of marriage, he established physical relations with her.

6. As per the averments of the non-applicant No.2, on 30.12.2019, the applicant came to Bhadrawati on leave and took her to Shegaon from where, they returned on 31.12.2019 and thereafter, the applicant resumed his duty on 13.01.2020. It is alleged that during this period, he continued to have physical relations with her on repeated assurances of marriage. Further, on 02.10.2020, the applicant and the non-applicant No.2 went to an OYO hotel at Warora, where, he again established physical relations with her on the pretext of marriage, and subsequently, on 17.10.2020, he again had physical relations with her before leaving to resume his duties at Tripura.

7. Lastly, it is the allegation of the non-applicant No.2 that she later came to know about the applicant's engagement to another girl and upon inquiry, with the applicant's sister, the same was confirmed. When she confronted the applicant, he

allegedly stated that he would marry her only if his family consented to the same. Thereafter, the non-applicant No. 2 along with her mother visited the applicant's residence at around 9:00 p.m., where the applicant's family members refused to interact with her. Subsequently, the applicant is said to have called the non-applicant No.2 and refused marriage stating that it would bring disrepute to him. On these allegations, the First Information Report was lodged, which is challenged in the said application.

8. We have heard Mr. Sahil Dewani, learned counsel for the applicant, Mrs. Swati Kolhe, learned Additional Public Prosecutor for non-applicant No.1/State and Mrs. Shubhada Phaltankar, learned counsel for non-applicant No.2.

9. Mr. Sahil Dewani, learned counsel for the applicant has submitted that the entire relationship between the applicant and non-applicant No.2 was consensual and there was no iota of concealment or misrepresentation. Learned counsel submitted that the non-applicant No.2, in her report, has falsely alleged that she came into contact with the applicant in the month of June –

2019 through Facebook. This fact submitted is partly admitted to the extent that both were connected via Facebook but, it was the non-applicant No.2 who had initiated the first conversation. The said non-applicant No.2 sent the first message on 03.06.2019 and thereafter, both began regular communication and exchanged their mobile numbers. It is submitted that after exchanging numbers, non-applicant No.2 herself initiated telephonic conversations and in due course, mutual affection developed between them. Learned counsel submits that whenever the applicant used to come home to Bhadrawati upon obtaining leave from his battalion, both used to meet and out of affection, consensually established physical relations. It is urged that there was no commitment or promise of marriage from either side during the subsistence of such relationship, which was purely consensual and voluntary between two adults who were fully aware of the consequences of their actions.

10. It is further submitted that during the course of such interactions, the applicant had clearly informed non-applicant No.2 that his marriage had already been arranged by

his family with another girl. The non-applicant No.2, however, expressed no objection and in fact, informed the applicant that her own family had similarly arranged her marriage with a person from Bhandara. Hence, both mutually decided to continue their association as a “no-strings-attached” relationship. Learned counsel submits that despite such clear understanding, the non-applicant No.2 began insisting for marriage to which, the applicant categorically stated that he would converse with her lifelong but would not marry her.

11. The learned counsel further pointed out that subsequent WhatsApp chats dated 16.02.2020 reveal that non-applicant No.2 herself admitted that she was aware that the applicant did not reciprocate her feelings and that he was maintaining contact only upon her insistence. The applicant had, on various occasions, informed non-applicant No.2 about his fiancée and even shared her photographs. It is submitted that chats dated 10.03.2020 indicate that upon being shown such photographs, non-applicant No.2 expressed happiness and stated that they would remain friends. Furthermore, on 21.05.2020, the

birthday of the applicant's fiancée, he had posted her photograph as his WhatsApp status, upon which the non-applicant No.2 conveyed birthday wishes to her. Thereafter, in June - 2020, the applicant informed non-applicant No.2 that his engagement ceremony was to take place in December. Despite being aware of this, the non-applicant No.2 sent a message on 16.06.2020 stating that till December, the applicant belongs to her.

12. Learned counsel for the applicant further pointed out that during their association, non-applicant No.2 frequently changed her mobile numbers and continued contacting the applicant from new numbers, namely (7058480067), (9373504943), (8600445267), (7745831912), (9503152327), (8600797087), and (8265063302). Learned counsel submits that it was, in fact, non-applicant No.2 who repeatedly forced communication upon the applicant, despite being aware of his engagement. On one occasion, when the applicant discontinued contact, she allegedly threatened to commit suicide and sent him photographs depicting an attempt to consume "Lizol," thereby compelling the applicant to continue interaction under duress.

13. It is also submitted that non-applicant No.2 was simultaneously maintaining association with one Rohit Roy from Bhadrawati, the said fact was disclosed by her to the applicant and she even forwarded two call recordings of her conversation with Mr. Rohit Roy. The transcribe thereof reveals that non-applicant No.2 had expressly stated that she could not marry the applicant, as her sister's inter-caste marriage had already caused disrepute in her family and she did not wish to defame herself or her relatives and further disclosed that her family had arranged her marriage with a boy from Bhandara and that the applicant was aware of the same. The transcript further shows that she mentioned she could, if she wished, falsely implicate applicant in a police complaint to compel marriage, though she preferred not to act against her family's wishes.

14. Learned counsel further submitted that upon perusal of the medical report annexed to the charge-sheet, it is revealed that the same does not disclose any material evidence supporting the allegations levelled by non-applicant No.2. Further, the statements of the lodge keeper of "Udday Lodge"

and the manager of “OYO Hotel,” where the applicant and the non-applicant No.2 had checked in together on 26.08.2019 and 02.10.2020 respectively, have confirmed that the both the parties had voluntarily checked in together and left together after a few hours, without any complaint or misconduct being reported.

15. The learned counsel finally submitted that despite the consensual nature of the relationship, the non-applicant No.2 suddenly visited the applicant’s residence on 21.12.2020 and after four days, lodged the present complaint, which clearly demonstrates that the First Information Report is an afterthought, intended solely to coerce and harass the applicant.

16. Mrs. Swati Kolhe, learned Additional Public Prosecutor has strongly opposed the contentions of the applicant. Further, learned Additional Public Prosecutor pointed out the testimony of witness of one Venu Lohi who supports the prosecution theory and thus, stated that the prosecution agency was right in registering offence punishable under Section 376(2) (n) and 417 of the Indian Penal Code. The counsel for respondent No.2 reiterates the contents of the learned Additional

Public Prosecutor and opposed the contentions made in the application.

17. We have also perused the statement of the witness of one Venu Lohi, but there is nothing substantial in the statement of the witness incriminating the applicant. We have also perused the medical report which does not reflect any injuries.

18. In light of these facts, we have perused the First Information Report and the consequent charge-sheet filed by the investigating agency after the completion of investigation. As can be seen from the record, the non-applicant No.2 shown to be aged about 22 years and applicant shown to be aged about 26 years during the time of filing of First Information Report. It is thus clear that both non-applicant No.2 and applicant are major and adults and therefore, they are able to understand the consequences of action taken by them. As can be seen from the record that for a span of about one year, the parties were in relationship. However, since the applicant informed non-applicant No.2 that his marriage had already been fixed then

even the non-applicant No.2 herself had stated that her marriage had been fixed by her family members. Thus, there were no commitments or promises for marriage between the parties. It's admitted that on 21.05.2020, on the birthday of his fiancée, the applicant had kept her photograph as his WhatsApp status to which, the non-applicant No.2 responded and wished his to be wife. Thus, it is apparent that the non-applicant No.2 was fully aware of the applicant's engagement and yet continued to maintain contact with him. Furthermore, First Information Report came to be lodged only on 25.12.2020, even though alleged incidents pertain to the period between June - 2019 to June - 2020, after an inordinate delay of more than six months. The delay in lodging First Information Report, coupled with the fact that the applicant's engagement had already taken place in month of December - 2020, of which the non-applicant No.2 was aware. It clearly indicates that the complaint is an afterthought, filed out to seek revenge after the applicant's marriage was fixed.

19. In view of these facts, we are of the considered opinion that the relationship was nothing but consensual in nature between two major persons. The concept of 'consent' has been elaborated by the Hon'ble Supreme Court in the case of *Pramod Suryabhan Pawar vs. State of Maharashtra and another*, (2019) 9 SCC 608, which reads 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."

20. In *Deepak Gulati vs. State of Haryana*, (2013) 7 SCC 675, this Court observed:

"21. ... 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.

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 of 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)”

21. In *Uday vs. State of Karnataka, (2003) 4 SCC 46*, the complainant was a college going student when the accused promised to marry her. In the complainant’s statement, she admitted that she was aware that there would be significant opposition from both the complainant’s and accused’s families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accused’s promise to marry the complainant was not of

immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors: (SCC P.58, Para 25)

“25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married...”

(Emphasis supplied)”

22. To summarize 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.

23. We are therefore of the view that the matter squarely falls within the laid down parameters of the judgment in the case of *State of Harayana and others vs. Ch. Bhajan Lal and others, 1992 AIR 604*, which read as under:

“1)

2)

3)

4)

5) *Where the allegations made in the FIR or complaint are so 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.*

6)

7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

24. The allegations made in the First Information Report, upon careful perusal, appear to be inherently improbable and devoid of material substance. It is difficult to accept that a woman of mature understanding, who was fully aware of the applicant's engagement and impending marriage, would continue to voluntarily meet and maintain physical intimacy with him over an extended period if such acts were indeed induced by deception or coercion.

25. In our view, therefore, this is a fit case to quash the charge-sheet/final report form. Hence, we proceed to pass the following order.

ORDER

- i) The criminal application is allowed.
- ii) The First Information Report registered as Crime No.0609 of 2020 at Police Station Bhadrawati, District Chandrapur, for offense punishable under Sections 376(2)(n) and 417 of Indian Penal Code,1860, and the consequent charge-sheet/Final Report Form bearing No.45 of 2024 dated 27.05.2024, are hereby quashed and set aside.

26. The criminal application stands disposed of in above terms.

(NANDESH S. DESHPANDE, J.) (URMILA JOSHI-PHALKE, J.)

TAMBE.