



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (APL) No. 599 of 2023

Saurabh Kishor Makwane

Versus

State of Maharashtra through its Station House Officer, Police Station
Bajaj Nagar, Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V.Sirpurkar, Advocate for the applicant.

Shri S.S.Doifode, APP for the non-applicant/State.

Ms. A.S.Mishrikotkar, Advocate for the non-applicant no.2.

**CORAM : ANIL S. KILOR &
PRAVIN S. PATIL, JJ.**

DATED : 23rd APRIL, 2025.

By way of present application filed under Section 482 of the Code of Criminal Procedure, applicant is seeking to quash the First Information Report No. 12 of 2023 dated 28th January, 2023 registered with the Police Station Bajaj Nagar, Nagpur City for the offence punishable under Sections 376, 417 and 420 of Indian Penal Code.

2. It is the case of the prosecution that the complainant lodged on 28th January, 2023 by non-applicant no.2, alleged that the applicant under the promise of marriage, established sexual relations with the complainant and subsequently refused to marry her.

3. We have heard learned counsel for the respective parties.

4. Shri Shripurkar, learned counsel for the applicant submits that there was a consensual relations between the applicant and the non-applicant no.2. He states that alleged incident of having sexual intercourse are of the period 2017 and 2019, whereas the complaint came to be lodged in the year 2023. He submits that even before Sadar Police Station when she approached on 8th October, 2022 to lodge the report, she admitted in writing that there was a consensual relations between her and the applicant. He, therefore, submits that in view of consensual relations, Section 376 of the Indian Penal Code would not attract and similarly other offences as alleged. To substantiate, his argument he has placed reliance on the following judgments.

1. *Biswajyoti Chatterjee Vs. State of West Bengal and another* reported in 2025 SCC OnLine SC 741;

2. Jothiragawan Vs. State Rep. By the Inspector of Police and Another reported in 2025 SCC OnLine SC 628;

3. Nitin B. Nikhare Vs. The State of Maharashtra and another in Criminal Appeal No(S). of 2025 arising out of SLP (Cri.) No. 1889 of 2024 dated 21st January, 2025;

5. On the other hand, learned Additional Public Prosecutor and learned counsel for the non-applicant no.2 strongly opposed the application. It is argued that the consent obtained was under misconception and as per Section 90 of Indian Penal Code if any consent is obtained under fear or misconception, in that case the same cannot be treated as consent.

6. In light of rival submissions, we have perused the First Information Report and the contents of the same.

7. From the report, it is evident that before establishing physical relations with the non-applicant no.2 by the applicant, he promised her for marriage. However, as regards time period for marriage he said that after the marriage of his elder sister, he would perform the marriage with the non-applicant no.2.

8. So under the pretext of marriage, he obtained the consent from the non-applicant no.2 to establish the physical relations with him.

9. A request letter written by the non-applicant no.2 before the Sadar Police Station dated 8th October, 2022 not to register the offence against the applicant, shows that when the police called the applicant before the Police, he sought time to take decision to perform marriage with the non-applicant no.2.

10. In the said letter, there is a specific mentioned of the fact that non-applicant no.2 allowed to have sexual relations with her by the applicant on his promise to marry her.

11. It appears that subsequently even after seeking time from the police to take decision about the marriage, he refused to marry her. Before the police he did not say that there was no such promise. On the contrary, he sought time to take final decision about the marriage. Thus, we find substance in the allegations made by the non-applicant no.2 that the applicant established the sexual relations with the non-applicant no.2 by giving false promise of marriage.

12. Section 90 of the Indian Penal Code says that a consent is not such a consent as is intended, 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.

13. The Hon'ble Supreme Court of India, in the case of *Bishwajyoti Chatterjee Vs. State of West Bengal* (supra) held in favour of appellant in the said case, on the ground that to conclude that there was fraudulent, dishonest, inducement of the complainant to constitute the offence, no evidence was found. The said judgment is thus of no help to the applicant in the present matter, as we have observed hereinabove that there is a sufficient material to *prima facie* conclude that the consent given by the non-applicant no.2 was under misconception.

14. Similarly, in the case of *Jothiragawan Vs. State* (supra), the promise of marriage was made subsequent to sexual intercourse and therefore Hon'ble Supreme Court has held that before sexual intercourse there was no promise of marriage, however, the same was made subsequent to the physical relations.

15. In the case of *Nitin Nikhare Vs. State of Maharashtra* (supra), the Hon'ble Supreme Court has categorically observed that promise to marry will not amount a rape in every case. The Court has further discussed two conditions which need to be satisfied namely, firstly, the that the promise of marriage 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 secondly, the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

16. In view of the above, we are of the opinion that after going through the report and the request letter made to the Sadar Police Station dated 8th October, 2022, *prima facie* both the conditions are being fulfilled in the present case.

17. In the circumstances, since we are satisfied that from the allegations made in the First Information Report, *prima facie* the offence as alleged constitutes against the applicant, we are not inclined to exercise inherent powers under Section 482 of the Code of Criminal Procedure.

18. Furthermore, even if the e-mails on which heavy reliance is placed by the learned counsel for the applicant are looked into, we do not find any favour with the submissions of the learned counsel for the applicant that there was consensual relations. Hence, the application is rejected.

[PRAVIN S. PATIL, J.]

[ANIL S. KILOR, J.]