



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

CRIMINAL APPLICATION [APL] NO. 887 of 2024

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Govan S/o Ramnath Maloth,
Aged about 34 years, Occ:Service,
R/o C/o Swapnil Vasantryao Chaudhari,
House No.41-A, Asra Gruhlaxmi Society,
Seminary Hills, Manavswa Nagar,
Nagpur – 440026.

... APPLICANT

- - V E R S U S - -

- 1] The State of Maharashtra,
Through Police Station Officer,
Gittikhadan, Nagpur.

- 2] XYZ Victim in Crime No.303/2024,
dated 25/4/2024 U/s 376 (2)(n),
509, 506, 504, 34 of I.P.C.
Police Station Gittikhadan, Nagpur.

... NON-APPLICANTS

Shri R.R. Prajapati, Advocate for the Applicant.
Shri Amit Chutke, A.P.P. for the Non-Applieant No.1/State.
Ms. Apurva Kolhe, Advocate [Appointed] for the Non-Applieant
No.2.

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**CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ**

DATE : AUGUST 08, 2025.

ORAL JUDGMENT (Per M.M. NERLIKAR, J.) :

Rule. Rule made returnable forthwith. Shri Amit Chutke, learned A.P.P. waives service for non-applicant No.1-State, Ms. Apurva Kolhe, learned counsel [appointed] waives service for non-applicant no.2. With consent of learned Counsel for the parties, the application is taken up for final hearing.

2. The application is for quashing and setting aside the First Information Report No.303/2024 dated 25/04/2024 registered at Police Station, Gittikhadan, Nagpur for the offences punishable under Sections 376(2)(n), 509, 504 and 506 of the Indian Penal Code and also the consequential charge-sheet.

3. The non-applicant no.2 lodged the First Information Report alleging that, initially, the applicant had developed friendly relationship with her. However, considering the nature and behavior

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of the applicant, she stopped taking meals with him and also stopped going to his room. It is further alleged that on 04/06/2020, the applicant went to the room of the informant and insisted her to come to his room to have a meal with him. Accordingly, she went to his room, where she was subjected to forceful intercourse against her wish by the applicant. Despite shouting, as the room was situated on the first floor, her shout was not heard by anyone. Thereafter, from time to time till 13/08/2021 under false promise of marriage, the applicant took the informant to his room and subjected her to forceful sexual intercourse. It is alleged that though she said no for continuing such relation, but the applicant threatened her of dire consequences. It is submitted that, when the informant insisted for marriage, the applicant flatly denied it saying that she is 30 years of age, and also abused her in filthy language. It is further alleged that on 25/08/2021, as she was fed up with the harassment at the hands of the applicant, therefore, she left her earlier room and shifted to another room. Based on these allegations, the First Information Report came to be registered. After investigation, charge-sheet came to be filed.

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4. The learned counsel for the applicant submits that even if the contents of First Information Report is taken as it is, no offence is spelt out as is alleged in the First Information Report. It is further submitted that the ingredients of Section 376 of the Indian Penal Code are not satisfied as it was a consensual relationship between both the parties. He submits that the informant was of 33 years of age at the time of registration of the First Information Report. He has further submitted that there is also an inordinate delay in registering the First Information Report, as the last incident shown in the First Information Report is of 13/08/2021 and the First Information Report was registered on 25/04/2024.

5. Per-contra, it is submitted by learned counsel for the informant that since inception, the applicant had no intention to marry and under false promise of marriage, he has at several times subjected the applicant to sexual intercourse. It was also contended that the same cannot be said to be a free consent, however, even if it is consented the same was obtained under false promise of marriage. The applicant has taken undue advantage of friendship, he had no

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intention to marry informant since beginning, which can be gathered from the First Information Report. She further submitted that there is no delay in registration of the First Information Report and in such cases delay would not be fatal.

6. We have considered the rival submissions of the parties. We have also gone through the materials placed alongwith the charge-sheet. We find from the First Information Report dated 25/04/2024 that the first incident of sexual intercourse has taken place on 04/06/2020. It seems from the recital of the First Information Report that there was no promise of marriage ever given by the applicant and it can be gathered that the informant on insistence of applicant on her own went to the room of applicant, though it is stated that she has tried to shout and the applicant has subjected her to forceful sexual intercourse. Under such circumstances, it is very difficult to accept such vague statement of resistance and shouting. Further, the relationship continued till August, 2021, without their being any resistance, however, the informant has alleged that the applicant had promised to marry her. The long standing relationship of more than one year would

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demonstrate that false promise if there was any, was diluted after such a long passage of time. It is to be further noted that First Information Report was registered after a period of about four years from the first date of incident, which seems to be after thought, therefore, it is very difficult to digest the allegation of rape, on the contrary, it is a clear case of consensual relationship. In the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another***, (2019) 9 SCC 608, the Hon'ble Supreme Court in Paragraph No.16 has observed 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. In Deepak Gulati 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

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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 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).

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7. Further, in the recent Judgment of the Hon'ble Supreme Court in case of ***Mahesh Damu Khare Vs. State of Maharashtra and Another***, (2024) 11 SCC 398, in paragraph No.34 it has been held that *“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.”*

8. Therefore, the Hon'ble Supreme Court in the above ratio has laid down that since inception there should be a promise to marry the informant, and in case of failure to keep the said promise amounts to deceiving the informant, the same would at the most be said that the consent has been obtained by making false promise of marriage. However, in the present case the allegations in the First Information Report does not spell out the above fact. It can be gathered from the First Information Report that there was no promise to marry when the first incident of sexual intercourse had taken place. Thereafter, she continued with the relationship till

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August, 2021. Merely making a promise to marry is not sufficient, however, there should be no intention to marry since beginning, and therefore, the ingredients of Section 375 of the Indian Penal Code are not satisfied in the present case. Therefore, the case would not fall under Section 376(2)(n) of the Indian Penal Code.

9. So far as Sections 506 and 509 of the Indian Penal Code are concerned, *prima facie* we find that there are allegations in the First Information Report to attract Sections 506 and 509 of the Indian Penal Code, and therefore, we decline to quash the First Information Report to that extent.

10. In this view of the matter, we are of the view that no offence is made out under Section 376(2)(n) of the Indian Penal Code, and therefore, we pass the following order :-

ORDER

(i) The Criminal Application is partly allowed.

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(ii) We quash and set aside the First Information Report No.303/2024 dated 25/04/2024 registered at Police Station, Gittikhadan, Nagpur and consequential charge-sheet only to the extent of offence punishable under Section 376(2)(n) of the Indian Penal Code.

(iii) Fees of the appointed counsel be quantified and paid as per the Rules.

(iv) Rule is made absolute in above terms.

[M. M. NERLIKAR, J]

[ANIL L. PANSARE, J]