



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

CRIMINAL APPLICATION (APL) NO.917 OF 2023

APPLICANT : Pravin S/o Prabhakar Wankhade,  
Aged about 36 years, Occ.: Service, R/o  
Gramsevak Colony, Naka No.7, Murtizapur,  
Tq. Murtizapur, Dist. Akola.

..VERSUS..

NON-APPLICANTS : 1. **State of Maharashtra,**  
Through Police Station Officer, Police  
Station Murtizapur, Tq. Murtizapur,  
Dist. Akola.

2. **X. Y. Z. (Victim) Crime No.169/2023,**  
P.S.O., P.S. Murtizapur City, Tq. Murtizapur,  
Dist. Akola.

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Mr P. R. Agrawal, Advocate for Applicant.  
Mrs S. Z. Haider, Addl. P. P. for Non-Applicant/State.  
Mr S. S. Ali, Advocate for Non-Applicant No.2 (Appointed)  
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CORAM : URMILA JOSHI-PHALKE AND  
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 7<sup>th</sup> NOVEMBER, 2025.

PRONOUNCED ON : 19<sup>th</sup> 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 12.05.2023 registered as Crime No.0169 of 2023 with the non-applicant No.1 – Police Station Murtizapur for the offence punishable under Sections 376, 376(2)(n), 313 and 323 of the Indian Penal Code, 1860 and has further prayed for quashing of the charge-sheet/final report form dated 10.07.2023 pending before the Judicial Magistrate First Class, Murtizapur.

4. As per the contents of the First Information Report lodged by the non-applicant No.2, she is a widow having two daughters and after the death of her husband, she and the present applicant were in consensual relationship since the year 2006. The relationship between them was continued from the said year. The applicant was appointed as a constable in Police Department and subsequently was posted at Gadchiroli. When, the applicant was married to another woman in the year 2015, thereafter also, the relationship of the applicant and non-applicant No.2 continued. It is further stated in the First Information Report that

during the year 2007, non-applicant No.2 became pregnant, but the applicant asked her to terminate pregnancy by consuming some pills for the said reason. Thereafter, also the relationship continued and non-applicant No.2 again became pregnant in the month of November-2022. It is further alleged in the First Information Report that the applicant does not want a child and asked non-applicant No.2 to terminate the pregnancy again. However, this time non-applicant No.2 refused for the same, which enraged the applicant and he abused non-applicant No.2 and hit her abdomen with his leg. According to non-applicant No.2, this caused a miscarriage leading her to file the First Information Report, which is impugned in the present application.

5. We have heard Mr. P. R. Agrawal, learned counsel for the applicant as well as Mrs. S. Z. Haider, learned Additional Public Prosecutor for the non-applicant/State and Mr. S. S. Ali, learned counsel for the non-applicant No.2.

6. Mr. P. R. Agrawal, learned counsel for the applicant submits that the non-applicant No.2 is shown to be 39 years old

and applicant is of 36 years old. Thus, both are adult and major and are able to understand the implications of their relationship. Furthermore, the meaningful reading of the First Information Report would reveal that the relationship was entirely consensual and therefore, no offence is made out. He further states that as far as the offence of causing miscarriage, the medical report indicates otherwise. He submitted that continuation of the proceedings would be abuse of the process of Court and prayed for quashing of the First Information Report and the consequent charge-sheet arising out of the same.

7. Per contra, Mrs. S. Z. Haider, learned Additional Public Prosecutor while vehemently opposing the contentions advanced by the learned counsel for the applicant states that the applicant's actions were driven by a desire to satisfy his lust, rather than any intention to marry or maintain a legitimate relationship with non-applicant No.2. The learned counsel for non-applicant No.2 supports the contentions advanced by the learned Additional Public Prosecutor and states that the conduct of applicant clearly shows that his intention was only to cheat

non-applicant No.2 and satisfy his lust. In nutshell, both these counsels prayed for rejection of the application.

8. In the backdrop of these facts, we have perused the application and the consequent charge-sheet filed on record. As can be borne out from the record, the applicant and non-applicant No.2 were adult and major being fully aware of the results of initiation and continuance of such relationship between them. Looking at the age of the parties and the length of relationship, which dates back to the year 2006 till lodging of the First Information Report in 2023 i.e. for more than 17 years, we are of the considered view that the relationship is nothing but consensual in nature. The non-applicant No.2 had expressly consented for initiation and continuation of relationship for such long period of time. The concept of “consent” has been elaborated by the Hon’ble Apex Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and another**, reported in **(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.”*

9. In *Deepak Gulati vs. State of Haryana*, reported in (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 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)*

10. In *Uday vs. State of Karnataka*, reported in (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 o'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)*

11. 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.

12. As far as the offence under Section 313 is concerned, the report submitted by doctor Yogesh Wankhede clearly states that non-applicant No.2 was not pregnant while he examined her and there was only a swelling on her appendix. Thus, the offence of causing of marriage without the consent of a woman is also not made out. In our view, therefore, the lodging of First Information Report is nothing but an abuse of the process of Court and the situation would squarely fall within the following well laid down parameters of *State of Harayana and others vs Ch. Bhajan Lal and Others*, reported in 1992 AIR 604:

"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.”*

13. Thus, the allegations in the First Information Report are inherently improbable and not expected from a lady of the applicant's age. It is, therefore, clear that the applicant cannot be met to suffer the criminal prosecution. In that view of the matter, we pass the following order.

### **ORDER**

- i) The criminal application is **allowed**.
- ii) The First Information Report dated 12.05.2023 registered as Crime No.0169 of 2023 with the non-applicant No.1 – Police Station Murtizapur for the offence punishable under Sections 376, 376(2)(n), 313 and 323 of the Indian Penal Code, 1860 and consequent charge-sheet/final report form dated 10.07.2023 pending before the Judicial Magistrate First Class, Murtizapur, are hereby quashed and set aside.

14. The application is disposed of in the above said terms.

15. Fees of the appointed counsel should be calculated and be paid as per the rules.

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

TAMBE.