



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

CRIMINAL APPLICATION [APL] NO.1519 OF 2024

- 1] Sachin s/o Kalidas Meshram
Aged about 34 years,
Occupation-Service.
- 2] Rahul s/o Kalidas Meshram
Aged about 36 years,
Occupation-Service.
- 3] Dr. Pranjali w/o Rahul Meshram
Aged about 32 years,
Occupation-Service.

All residents of Rukmini Nagar,
Armori Road, Bramhapuri,
District-Chandrapur.

.. Applicants

...Versus ...

- 1] State of Maharashtra,
Through Police Station Gadge Nagar
Amravati (City)
- 2] Complainant
In Crime No.501/2024, dated
29/5/2024, registered with
P.S. Gadge Nagar, Amravati (City)

.. Respondents

Shri V.R. Nayak, Advocate with Shri R.S. Nayak, Advocate for Applicants.

Ms. Shamsi Haidar, Additional Public Prosecutor for Respondent No.1/State.

Shri Yash Bhelande, Advocate for Respondent No.2/Complainant.

.....

**CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.**

RESERVED ON : 10th FEBRUARY, 2025.

PRONOUNCED ON : 20th FEBRUARY, 2025.

JUDGMENT [Per : Nitin B. Suryawanshi, J.]

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. By this application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, applicants seek quashing of the First Information Report No.501/2024, registered with Gadge Nagar Police Station, Amravati under Sections 376, 377 read with Section 34 of the Indian Penal Code and the proceedings of Regular Criminal Case No.1065/2024 pending in the Court of learned Judicial Magistrate, First Class, Amravati.

3. The second respondent lodged a written report in short alleging that, her marriage was fixed with applicant no.1 in a traditional way with the consent of the parents and relatives. On 28.5.2023, engagement ceremony took place as per custom. Her parents spent about 7 to 8 Lakhs for engagement ceremony. The date of marriage was fixed as 26.11.2023.

After engagement ceremony, applicant no.1 sexually exploited her in the changing room. Thereafter, during the period between 4.6.2023 to 23.9.2023, they had physical relations at various places on multiple occasions. Applicant no.1 also indulged in oral and unnatural sex with her.

Applicant no.1, while distributing marriage invitation cards, met with an accident on 20.11.2023. Due to that the marriage was postponed. Thereafter again on one pretext or the other, the marriage was postponed. On 4.4.2024, applicant no.1 called her and asked her to come along with her parents to his house at Bramhapuri. On

6.4.2024, she along with her parents and brother went to applicant no.1's house. There applicants and 7 to 8 other relatives were present. They were told that the marriage is cancelled and applicant no.1 does not wish to marry her. Applicants no.2, 3 and other relatives told that they were not given proper respect at the time of engagement, they did not agree to give dowry and, therefore, they have no capacity to perform the marriage ceremony as per the status of applicants. She, therefore, alleged that she was sexually exploited and cheated by the applicants and her life is spoiled. On these allegations, First Information Report in question came to be registered and on completion of investigation, charge-sheet is filed for the offences punishable under Sections 376, 377 read with Section 34 of the Indian Penal Code and case is numbered as Regular Criminal Case No.1065/2024.

4. Heard learned Advocate for applicants, learned Advocate for second respondent and learned Additional Public Prosecutor for State.

5. Learned Advocate for applicants submits that admittedly the marriage was settled and it was to be performed on 26.11.2023. The second respondent is a major lady of 30 years and even if her allegations are accepted, it is clear that her physical relations with applicant no.1 consensual, as their marriage was settled. Even as per her allegations, at the time of distribution of marriage invitation cards, applicant no.1 met with an accident and, thereafter, the marriage was cancelled at the instance of second respondent. With a view to pressurize the applicants and extort money, present first information report is lodged.

6. By relying on the judgments of the Hon'ble Apex Court in cases of (1) **Dr. Dhruvaram Murlidhar Sonar .vs. State of Maharashtra and others**, reported in 2019 Cri.L.J. 1169, (2) **Pramod Suryabhan Pawar .vs. State of Maharashtra and another**, reported in AIR 2019 SC 4010, (3) **Shambhu Kharwar .vs. State of Uttar Pradesh and**

another, reported in **AIR 2022 SC 3901** and the decision of this Court in **Criminal Application (APL) No.806/2023 (Shubham s/o Laxman Dikondwar and others .vs. State of Maharashtra and one, decided on 7.5.2024)**, learned Advocate for applicants submits that since the physical relations were not on the basis of false promise of marriage, the first information report and the chargesheet do not disclose any offence against applicants and hence the proceedings against the applicants are liable to be quashed and set aside.

7. *Per contra*, learned Advocate for the second respondent and learned Additional Public Prosecutor for State vehemently opposed the application by relying on the judgment of this court in the case of **Sachin .vs. State of Maharashtra and others, 2018 ALL MR (Cri) 3721**. According to them, the first information report and material collected during the course of investigation clearly make out case against the applicants. Hence, the application deserves to be dismissed.

8. Admittedly, the marriage between applicant no.1 and second respondent was traditionally fixed with the consent of parents and relatives. Engagement ceremony was held on 28.5.2023 and date of marriage was fixed as 26.11.2023. After applicant no.1 met with an accident on 20.11.2023, the marriage was cancelled. According to applicants, as applicant no.1 received injury to his spinal cord in the accident, second respondent cancelled the marriage, whereas according to the second respondent, applicants' side cancelled the marriage. Fact remains that marriage was cancelled after the accident of applicant no.1 and at the time of accident, applicant no.1 was proceeding to distribute the marriage invitation cards.

9. Applicant no.1 and second respondent both are adult. The second respondent has given her age as 30 years at the time of lodging of First Information Report. In the aforesaid facts, therefore, it is not possible to believe that she gave consent for the physical relations with applicant no.1 only because applicant no.1 gave false promise of marriage to her. Physical relations could not have been

without her consent and at no point of time, she has protested, prevented or prohibited applicant no.1 from keeping physical relations with her.

10. Taking into consideration the allegations made in the First Information Report and material collected during the course of investigation, even if taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the applicants.

11. In similar facts, this court in case of **Shubham s/o Laxman Dikondwar** (supra), observed as under :

13. The intention of applicant No.1 was not to establish the relations by giving false promise. It is not the case of false promise of marriage because the marriage was settled. The Holi was celebrated by both the families. The arrangement of marriage was done by both the parties. Therefore, there is no question of establishing sexual relations by giving false promise. The non-applicant No.2 has filed copies of whatsapp chat, which shows their romantic relationship and does not disclose any promise to marry. From perusal of the police papers produced in the form of charge-sheet, we are satisfied that the ingredients of the offence are not fulfilled.

12. The Hon'ble Apex Court in case of **Dr. Dhruvaram**

Sonar (supra), has observed as under :

20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under [Section 376](#) of the IPC.

13. The Hon'ble Apex Court in case of **Pramod**

Suryabhan Pawar (supra) 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 (AIR 2013 SC 2071), Paras 18, 21) 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)

17. In [Uday v 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.

“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)

18. *To summarise 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.*

14. The Hon'ble Apex court in case of **Shambhu Kharwar** (supra), has observed as under :

13. *In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under [Section 376](#) IPC. The crucial issue which is to be considered is whether the*

allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under [Section 375 IPC](#) are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

14. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under [Section 482](#) of CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under [Section 376 IPC](#) were not established. The High Court has, therefore, proceeded to dismiss the application under [Section 482](#) of CrPC on a completely misconceived basis.

15. The observations in aforesaid citations squarely cover the case of applicants. There is no iota of material on record to show that the second respondent consented to have physical relations with applicant no.1, as applicant no.1 gave her false promise of marriage.

16. As per the allegations of the second respondent, the marriage was cancelled on 6.4.2024, however, she has lodged the report on 29.5.2024. It is thus clear that the First Information Report in question is lodged afterthought, after due deliberations and appears to have been maliciously instituted with an ulterior motive for wreaking vengeance on the applicants and with a view to spite them due to private and personal grudge. The case of applicants is, therefore, covered by Clauses (1), (3) and (5) of the categories enumerated in **State of Haryana and others .vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335.**

17. In **State of Karnataka .vs. M. Devendrappa and another, (2002) 3 SCC 89**, it is held as under :

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto".

Aforesaid observations support the case of applicants.

18. Since the First Information Report and the material collected during investigation show consensual sex, no offence under Sections 376, 377 r/w 34 of the Indian Penal Code, as alleged by the second respondent, is disclosed against the applicants.

19. For aforestated reasons, application is **allowed** in terms of prayer Clause (1). Regular Criminal Case No.1065/2024, arising out of the First Information Report vide Crime No.501/2024, registered with Gadge Nagar Police Station, Amravati for the offence punishable under Sections 376, 377 read with Section 34 of the Indian Penal Code, pending before the learned Judicial Magistrate, First Class, Amravati is hereby quashed and set aside.

20. Rule is made absolute in the above terms.

(Pravin S. Patil, J.)

(Nitin B. Suryawanshi, J.)