



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

CRIMINAL APPLICATION (APL) No.844 OF 2024

Mr. Palash s/o. Bhavrao Kotangale,
Age 27 years,
Occupation : Govt. Servant,
R/o. Shivaji Nagar, Pauni, Taq. Pauni,
Distt. Bhandara 441 910. : APPLICANT

...VERSUS...

1. The State of Maharashtra,
Through PSO, Pauni, Tah. Pauni,
Distt. Bhandara 441 910.
2. Miss. X.Y.Z. : RESPONDENTS

==
Mr. Rahul D. Gulhane, Advocate for Applicant.
Mrs. Shamsi Haider, Additional Public Prosecutor for Respondent No.1.
==

CORAM : **URMILA JOSHI-PHALKE AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **17th DECEMBER, 2025.**
PRONOUNCED ON : **24th DECEMBER, 2025.**

JUDGMENT : (Per : Nandesh S. Deshpande, J.)

1. Heard. Admit. Heard finally by consent of learned counsel appearing for the parties.
2. The applicant has approached this Court by filing the present application under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the First Information Report

(for short "FIR") dated 02.05.2022, registered as Crime No. 119/2022 at Police Station Pauni, District Bhandara, as also for quashing of chargesheet dated 05.07.2022 registered as Charge-sheet No.87/2022 under Section 376 (2)(n) of Indian Penal Code, 1860 (for short "IPC"), pending before learned Principal District Judge, Bhandara in Session Case No.88/2022.

3. As per the case of respondent No. 2, and as reflected in the First Information Report dated 02.05.2022, The present applicant and respondent No.2 are relatives who became acquainted through Instagram. On 07.06.2020, the applicant asked for the mobile number of respondent No. 2, following which they began texting. Subsequently, a romantic relationship developed between them. Further it is alleged that in the month of June 2020, respondent No. 2 went to her uncle's home located at Chapral (Soni). While talking on call, the present applicant expressed his feelings for respondent No.2 whereupon respondent No. 2 asked "do you love me?", "will you marry me?", to which the present applicant answered and said he wants to marry respondent No. 2.

4. Thereafter, on 19.11.2020, at afternoon 12:00 p.m., respondent No.2 visited with the applicant at Wahi Lake by four-wheeler of the applicant and while seating in the car, the applicant was demanding for sexual favours, wherein respondent

No. 2 denied for the same saying that they haven't got married yet. The applicant promised to marry her and stated that he will not leave respondent No. 2 in any circumstances. Further, on 25.03.2022, between 12:00 pm to 03:00 pm, respondent No.2 and the applicant came to the Buddhist monastery by four-wheeler for discussing about marriage, wherein the applicant had promised to get married with respondent No. 2 and further, had demanded for physical relation. In the result, the applicant had physical relation with respondent No. 2 in the car of the applicant, and since then the applicant was regularly having physical relation with her. It is further alleged that on 23.04.2022, respondent No. 2, while talking as usual on call with the applicant, asked about marriage to the applicant, wherein he denied to marry since his parents are not ready for marriage with non-applicant No.2. Aggrieved by this respondent No.2 filed report which is challenged in the present application.

5. We have heard Mr. Rahul D. Gulhane, learned counsel for the applicant and Mrs. Shamsi Haider, learned Additional Public Prosecutor, for respondent No. 1/State.

6. The learned counsel for the applicant submits that the First Information Report itself reveals that the present applicant and respondent No. 2 were acquainted with each other and thereafter

fell in love, and under the impression of a promise of marriage, the applicant and respondent No. 2 had physical relation. This denotes that consensual sexual relations have taken place. It is not a case where consent of respondent No. 2 was obtained by putting fear of death and hurt, and therefore, it cannot be rape within the definition laid down in Section 375 of the Indian Penal Code.

7. It is submitted that the prosecution case is absurd because the applicant was alleged to have had physical relations at about 12:00 pm to 3:00 pm on 25.03.2022, but respondent No.2 has not lodged an immediate First Information Report as would be expected if there was forced rape without consent. The First Information Report was lodged with malafide intention after a number of months, only when the demand of respondent No. 2 for getting married was denied by the present applicant.

8. It is further submitted that the applicant is a Government Engineer in the Central Railway. In these circumstances, keeping such type of offence pending may spoil his career, and hence the learned counsel seeks leniency from this Court for quashing the said First Information Report.

9. Mrs. Shamsi Haider, learned Additional Public Prosecutor for the respondent No.1 has strongly opposed the present application, submitting that perusal of the charge-sheet

clearly shows that the applicant has committed forcible sexual intercourse on the false pretext of promise to marry and has obtained consent fraudulently. The learned A.P.P. further submits that the material collected during investigation, including the statement of witnesses, discloses prima facie commission of alleged offences, and requests that the present application be dismissed and trial be allowed to proceed in accordance with law, in the interest of justice.

10. On a careful perusal of the facts and the material placed on record, it is evident that the relationship between the applicant and respondent No.2 was consensual in nature and continued for a substantial period. The allegations are founded on an admitted long-standing relationship that developed gradually from June 2020. Even assuming, that the first alleged physical intimacy which happened on 25.03.2022 was induced by a promise of marriage, the subsequent and continued relationship over a considerable period, during which non-applicant No.2 voluntarily established physical relations on multiple occasions, clearly demonstrates consensual conduct rather than deceit.

11. This unbroken chain of voluntary interaction and continued intimacy after the alleged incident on 25.03.2022 completely belies any claim of forcible intercourse or of consent

having been vitiated by a false promise of marriage. The conduct of respondent No. 2 is wholly consistent only with a consensual, adult romantic relationship that subsequently turned sour. The concept of 'Consent' has been elaborated by the Hon'ble Supreme Court in the case of **Samadhan Manmothe v. State of Maharashtra & another**, 2025 I NSC 1351 which reads as under:

38. At this stage it is material to refer to the decision of this Court in Mahesh Damu, wherein the following observations were made :

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to DeepakGulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], in which it was held as follows: (SCC pp. 6 82-84, paras 21 & 24)

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused 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 latter falls within the ambit of cheating or deception. 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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."

12. Further, the Apex Court, in the same judgment in para 27, observed that :

27. In this regard, it becomes relevant to refer to the decision of this Court in the case of Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398, ("Mahesh Damu") wherein the following observations were made :

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

13. The facts on record clearly establish that the applicant's failure to marry respondent No.2 was not attributable to any mala fide intent from the outset. The evidence points to a genuine romantic relationship that developed between the parties over a period of time, marked by mutual emotional involvement. The non-materialisation of the marriage stemmed from familial opposition

rather than any deliberate fraud or deceit on the applicant's part. A relationship spanning approximately two years cannot reasonably be characterised as founded solely on deceit; it manifestly reflects a sincere affection that, unfortunately, could not culminate in marriage due to factors outside the applicant's control.

14. Further, there exists an unexplained delay of approximately 38 days in lodging the First Information Report. The alleged incident of establishing physical relations occurred on 25.03.2022, whereas the complaint was filed only on 02.05.2022. The only explanation provided is that the First Information Report was lodged after the applicant refused to marry respondent No.2 on 23.04.2022, citing that his parents were not ready for the marriage. This clearly demonstrates that the First Information Report is an afterthought, lodged in the heat of a failed relationship and rejection, rather than on account of any sexual assault or fraud committed by the applicant.

15. In view of the arguments advanced and upon a holistic appreciation of the entire material on-record and the consistent judicial precedent on the subject, 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 Haryana vs. Bhajan Lal**, reported in **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.”*

16. In our view, therefore, this is a fit case to quash the charge-sheet. Hence, we pass the following order.

ORDER

(i) The application is allowed.

(ii) Charge-sheet No.87/2022, dated 05.07.2022, filed by Police Station Officer Pauni, District Bhandara, in pursuance of Crime No.119/2022, dated 02.05.2022, under Section 376 (2)(n) of Indian Penal Code, registered at Police Station Officer Pauni, Taq. Pauni, District Bhandara, together with all consequential proceedings, including the entire trial Court's record in Sessions Case No.88/2022 pending before the Principal District Judge, Bhandara, are hereby quashed and set aside to the extent of

the applicant, namely, Palash s/o. Bhavrao Kotangale.

(iii) The application is disposed of accordingly.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

wadode