



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.1500/2024

Atish Pankaj Sarkar,
Aged about 27 years, Occ.: Doctor,
R/o Korachi, Tah. Korachi, Dist.
Gadchiroli.

... APPLICANT

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
P.S. Gadchiroli.
2. X.Y.Z. vide crime No 576/24
through P.S.O. Gadchiroli,
Dist. - Gadchiroli

...NON-APPLICANTS

Shri A.M. Chandekar, Advocate for applicant
Ms S.S. Dhote, APP for non-applicant No.1/State
Ms Jayanti Deshpande, Advocate for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 30.09.2025
PRONOUNCED ON : 13.10.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. **Admit.** Heard finally with the consent of learned
Counsel for both the parties.

2. The applicant has approached this Court by filing the present application under Section 482 of the Criminal Procedure Code, for quashing of the First Information Report bearing No. 0576/2024, dated 07.08.2024, registered with non-applicant No.1/Police Station Gadchiroli, for the offence punishable under Sections 376, 376(2)(n), of the Indian Penal Code. He has also prayed for setting aside the charge-sheet bearing No. 210/2024, registered with Police Station Gadchiroli for the offence punishable under Sections 376, 376(2)(n), and Section 417 of the Indian Penal Code.

3. As per the case of the non-applicant No.2 and as reflected in the First Information Report, it was lodged in the month of August, 2023. In the said First Information Report, the non-applicant No.2 alleged that she and the applicant came in contact through a social media platform “Instagram”. Thereafter, they began communicating with each other and gradually developed an acquaintance that later blossomed into a romantic relationship. They started meeting frequently and in the Month of August, 2023, the applicant proposed the non-applicant No.2 for marriage. Although the non-applicant No.2, initially was reluctant and declined the proposal,

she subsequently accepted the same after discussing with the parents of the applicant.

4. It is further stated in the said First Information Report that in November, 2023, the applicant took the non-applicant No.2 to Janasewa Lodge, Dhanora Road, Gadchiroli, and established physical relationship with her. The non-applicant No.2, initially resisted but later consented after the applicant assured her that they would solemnize the marriage soon.

5. Again in January, 2024, the applicant and the non-applicant No.2 met and stayed together for three days at the Primary Health Center Quarters Kotgul, which is the place where the applicant was serving. During this period of three days also they established physical relations with each other. It is further stated when the non-applicant No.2 inquired about their marriage, the applicant assured that he would solemnize it after the completion of construction of his clinic. On the strength of this assurance, the non-applicant No.2, agreed and continued to maintain physical relationship with the applicant. However, since the applicant refused to marry the non-

applicant No.2, allegedly on the refusal of his parents, the non-applicant No.2 lodged a report with the non-applicant No.1. It is this First Information Report and the consequent charge-sheet which is challenged in the present application.

6. We have heard Shri A.M. Chandekar, learned Counsel for the applicant and Ms S.S. Dhote, learned Additional Public Prosecutor for the non-applicant No.1/State, as also, Ms Jayanti Deshpande, learned Counsel for the non-applicant No.2.

7. Learned Counsel for the applicant states that meaningful reading of the First Information Report would reveal that no offence is made out under the sections as mentioned in the First Information Report. It is his submission that if the averments about the relationship is considered to be true, the said was entirely consensual and not forced, as both of them are major, and therefore, the offence under Section 376 is not made out. It is further submitted by the learned Counsel for the applicant that if the complaint filed by the non-applicant No.2, is perused in its entirety, it does not make out a case of forced relationship. He

further submits that the non-applicant No.2 has recorded a statement on oath as per Section 183 of the Bhartiya Nagrik Suraksha Sanhita, in which, she has clearly stated that the accusations against the applicant are not truth and only because he has refused to marry her, she has lodged the report.

8. On the other hand, learned Additional Public Prosecutor has vehemently opposed the submissions of the learned Counsel for the applicant. She submits that it was a physical relationship on false promise of marriage and the intention to deceive was from the initiation of the said relationship. Learned Counsel for the non-applicant No.2 however, admits that the victim has given a confession under Section 183 of the Bhartiya Nagrik Suraksha Sanhita. However, she has refused to file an affidavit about the same.

9. In view of these facts, we have perused the First Information Report and the consequent charge-sheet. As can be seen from the said documents, the First Information Report in question is lodged by the non-applicant No.2, who at the time of lodging report was

22 years of age, while the applicant is 27 years of age. Thus, both of them are educated, adult, and major and able to understand the consequences of any act or omission to be done by them. The controversy in the present matter has to be adjudicated in the backdrop of these facts.

10. In the celebrated judgment of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608***, wherein it is held 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:(SCC pp. 682-684, paras 21 & 24)

"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 I.P.C. 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."

11. In the backdrop of these facts, it is the dictum of the Hon'ble Apex Court that the consent of a woman with respect to Section 375 must involve an active and reasoned deliberation of 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 its atpearance. Further the false promise must be of immediate relevance and bear a direct nexus to the woman's decision to engage in the sexual act.

12. From the averments in the First Information Report and the charge-sheet, and more particularly the statement of the non-applicant No.2, she states that the applicant has refused to marry her under the pressure of his parents. It therefore, cannot be said that there was intention to deceive from its inception which is a *sine qua non* for such offences. She also states that she and the applicant were in live-in relationship since last more than a years and she had full consent for the same. She further states that the applicant never forced himself on her, and she never expected that the First Information Report would be lodged against the applicant and he would have to face arrest in the same. It is thus clear that even though an affidavit is not filed in the present matter, the statement referred above which is not contraverted can be taken into consideration while deciding the controversy involved in the

present matter. Section 183 of the Bhartiya Nagarik Suraksha Sanhita, 2023, speaks about recording of confession and statements and is in *pari materia* with Section 164 of the Criminal Procedure Code. It provides that any Magistrate of the District may whether or not he has jurisdiction in the case record any confession or statement made to him in the course of investigation or at any time afterwards. Thus, the statement can be taken into consideration.

13. In view of these facts and after a meaningful reading of the First Information Report, as also, the material collected during the investigation, we are of the view that the relationship between two adults, major persons, was of consensual nature and therefore no offence is made out under Section 376 of the Indian Penal Code. Even offence punishable under Section 417 of the Indian Penal Code, which provides punishment for cheating is not attracted since there is no deception for delivery of any property as contemplated under Section 415 of the Indian Penal Code.

14. It is thus clear that no offence as alleged in the First Information Report, as also, the charge-sheet are made out against the present applicant.

15. The non-applicant No.2 has voluntarily accorded her consent for the relationship out of her own free will and volition.

16. The Hon'ble Apex Court in the case of ***Gian Singh Vs. State of Punjab, (2012) 10 SCC 303***, wherein, the Hon'ble Apex Court has observed that *"where the High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and the victim has been settled, although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored, securing the ends of justice being the ultimate guiding factor."*

17. The Hon'ble Supreme Court had stated that even a non compoundable offence can be quashed under the inherent powers of the High Court under Section 482 of the Criminal Procedure Code, in the contingencies mentioned therein.

18. In view of the facts, we are of the view that it would therefore be an exercise in futility to continue the proceedings

against the applicant since the same would amount to abuse of the process of Court. Hence, we proceed to pass following order :

ORDER

- i) The application is allowed.
- ii) The First Information Report bearing No. 0576/2024, dated 07.08.2024, registered with non-applicant No.1/Police Station Gadchiroli, for the offence punishable under Sections 376, 376(2)(n), of the Indian Penal Code, as also, the charge-sheet bearing No. 210/2024, registered with Police Station Gadchiroli for the offence punishable under Sections 376, 376(2)(n), and Section 417 of the Indian Penal Code, are hereby quashed and set aside

19. The application is disposed of accordingly.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..