



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.178/2025

Vishal S/o Rustumrao Deshmukh  
Age : 47 years, Occupation :  
Labour, R/o Near Maroti Mandir,  
Old Town Ward, n.12, Chikhli,  
Buldhana

... APPLICANT

...VERSUS...

1. State of Maharashtra,  
Through its Police Station  
Officer, Police Station Chikhli,  
District Buldhana.
2. XYZ [VICTIM]  
In crime no. 97/2024  
Through Police Station Chikhli,  
District Buldhana

...NON-APPLICANTS

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Mrs. Kirti Deshpande, Advocate for applicant  
Shri K.R. Lule, APP for non-applicant No.1/State  
Mrs. Anuprita S. Mishrikotkar, Advocate for non-applicant No.2  
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CORAM : URMILA JOSHI-PHALKE AND  
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 20.09.2025  
PRONOUNCED ON : 29.09.2025

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

Heard. Admit. Heard finally with the consent of learned Counsel for 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 No.0097 of 2024 dated 08.02.2024, along with the Charge Sheet No. 62 of 2024, dated 04.04.2024, registered with non-applicant No.1 - Police Station Chikhli, Dist. Buldhana, for the offences punishable under Sections 376, 504, 506 of the Indian Penal Code and Sections 3(1)(w)(i)(ii), 3(2)(va), 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC & ST Act'), and consequent Sessions Trial No. 27/2024.

3. It is the case of the non-applicant, first informant, according to the contents of the First Information Report that on 03.02.2019, the applicant took the informant to a temple at Gram Sakegaon, on the pretext of worshipping, however, on the pretext of worshipping, the applicant committed forcible intercourse with her. Thereafter,

on 17.08.2023, the first informant came to know that the applicant is married and his petition for divorce is pending. Thereafter, as the applicant avoided to marry her, non-applicant No.2, lodged the First Information Report as stated above. It is this First Information Report, which is sought to be challenged in the present proceeding.

4. We have heard Ms Kirti Deshpande, learned Counsel for the applicant, Shri K.R. Lule, learned Additional Public Prosecutor for the non-applicant No.1/State and Ms Anuprita Mishrikotkar, learned Counsel for the non-applicant No.2.

5. Learned Counsel for the applicant states that meaningful reading of the First Information Report would reveal that no offence is made out under Sections as mentioned in the First Information Report. It is her submission that the averments about the relationship if considered to be true was consensual and not forced and as both of them are major, offence under Section 376 is not made out. It is further submitted by her that even the complaint lodged by the non-applicant No.2, if perused in its entirety does not make out a case for offence punishable under various sections.

6. On the other hand, the learned Additional Public Prosecutor as also the learned Counsel for non-applicant No.2, vehemently opposed the submissions of the Counsel for the applicant. Learned Additional Public Prosecutor states that it was a physical relation on the false promise of marriage and the intention to deceive was from the initiation of the said relationship. He further submits that the applicant at the initial stage had suppressed the said fact and their situation would be squarely covered by Section 376 of the Indian Penal Code. Learned Counsel for the non-applicant No.2 also submits that the case is made out for full fledged trial under the various sections, and therefore, it cannot be said to be a fit case for quashing of the First Information Report and consequent charge-sheet.

7. In the backdrop of these submissions, we have perused the First Information Report and the consequent charge-sheet. As can be seen from the said charge-sheet, the First Information Report in question is lodged by the non-applicant No.2, who at the time of lodging of the First Information Report is of 36 years of age, while the applicant is 45 years of age. Thus, both of them are adult, major

and able to understand the consequences of any act or omission to be done by them. The controversy in the present matter is thus to be decided in the backdrop of these facts. It can further be seen from the complaint of the non-applicant No.2, that she candidly admits that she is having physical relationship with the applicant from last six years. Furthermore, it is nowhere alleged that the applicant abused her in the name of caste, and therefore, even otherwise offences under Section Scheduled caste and Scheduled Tribe (prevention of Atrocities) Act are not made out. In the conspectus of these facts, we are of the view that the relationship is between two adults and major persons who were well aware of the consequences of their relationship still they ventured to enter into that relationship out of their free will.

8. In the case of *Uday Vs State of Karnataka, (2003) 4 SCC 46*, the Hon'ble Supreme Court after reproducing Section 375 has held that "Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side." It is further held that "there does not necessarily have to be complete willingness to constitute consent. A woman's consent to

intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is consent” In paragraph No. 11 & 12, it is held as under :

*“11. Some of the decisions referred to in Words and Phrases, Permanent Edition, Vol. 8A at p. 205 have held:*

*"that adult female's understanding of nature and consequences of sexual act must be intelligent understanding to constitute 'consent'. Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. Legal consent, which will be held sufficient in a prosecution for rape, assumes a capacity to the person consenting to understand and appreciate the nature of the act committed, its immoral character, and the probable or natural consequences which may attend it".*

*“12. The courts in India have by and large adopted these tests to discover whether the consent was voluntary or whether it was vitiated so as not to be legal consent.*

*"7. A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent, on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent.*

*Submission of her body under the influence of fear or terror is no consent. There is a difference*

*between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure."*

9. Furthermore, in the celebrated judgment of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608***, after exhaustively dealing with the case laws related to the subject this Court 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. 682-84, 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 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."*

*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.”*

10. In the backdrop of these facts, if we analyze the materials collected by the prosecution the inevitable conclusion is that the non-applicant No.2 and the applicant were engaged in consensual physical relationship voluntarily out of their own free will that too for a long period of six years. It does not appeal to logic and reasoning that an adult female like the complainant would not have been aware about the marital status of the applicant-accused for such a long period. It would be therefore a fit case to exercise powers under Section 482 of the Criminal Procedure Code, since continuance of the proceedings, in our view, would amount to nothing but an abuse of the process of Court. When we take this view, we are guided by the parameters laid down in paragraph No. 102 of judgment reported in ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335***, and more particularly Clause 1, 3 and 7 thereof :

*“102.....*

*(1) Where the allegations made in the first information*

*report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) ...*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) ....*

*(5) ...*

*(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.”*

11. We, therefore, of the view that since the relationship between the applicant and the non-applicant No.2 was consensual in nature, there was no abuse in the name of caste or otherwise which is sine-qua-non for making out offence under Sections 376, 504, 506 of the Indian Penal Code and Sections 3(1)(w)(i)(ii), 3(2)(va), 3(1)(r), 3(1)(s), 3(2)(v) of the SC & ST Act, this would be a fit case to quash the First Information Report and the consequent charge-sheet against the present applicant. We therefore, proceed to pass the following order :

**ORDER**

- i) Application is allowed.
- ii) The First Information Report No.0097 of 2024, dated 08.02.2024, along with the Charge Sheet No. 62 of 2024, dated 04.04.2024, registered through non-applicant No.1- Police Station Chikhli, Dist. Buldhana, for the offences punishable under Sections 376, 504, 506 of the Indian Penal Code and Sections 3(1)(w)(i)(ii), 3(2)(va), 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and consequent Sessions Trial No. 27/2024, are quashed and set aside.

The application is disposed of accordingly.

**(NANDESH S. DESHPANDE, J.)**

**(URMILA JOSHI-PHALKE, J.)**

*Jayashree..*