



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

CRIMINAL APPLICATION (APL) NO.213 OF 2025

Abhishek S/o Ramesh Kudmethe, Aged
about 31 yrs, Occu: Service, R/o. Sahyog
Gruha Nirman Society, Waghapur,
Yavatmal, District. Yavatmal.

Presently R/o. Vastu Vihar, K.H.3,
Building No.8, Kharghar, Sector 16, New
Mumbai.

...Applicant

// VERSUS //

1. State of Maharashtra, Through Police
Station Officer, Police Station
Awadhootwadi, District – Yavatmal.
2. XYZ,

Victim in Crime No.1284/2024 registered
with Police Station Awadhootwadi, Dist. –
Yavatmal.

... Non-applicants

Mr S.B. Gandhe, Advocate for Applicant.
Mr A.R. Chutke, A.P.P. for Non-applicant/State.
Mr M.R. Giratkar, Advocate for Non-applicant No.2 (through V.C.).

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.
DATE : 06/05/2025

ORAL JUDGMENT (Per : Anil S. Kilor, J.)

1. Heard.

2. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the parties.

3. By way of present application filed under Section 482 of the Code of Criminal Procedure seeking quashment of the Chargesheet No.02 of 2025 dated 02.01.2025 filed in FIR No.1284 of 2024 dated 08.11.2024 registered with Police Station Awadhootwadi, Dist. Yavatmal, for the offences punishable under Sections 69, 351(2) of the Bhartiya Nyaya Sanhita, 2023.

4. The brief story of the prosecution is that, the applicant and the non-applicant No.2 had love relations and the applicant promised her about marriage and thereupon, established physical relations and subsequently, he refused to marry her. Accordingly, the FIR in question came to be registered and after investigation, chargesheet came to be filed.

5. The learned counsel for the applicant submits that there was no false promise of marriage, on the contrary, till the last moment he tried to marry with the non-applicant No.2. He, therefore, submits that, there was no question of misconception while obtaining the consent of the non-applicant No.2 to establish physical relations. He therefore

submits that, in absence of misconception or fear as required under Section 90 of the IPC, the relations were consensual and therefore, no offence is constitutes against the applicant.

6. On the other hand, learned A.P.P. strongly opposed the application and submits that, there was a false promise of marriage and with such promise, he established physical relations with the non-applicant No.2.

7. In light of the rival submissions, we have perused the chargesheet. The statement of complainant recorded on 19.11.2024, shows that, till the last moment, he tried to perform marriage with her. It has come in the statement of the non-applicant No.2 that, the family of the applicant fixed his marriage with another girl. Thereupon, the applicant himself gave mobile number of that girl to the non-applicant No.2 and requested her to speak to her and tell her about love affair and intention to marry. Accordingly, the non-applicant No.2 spoke with her. However, she asked her to speak to the mother of the applicant. Thereupon, she tried to convince the family of the applicant and there was also a meeting of both the families i.e. family of the applicant and the non-applicant No.2. However, the talks fails and the applicant thereafter show his enability to perform marriage with the non-applicant

No.2 because of family pressure. In the circumstances, it cannot be said that there was a false promise.

8. The Hon'ble Supreme Court of India in the case of *Pramod Suryabhan Pawar ..vs.. The State of Maharashtra and Ors*, reported in (2019) 9 SCC 608, has held thus :-

*“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 :*

*“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.”

9. In the teeth of the above referred observations of the Hon’ble Supreme Court of India, if we revert back to the facts of the case, as we have observed that from the statement of complainant herself, it is evident that the applicant tried to marry her till last moment, however, because of family pressure, he could not perform marriage with the non-applicant No.2. Therefore, it cannot be said that, there was a false promise or it is a case of misconception.

10. In the circumstances, as there was consensual relation between the applicant and the non-applicant No.2, no offence constitutes as alleged against the applicant. Accordingly, we pass the following order :-

- i) The Criminal Application is **allowed**.
- ii) The Chargesheet No.02 of 2025 dated 02.01.2025 filed in FIR No.1284 of 2024 dated 08.11.2024 registered with Police Station Awadhootwadi, Dist. Yavatmal, for the offences punishable under Sections 69, 351(2) of the Bhartiya Nyaya Sanhita, 2023 as well as the Sessions Case No.23 of 2025 pending before the learned Ad-hoc District Judge-1 and Additional Sessions Judge, Yavatmal, are hereby quashed and set aside.

Rule is made absolute in above terms. No costs.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

C.L.Dhakate