



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 276/2025

1. Hitesh S/o Ashokrao Mahajan,
Aged about 27 years, Occ- Service,
R/o. At post Sirasgao, Taluka Hinganghat,
District Wardha. Presently residing at
C/o – Satyajeet Barokar behind Gajanan
Sabhagruh, Manewada Road,
Nagpur

... APPLICANT

...VERSUS...

1. State Of Maharashtra,
Through Police Station Officer,
Police Station, Jaripatka, Nagpur.
2. Informant in F.I.R. No. 434/2021,
registered at Police Station Jaripatka,
Nagpur.

...NON-APPLICANTS

Mr. Sameer P. Sonwane along with Amit Thakur and Shiba Thakur,
Advocate for applicant
Mr. A. G. Mate, APP for non-applicant/State
Ms. Lata Tiple, Advocate for non-applicant no.2.

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

RESERVED ON : 09th DECEMBER, 2025.

PRONOUNCED ON : 23rd DECEMBER, 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 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for quashing and setting aside of the First Information Report bearing Crime No. 434/2021 dated 18.07.2023, registered by the Police Station Jaripatka, District Nagpur, for the offences punishable under sections 376, 376(2)(n), 313, 417 and 34 of Indian Penal Code, 1860. The Applicant has further prayed for quashing of R.C.C. bearing No. 4377/2021 (State Vs Hitesh Mahajan), which is presently pending before the Learned Judicial Magistrate First Class Court No.-7, Nagpur.

3. As per the case of non-applicant No. 2 and contents of the impugned First Information Report, the applicant and non-applicant no. 2 are from the same village and studied together from 5th to 10th standard. They were in a love relationship and met frequently.

On 31.03.2021 at about 9:00 p.m., the applicant arrived outside the hostel of non-applicant No. 2 to pick her up, assured her of marriage, and insisted her to accompany him to his room for physical relations. Trusting this assurance, non-applicant No. 2 visited his room frequently and established physical relations.

4. It is stated that on 06.06.2021, non-applicant no. 2 came to know that she was pregnant and she immediately informed the applicant about her pregnancy over the phone. Subsequently, on 08.06.2021, at about 9.00 a.m., the applicant called non-applicant no. 2 to his room. The sisters and the brother-in-law of the applicant were already present in the room of the applicant. It is stated that they assured the non-applicant no. 2 for marriage with the applicant after his sister's wedding and asked her to abort the pregnancy. It is alleged that the applicant administered abortion pills to the Non-applicant No. 2. It is further stated that post such incident, the applicant started avoiding non-applicant no. 2. As a result of such avoidance, a meeting was called before Sarpanch of village, wherein the applicant refused to marry non-applicant no. 2. Aggrieved by this, she has filed the a First Information Report in

which is under challenge in the present application.

5. We have heard Mr. Sameer Sonwane, Advocate for applicant, Mr. A. G. Mate, Additional Public Prosecutor for State and Ms. Lata Tiple, Advocate for non-applicant no. 2.

6. Mr. Sameer Sonwane, Learned Counsel for the Applicant submits that the entire First Information Report is false and fabricated. It is submitted that after reading the contents of the said First Information Report, it is by far a case of consensual love affair between the applicant and non-applicant no. 2. The applicant had no intention of deceiving the non-applicant no. 2, however, as things did not materialize, it was not possible for the applicant to marry her.

7. It is further submitted that the applicant and non-applicant no. 2 have known each other since their school days, having studied together from 5th to 10th standard, and their love affair continued since then. During the course of the relationship, the applicant discovered that non-applicant no. 2 was simultaneously involved

with other persons. The applicant was also shown chats and screenshots of the alleged involvement with other people. Consequently, the relationship became strained and further continuance of the relationship was not reasonable.

8. The Learned Counsel for the Applicant further submits that this court, vide its order dated 22.04.2024 in Criminal Application No. 1084/2023 arising from the same First Information Report (Arti Mahajan & Two Others Vs. State & One), quashed and set aside the said report. Thus the present application also deserves to be placed on similar footing.

9. Lastly, the Learned Counsel for the Applicant has placed reliance on the following judgments to support his contentions:

- i. *Deepak Gulati Versus State of Haryana*, reported in (2013) 7 SCC 675,
- ii. *Naim Ahamad Versus State (NCT of Delhi)*, reported in 2023 LiveLaw (SC) 65,
- iii. *Pramod Surybhan Pawar Versus State of Maharashtra and Anr.*, reported in (2019) 9 SCC 608, and

iv. *State of Haryana and Others Versus Bhajanlal*, Criminal Application (APL) No. 128/2020 decided on 10.11.2025.

10. Mr. A. G. Mate, Learned Additional Public Prosecutor for non-applicant no. 1/State, has strongly opposed the contentions advanced by the Learned Counsel for the applicant. He submits that the investigating agency was fully justified in registering the offenses as alleged in the First Information Report dated 18.07.2021.

11. Learned Additional Public Prosecutor submits that during the course of investigation, non-applicant no. 2 was sent for medical examination and the medical report specifically mentioned that hymen of non-applicant no. 2 was found to be torn and possibility of medical abortion cannot be ruled out.

12. Further it is submitted that the statements of various witnesses were recorded, which clearly state that it is the applicant who asked non-applicant no. 2 to get her child aborted on the pretext that only after abortion they could perform the marriage.

The applicant gave pills for abortion to non-applicant no. 2 and after abortion was done, the behavior of the applicant changed. Thus, there is ample material available against the present applicant.

13. From the facts that stand admitted and the evidence adduced, it becomes abundantly clear that the applicants are major, well educated and mature enough to understand the implications of their conduct. From 19.05.2019, both parties were admittedly in love with each other. Throughout this protracted period, non-applicant no. 2 actively and voluntarily participated in regular meetings and continued communication with the applicant. This unbroken chain of voluntary interaction and continued intimacy long after the alleged incident completely belies any claim of forcible intercourse or of consent having been vitiated by a false marriage promise.

14. 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 INSC 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 90IPC, 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 Deepak Gulati 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. 682-84, 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.”

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 man. In the case of Hitesh S/o Ashokrao Mahajanle 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.”

15. As far as Section 313 is concerned, it is significant to observe that non-applicant no. 2 is a Nurse, possessing considerable knowledge of abortion pills and its ramifications. Furthermore, the concerned First Information Report contains no assertion that she was coerced into consuming the pills. Thus, to substantiate the offense under Section 313 of the Indian Penal Code, it must be demonstrated that the medication was administered without the victim's consent but here non-applicant no.2 willingly took the abortion pills.

16. Concerning the accusation of cheating under Section 417 of Indian Penal Code, such an offense would materialize only if the

prosecution can demonstrate that non-applicant No. 2 was manipulated through deceitful intent to consume the medication based on a promise of marriage, which she would either have refused in the absence of such inducement. However, the record reveals that the relationship between the applicant and non-applicant No. 2 was acknowledged by both families.

17. Further, this Court, vide order dated 22.04.2024 in Criminal Application No. 1084 of 2023 arising out of the same First Information Report, has already quashed the proceedings against the accused Nos. 2, 3 and 4, namely Arti Ashokrao Mahajan, Pooja Pankaj Padole, Nakul Devidasji Ambatkar, who are the sisters and the brother-in-law of the present applicant.

18. In light of the reasoning articulated hereinabove and having regard to the judgment dated 22.04.2024 rendered in Criminal Application No. 1084 of 2023, this Court is of the considered view that the First Information Report in question is devoid of any merit and thus the same deserves to be quashed. Accordingly, the present application is allowed.

19. In our view, therefore, this is a fit case to quash the charge-sheet and R.C.C. No. 4377/2021 pending before the learned Judicial Magistrate First Class Court No. -7. Hence, we proceed to pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) First Information Report bearing Crime No. 434/2021 dated 18.07.2023, registered by the Police Station Jaripatka, District Nagpur, for the offences punishable under sections 376, 376(2)(n), 313, 417 and 34 of Indian Penal Code, 1860 and R.C.C. No. 4377/2021 pending before the learned Judicial Magistrate First Class Court No. -7 is hereby quashed and set aside to the extent of applicant namely - Hitesh S/o Ashokrao Mahajan .
- (iii) Application is allowed and disposed of in above said terms.

(NANDESH S. DESHPANDE, J.)

Shubham

(URMILA JOSHI-PHALKE, J.)