



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.372/2025

1. Shailendra Kumar Dipak Mate,
Aged about 44 years, Occ:Service,
R/o Plot No.78, Vinayak Nagar
Colony, Near Dharmik Kirana
Stores, Kamptee Road, Khairi
Nagpur, Shramjivi Nagar, Nagpur,
Tahsil and District:Nagpur.

... APPLICANT

...VERSUS...

1. State of Maharashtra, through.
Police Station Officer, Police Station
Kamptee (Old), Tah. Kamptee,
District:Nagpur.
2. XYZ Victim of Crime No.
0086/2025, Police Station Kamptee
(Old), Tah. Kamptee,
District: Nagpur

...NON-APPLICANTS

Shri M.V. Acharya, Advocate for applicant
Shri A.J. Gohokar, APP for non-applicant No.1/State
Shri Ritik Khobragade, Advocate h/f Ms G.D. Paunikar, Advocate
for non-applicant No.2

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

RESERVED ON : **12.11.2025**
PRONOUNCED ON : **25.11.2025**

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

Heard. Admit. Matter is taken up for final disposal by the consent of learned Counsel for the parties.

2. The Applicant has approached this Hon'ble Court by filing the present application under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the First Information Report dated 15.02.2025, registered as Crime No. 0086/2025 at Police Station Old Kmp tee, Nagpur City, for the offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860. The applicant has further prayed for quashing of the charge-sheet/Final Report bearing Form No. 33/2026 dated 16.04.2025, offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860, which is presently pending before the learned Judicial Magistrate First Class, Kamptee, Court No. 2, Nagpur City.

3. The sum and substance of the present First Information

Report is as follows: -

In the First Information Report, it is stated by the non-applicant No.. 2 that she is working as a Supervisor at Ion Digital Zone, M.I.D.C Nagpur. That on 03.04.2021, there was a group D-level examination of the railway department. At that time, the applicant was present for the said examination. He is stated to be working as a Senior Clerk in Southern Railway, Motibag. It is alleged that the applicant and the non-applicant No. 2 met at the venue of the examination for the first time. It is further alleged that the applicant and the non-applicant No. 2 exchanged mobile numbers at the venue and initiated talking to each other. This gradually culminated in a love affair. It is further alleged that the applicant expressed his desire to marry the non-applicant No. 2, to which the non-applicant No. 2 agreed and gave her consent.

The present First Information Report further asserts that on 01.08.2021, the applicant invited the non-applicant No.2 to his house at Khairi for his nephew's birthday celebration. It is further stated that since the party was late at night, the non-applicant No. 2

stayed overnight. During the night of the birthday, it is alleged that the applicant established physical relations with the present non-applicant No. 2 by giving her a false assurance of marriage.

It is further alleged by the non-applicant no. 2 that after a few days, in the absence of the non-applicant No. 2's husband, the applicant visited her residence and again established physical relations with her. It is further alleged that on 17.05.2022, the applicant visited the house of the mother of the non-applicant No. 2 and applied vermilion (kunku) on the forehead of the non-applicant No. 2. On the strength of this act, the non-applicant No. 2 was in a false belief that they had performed marriage and thus, continued to maintain physical relations with the present applicant.

It is further alleged that the non-applicant No. 2 visited the office of the applicant at Motibag wherein she learnt that the applicant is already married and is a father of two children. Thereafter, the non-applicant No. 2 met the present applicant at Kamptee. It is alleged that at the said time the applicant refused to perform legal marriage with the non-applicant No. 2. Aggrieved by

the aforementioned reasons, the non-applicant No. 2 filed the present First Information Report No. 0086/2025, at Police Station Old Kamptee, District Nagpur. It is this First Information Report that is challenged through the present application.

4. We have heard Shri. M.V. Acharya, learned Counsel for the applicant, Shri. A.J. Gohakar, learned Additional Public Prosecutor for the non-applicant/State, and Shri. Ritik Khobragade on behalf of Ms G. D. Paunikar, learned Counsel for the non-applicant No. 2.

5. The learned Counsel for the applicant submits that the allegations levelled in the First Information Report by the non-applicant No. 2 are absurd and inherently improbable and lacks essential substance to constitute a case under Section 376(2)(n) of the Indian Penal Code.

6. The learned Counsel for the applicant further states that the present dispute between the applicant and the non-applicant No. 2 concerns a money transaction and the non-applicant No.2 maliciously instituted a false case under Section.376(2)(n) of the Indian Penal Code, 1860. It is, thus, very clear that the present First

Information Report is filed with an ulterior motive for wrecking vengeance on the applicant.

7. It is further submitted that the non-applicant No. 2 filed a report on the same facts with the Police Station, Warangaon, and the said Police Station Officer thoroughly investigated the said matter. It was concluded by the Police Officer that no case is made out against the present applicant under Section 376(2)(n) and closed the investigation.

8. It is also further submitted that there exists a complaint against the present non-applicant No.2 and her husband for throwing files and obstructing in official work of the applicant. The said complaint is registered with the Police Station Jaripatka, Nagpur, as Crime No.0885/2023 under Sections 352,294,506 and 34 of Indian Penal Code,1860.

9. Lastly, it is the submission of the learned Counsel that the non-applicant No.2 has very skillfully avoided to take recourse under civil law and has maliciously converted a civil dispute into a criminal case. Thus, the present First Information report and the

consequent charge-sheet deserves to be quashed and set aside.

10. Per contra, the learned Additional Public Prosecutor has vehemently opposed the submissions advanced by the learned Counsel for the applicant. It is submitted that after the completion of the investigation there exists a *prima facie* case against the present applicant.

11. It is further submitted that the statements of the witnesses are corroborating with the version of the prosecution and the material collected by the non-applicant No.1/Police Station Kamptee, clearly show an involvement of the present applicant in the alleged crime.

12. It is further submitted that the case of the applicant does not fall under the seven exceptions carved out by the Hon'ble Supreme Court in the case of the ***State of Haryana vs. Bhajan Lal, AIR 1992 SC 604***. Thus, the present application is liable to be rejected in the interest of justice.

13. We have carefully perused the First Information Report and the consequent charge-sheet in question. It is a matter of fact that both the applicant as well as non-applicant No.2 are major and matured persons of 44 and 43 years of age and are able to understand the consequences of their decisions. Looking at the age of both of them, it can be concluded that they are sane enough to understand the repercussions of engaging and continuing such relationship. Furthermore, looking at the length of the relationship, i.e. one year and the ages of the parties, it can safely be inferred that parties engaged into sexual relationship out of their own consent and free will. It is only when the non-applicant No. 2 came to know about the prior marriage of the applicant and when the applicant refused to marry the non-applicant No. 2, she lodged the present First Information Report.

14. Furthermore, no material is placed on record and the nor can be deduced from the charge-sheet in question that the applicant never intended to marry the non-applicant No. 2, nor such intention was there at the initiation of the relationship.

15. The question of voluntary consent or consent under misconception of fact has been settled in various judgments such as *Uday Vs. State of Karnataka*, reported in (2003) 4 SCC 46 and thereafter again in *Dilip Singh alias Dilip Kumar Vs. State of Bihar*, reported in (2005) 1 SCC 88. Furthermore in *Deepak Gulati Vs. State of Haryana*, reported in (2013) 7 SCC 675 and identical question came up for consideration. Thereafter, in the celebrated judgment of *Pramod Suryabhan Pawar Vs. State of Maharashtra and another*, reported in (2019) 9 SCC 608, the Hon'ble Apex Court held in paras 8,10 and 13 as under :

“8. In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in *Dhruvaram Murlidhar Sonar v State of Maharashtra*, (“*Dhruvaram Sonar*”) :

“13. It is clear that for quashing proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.”

10. Where a woman does not “consent” to the sexual

acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term “consent”, a “consent” based on a “misconception of fact” is not consent in the eyes of the law.

16. Furthermore, in the same judgment in para 16 the Hon’ble Apex 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.

17. 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. In para 18 of the said judgment the Hon’ble Apex Court summarized the legal position as under:

“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.”

19. The allegations made in the First Information Report are inherently improbable inasmuch as it is not expected of a lady of 43 years of age, who is herself married, to continue with physical relations under a false pretext of marriage. As also, it is very surprising to know that the same lady was given any false assurances of marriage. The allegations, therefore, do not inspire confidence and are inherently improbable in nature. Thus, there is no sufficient ground for proceeding against the applicant.

20. In our view, therefore, this is a fit case to quash the charge-sheet/final report. Hence, we passed the following order.

ORDER

(i) The application is allowed.

(ii) The Charge-sheet/Final Report No. 33/2025, dated 16.04.2025 in Crime No.0086/2025 dated 15.02.2025, registered by the non-applicant No.1, for the offence punishable under Sections 376(2)(n) of the Indian Penal Code, as also, Sessions Case No. 443/2025 arising out of Charge Sheet No. 33/2025, pending before the learned District Judge -11 and Sessions Judge, Nagpur, are quashed and set aside.

21. The application is disposed of.

22. Parties to bear their own costs.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..