



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

CRIMINAL APPLICATION (APL) No.467 OF 2025

Hrushikesh Girish Visave
Aged about 26 years, Occupation : Service,
R/o. Jalgaon, Tah. & Distt. Jalgaon. : APPLICANT

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Vasantnagar Police Station,
Tah. Pusad, Distt. Yavatmal.
2. XYZ [Victim]
In crime No. 392/2023 dated 26-08-2023
registered by P.S.O.
Vasantnagar, Tah. Pusad,
Distt. Yavatmal. : RESPONDENTS

Mr. Abhishek Zade, Advocate for applicant.
Mr. N.B. Jawade, Additional Public Prosecutor for respondent No.1.
Mr N.R. Raut, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 19th SEPTEMBER, 2025.
PRONOUNCED ON : 01st OCTOBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing 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 charge-sheet dated 25.10.2023 vide S.T. 612/2023, pending before Additional Sessions Judge-2, District Yavatmal, in Crime No.612/2023, for the offences punishable under Sections 376(2)(n), 506, of Indian Penal Code with the non-applicant No.1 by the non-applicant No.2.

3. It is the case of the non-applicant no.2/first informant, according to the contents of the First Information Report in the month of May 2023 the applicant and the non-applicant No.2 came in contact with each other through Instagram. Then they started messaging each other and thus got acquainted with each other. The relationship blossomed into love and they started meeting each other. It is further alleged that on 6.6.2023 they had physical relations with each other.

4. We have heard Mr. Abhishek Zade, learned counsel for the applicant, Mr. N.B. Jawade, learned Additional Public Prosecutor for the non-applicant No.1/State and Mr N.R. Raut, 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 his 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 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, learned Additional Public Prosecutor for the respondent No.1 vehemently opposed the submissions of the learned counsel for the applicant. He 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.

7 Learned counsel for the non-applicant No.2, however, submits that the victim has filed an affidavit that the matter is amicably settled and she is having no objection to quash the charge-sheet. The applicant and the non applicant No.2 have affirmed the contents of the affidavits and we have verified the same from them who were physically present before us on 19.9.2025.

8. 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 25 years of age, while the applicant is 26 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. 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.

9. 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. The Non applicant No.2 has voluntarily accorded her consent to quash the charge-sheet in question. In the judgment of **Gian Singh Vs. State of Punjab and another**, reported in **2012(10) SCC 303** the Hon'ble Supreme Court has stated that even a non-compoundable offence can be quashed under inherent powers of the High Court under the contingencies stated therein. It would, therefore, be an exercise in futility to continue the proceedings any further as there are no chances of conviction in view of no objection by the complainant. It would be, therefore, a fit case to exercise power 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. We, accordingly proceed to pass following order :

ORDER

- (i) The application is allowed.
- (ii) The charge-sheet dated 25.10.2023 vide S.T. 612/2023, pending before Additional Sessions Judge-2, District Yavatmal, in Crime No. 612/23 for the offences punishable under Sections 376(2)(n), 506, of Indian Penal Code against the applicant is quashed and set aside.
- (iii) The application is disposed of accordingly.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)