



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

CRIMINAL APPLICATION (APL) No.473 OF 2025

Shri Bhushan Ramesh Brahme,
Indian Inhabitant,
Aged about 42 years,
R/of- BK No.1293, Room no.06,
O.T. Section, Ulhasnagar-421 004,
Dist- Thane, Maharashtra. : APPLICANT

...VERSUS...

1. The State of Maharashtra,
Through Senior Police Inspector,
Dhantoli Police Station,
Nagpur City.
2. XYZ (Victim),
Indian Inhabitant,
Aged About Years,
R/of:ABC. : RESPONDENTS

Mr. Sumeet Gemnani, Advocate for Applicant.
Mr. M.J.Khan, Additional Public Prosecutor for Respondent No.1.
Mr. Bharat C. Chandrakapure, Advocate for Respondent No.2.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 23rd SEPTEMBER, 2025.
PRONOUNCED ON : 14th OCTOBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande, J.)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing for the parties.
2. The applicants have filed the present application under

Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing the First Information Report bearing No.45/2023, dated 18.02.2023, registered with Police Station Dhantoli, Nagpur for the offences punishable under Sections 376 and 506 of the Indian Penal Code and Charge-sheet bearing No.25/2023, dated 17.04.2023, registered with Police Station Dhantoli, Nagpur, for the offences punishable under Sections 376, 506(b) of the Indian Penal Code.

3. It is the case of the respondent No.2/first informant that the respondent No.2 (original informant) uploaded her matrimonial bio-data on the Buddhist Matrimonial website in December 2022 and came into contact with the applicant through the platform. Thereafter, they met on 7.1.2023 and 8.1.2023 in Nagpur and proceeded to maintain daily contact through WhatsApp and other means. The respondent No.2 alleged that on 12.2.2023, the applicant forcibly had sexual intercourse with her in a hotel room at Nagpur under the pretext of marriage and later threatened her to keep the matter confidential. Consequently, the F.I.R. was lodged against the applicant for the offence of rape and criminal intimidation.

4. We have heard Mr. Sumeet Gemnani, learned counsel for the applicant, Shri M. J. Khan, learned Additional Public

Prosecutor for the respondent No.1/State and Mr Bharat C. Chandrakapure, learned counsel for respondent 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 respondent 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 vehemently opposed the submissions of learned counsel for the applicant and 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. Learned Counsel for the respondent No.2, however, submits that the victim has filed an affidavit dated 22.9.2025 and states that the matter is amicably settled between applicant and respondent No.2 and respondent No.2 has no objection to quash the 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 respondent No.2, who at the time of lodging of the First Information Report was of 32 years, while the applicant was 39 years. 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.

8. In the celebrated judgment of the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another**, reported in (2019) 9 SCC 608, wherein the Hon'ble Apex Court in para 16 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:

"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."

9. To summarize 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 respondent No.2 and the applicant were engaged in consensual physical relationship voluntarily out of their own free will. The respondent No.2 has voluntarily accorded her consent by filing an affidavit to quash the charge-sheet in question. In the case of **Gian Singh Vs. State of Punjab and another**, reported in **MANU/SC/0781/2012** 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 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. Hence, we proceed to pass the following order :

ORDER

- (i) The application is allowed.
- (ii) The First Information Report bearing No.45/2023, dated 18.02.2023, registered with Police Station Dhantoli, Nagpur for the offences punishable under Sections 376 and 506 of the Indian Penal Code and Charge-sheet bearing No.25/2023, dated 17.04.2023, registered with Police Station Dhantoli, Nagpur, for the offences punishable under Sections 376, 506(b) of the Indian Penal Code is hereby quashed and set aside.
- (iii) The application is disposed of accordingly.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)