



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

CRIMINAL APPLICATION (APL) NO. 924 OF 2025

Shripal S/o Deoraoji Kamble
Age-50 yrs, Occu - Private,
R/o Sant Dnyaneshwar Nagar,
Mhasala, Post Nalawadi, Tahsil
& District Wardha

... **APPLICANT**

...**VERSUS**...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Sitabuldi, Nagpur.
2. Victim in Crime No.
187/25 registered
with Police Station
Panch Pauli, Nagpur.

...**NON-APPLICANTS**

Ms Radha Mishra, Advocate for applicant
Ms S.Z. Haidar, APP for non-applicant No.1/State
Shri R.R. Maddalwar, Advocate (Appointed) for non-applicant No.2

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

RESERVED ON : **11.11.2025**
PRONOUNCED ON : **19.11.2025**

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

Heard. **Admit.** Heard finally with the consent of learned
Counsel for both the parties.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, invoking the inherent jurisdiction of this Court for quashing and setting aside the First Information Report dated 07.03.2025, in connection with Crime No. 0187/2025, registered with the non-applicant No.1, for the offences punishable under Sections 64(1), 64(2)(m), 115(2) and 351(2) of the Bhartiya Nyaya Sanhita, 2023. The applicant further prays for quashing and setting aside the charge sheet bearing No. 92/2025.

3. According to the case of the prosecution, the non-applicant No.2 lodged a complaint, thereby alleging that she, along with Sultana Parveen Mazhar Patel, with one acquaintance, namely Maya Madam, got her acquainted with the present applicant, and they were engaged in UBIT-COIN plotting online and acquainted with the applicant. They for the first time met at Teka New Basti office, and again held a meeting in Prem Hotel, Sitabuldi, during which the complainant came in close contact with the applicant. It is further stated in the First Information Report that the applicant took the complainant, i.e non-applicant No.2 to Sunshine Hotel, Modi No.3, Sitabuldi, Nagpur, and forced her to have physical

relations with her. Furthermore, the applicant also established physical relations with her for about 10 to 12 times. In addition to this, the applicant took her to an open space ahead of Umred Road and forcibly established physical relationship with her. This act was also repeated at Khindsi Road, in Ramtek, in an open space and thereafter in a hotel. Thus, from the month of August 2024, till December 2024, {as per the First Information Report), the applicant and the non-applicant No.2 were in a relationship. On the basis of this allegation, the First Information Report was registered, and the consequent charge-sheet was filed, which has been challenged in the present application.

4. Heard Ms Radha Mishra, learned Counsel for the applicant along with Ms S.Z. Haidar, learned Additional Public Prosecutor for the non-applicant/State.

5. The learned Counsel for the applicant submits that a bare perusal of the First Information Report in question, as also the consequent charge-sheet filed on record would reveal that there is no allegation about the applicant promising the non-applicant No.2

of marriage. It is further stated, that looking at the ages of the applicant and the non-applicant No.2, it cannot be said that they were not aware of the repercussions of the relationship between them. She therefore prays that no offence, much less as stated in the First Information Report, and the consequent charge-sheet is made out. She therefore, prays that the said criminal proceedings be quashed.

6. Per contra, learned Additional Public Prosecutor submits that during the course of the investigation, the investigating officer has drawn panchanama, and referred the complainant/informant for medical examination, which she has denied, and biological samples were also sent for chemical examination. She further states that the statements of the witnesses were recorded, which specifically states the commission of the alleged offence. She therefore prays for the rejection of the application in question.

7. In the backdrop of these facts, we have perused the record of the matter. Before proceeding with the reasoning of the matter it is relevant point out that as per the First Information Report as also

the charge-sheet, the non-applicant No.2 is aged 30 years which applicant is aged 50 years. It is therefore clear that both the applicant and the non-applicant No.2 are adult, major and are capable of understanding the repercussions of the consent for any relationship. The controversy in the present matter has to be adjudicated in the backdrop of these admitted facts.

8. A meaningful reading of the First Information Report in question would reveal that what is conspicuous by its absence is an allegation about any promise made by the applicant to marry the non-applicant No.2. In fact, there could not have been such a promise as the applicant is already married. Furthermore, even as per the allegations in the First Information Report, the relationship started in the month of August 2024, and continued till December 2024, while the First Information Report in question was lodged after three months i.e. on 07.03.2025. This creates suspicion and doubt about the allegations and the veracity of the contents of the First Information Report. As far as the consent of the non-applicant No.2 is concerned, a beneficial reference can be made in the judgment of *Pramod Suryabhan Pawar Vs. State of Maharashtra*,

(2019) 9 SCC 608, in which the Hon'ble Court has culled out the following principles :

*"12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In **Dhruvaram Sonar** which was a case involving the invoking of the jurisdiction under Section 482, this Court observed: (SCC para 15)*

*"15.... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of." This understanding was also emphasised in the decision of this Court in *Kaini Rajan v. State of Kerala*: (SCC p. 118, para 12)*

"12.... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above).

Section 3(1)(w) of the SC/ST Act also incorporates this concept of consent:

3(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

Explanation - For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh, this Court held: (SCC para 12)

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any

intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in Deepak Gulati v. State of Haryanas (Deepak Gulati): (SCC p. 682, para 21)

"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;""

9. If we analyse the facts of the present matter in view of the dictum of the Supreme Court as mentioned supra. We are of the considered view that, looking at the ages of the parties, the period for which the relationship continued, and the delay in lodging the First Information Report, leads to an inference that the relationship between the parties was of consensual nature. Moreover, one more fact which needs to be emphasized is that the non-applicant No. 2 has refused medical examination, which also creates a doubt about the veracity of the allegation. It seems that the applicant and the

non-applicant No.2, being in the same profession of selling and purchasing of immovable properties and plotting, were having a commercial relationship between them, and since the relationship has turned sour, the present First Information Report is lodged. We have also perused the statements recorded by the Investigating Officer during the course of the investigation. Nothing incriminating is found in the said statements against the applicant. The situation would therefore be squarely covered by the well laid down parameters by the Hon'ble Supreme Court in the judgment of ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335***, and more particularly paragraph No. 102 Clause 1, 3 and 7 thereof :

“102.....

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) ...

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)

(5) ...

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. We, therefore, proceed to pass the following order:

ORDER

- i) The Criminal Application is allowed.
- ii) The the First Information Report dated 07.03.2025, in connection with Crime No. 0187/2025, registered with the non-applicant No.1, for the offences punishable under Sections 64(1), 64(2)(m), 115(2) and 351(2) of the Bhartiya Nyaya Sanhita, as also, Charge sheet No. 92/2025, are quashed and set aside.
- iii) Fees of the appointed Counsel be quantified as per the Rules.

11. The application is allowed and in the above terms and disposed of. Pending applications, if any, shall stand disposed of.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..