



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

CRIMINAL APPLICATION (APL) No.1077 OF 2025

Akshay S/o Bhaskarrao Mate,
Aged about 29 years,
Occupation : Private,
R/o. Bhuteshwar Nagar,
Killa Road, Near Shishu Vikas School,
Mahal, Nagpur.

: APPLICANT

...VERSUS...

- 1) State of Maharashtra,
through its Police Station Officer,
Dhantoli P.S., Nagpur.
- 2) XYZ (victim)
In Crime No. 37/2025,
dated 29.1.2025
u/Sec. 376 & 354 of I.P.C.,
P.S. Dhantoli, Nagpur

: NON-APPLICANTS

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Mr. Roshan R. Prajapati, Advocate for Applicant.
Mr. A.J. Gohokar, Additional Public Prosecutor for Non-applicant No.1.
Mrs. Anuprita Mishrikotkar, learned Advocate for Non-applicant No.2
(Appointed)

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CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 21st NOVEMBER, 2025.
PRONOUNCED ON : 12th DECEMBER, 2025.

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

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 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking quashing of the First Information Report dated 29.01.2025, registered as Crime No.37/2025 at Police Station Dhantoli, District Nagpur, for offences punishable under Sections 354 and 376, of the Indian Penal Code, 1860. The applicant has further prayed for quashing of the Charge-sheet/Final Report bearing No.52/2025 dated 07.04.2025, which is presently pending before the District and Sessions Court, Nagpur.

3. As per the case of non-applicant No.2, and in accordance with the contents of the First Information Report, dated 29.01.2025, in the year 2022 she became acquainted with the applicant through Facebook, and they used to chat with each other. It is alleged that the applicant, who works in Nagpur M.I.D.C. and has a weekly off on Wednesdays, started taking the non-applicant No. 2 to Janki Talkies, near Cotton Market, Nagpur, almost every Wednesday to watch movies. Thereafter, the applicant expressed that he liked non-applicant No. 2 very much and wanted to marry her. Initially there was no misbehaviour, but subsequently he began holding her inappropriately and kissing her. It is further alleged that on 18.06.2024 the accused took non-applicant No.2 to

Shegaon and there, at Atithi Niwas Guest House, forcibly established physical relations with her. Even after returning to Nagpur, the applicant continued to meet the non-applicant No.2 almost every Wednesday at Janki Talkies. It is alleged that on 25.06.2024 the accused called the non-applicant No.2 and informed her that his parents were not agreeing to the marriage and, therefore, he would not marry her. Aggrieved by this non-applicant No.2 file the present report which is challenged in the present application.

4. We have heard Mr. Roshan R. Prajapati, learned counsel for the applicant, Mr. A.J. Gohokar, learned Additional Public Prosecutor for non-applicant No.1/State and Mrs. Anuprita Mishrikotkar, learned counsel for non-applicant No.2.

5. Learned counsel for the applicant submits that the entire First Information Report, when perused as a whole, reveals that the same is wholly false, fabricated and bogus. It is submitted that non-applicant No.2 has lodged the present First Information Report only with a view to take revenge for non-performance of marriage and to falsely implicate the applicant. The alleged incident of forcible physical relations is stated to have taken place on 18.06.2024, whereas the First Information Report has been lodged after a delay of more than one year (i.e. in July 2025). The said

inordinate and unexplained delay itself raises a strong presumption of false implication and shows that the case of non-applicant No.2 is an afterthought.

6. It is further submitted that after returning from Shegaon the non-applicant No.2, started pressurizing the applicant to marry her. The applicant clearly informed her that she is older to him and, therefore, marriage was not possible. Thereafter, during the month of September, October and November 2024, non-applicant No.2 lodged false complaints against the applicant before the Nagpur Municipal Corporation, Samaj Kalyan Department, Dharampeth Zone-II, Nagpur. In the proceedings and statements recorded therein, non-applicant No.2 herself admitted that she was in a love relationship with the applicant and even demanded Rs.2,000/- per month as maintenance from him.

7. The learned Counsel for the applicant submits that non-applicant No.2 made persistent efforts to pressurize the applicant and to extort money from him. It is contended that in the presence of the Mahila Cell, Nagpur, non-applicant No.2 openly demanded a sum of Rs.10/- lakhs from the applicant for settling the dispute. The present First Information Report is nothing but a counterblast, lodged with mala fide intent solely to extract money and to wreak vengeance upon the applicant.

8. Mr. A.J. Gohokar, learned Additional Public Prosecutor for non-applicant 1 strongly opposed the contentions raised on behalf of the applicant and submitted that the prosecution Agency was justified in registering the offences punishable under Sections 354 and 376 and of the Indian Penal Code.

9. Learned Counsel for non-applicant No.2 has strongly opposed the present application and submits that on 18.06.2024, the applicant took the complainant to Shegaon on the pretext of visiting the temple and forcibly established physical relations with her without consent. It is further submitted that barely a week later, on 25.06.2024, the applicant telephoned non-applicant No.2 and informed her that his family members were not agreeing to the marriage.

10. Learned counsel for the non-applicant No.2 vehemently contended that even though the prosecutrix is a major, the physical relations were never truly consensual. The applicant was, from the very inception of the relationship in 2022, fully aware that non-applicant No.2 was approximately eight years elder to him. Despite such knowledge, he repeatedly promised marriage, induced her into a physical relationship, and thereafter dishonoured the promise only on the ground of the very same age difference which was known to him from day one.

11. Lastly, the counsel for non-applicant no. 2 submits that the First Information Report and the Charge-sheet states that consent was given by non-applicant No.2 for physical relations was under a complete misconception of fact, believing the applicant's repeated assurances of marriage. The moment the applicant refused to marry her, the said consent stood vitiated and became no consent in the eyes of law.

12. In the conspectus of the admitted facts and upon a careful scrutiny of the entire material on record, the position which clearly emerges is that both the applicant (aged about 30 years) and non-applicant No. 2 (aged 38 years at the time of lodging the F.I.R.) are major, matured, educated and worldly-wise adults. Their relationship, which commenced in the year 2022 through mutual interaction on Facebook, continued for over two years till the year 2024. Throughout this protracted period, non-applicant No.2 actively and voluntarily participated in regular outings, weekly movie visits almost every Wednesday at Janki Talkies, Nagpur, and a joint trip to Shegaon. There is nothing on record to show that non-applicant No.2 was a innocent or gullible woman who could be easily overpowered or deceived.

13. Further non-applicant No.2, in her own statement recorded before the N.M.C., Samaj Kalyan Department,

Dharampeth Zone-II, Nagpur on 26.09.2024, admitted that the physical relations on 18.06.2024 at Shegaon were consensual in nature. Further, in her subsequent statement to the police on 31.01.2025, she disclosed that the applicant had contacted her as late as 25.09.2024 i.e., more than three months after the alleged incident, and that during the entire intervening period she continued to meet and maintain the relationship with applicant. The call-detail records placed on record conclusively establish that contact between the parties persisted even after 25.09.2024 and after she had already approached the N.M.C., Samaj Kalyan Department, Dharampeth Zone-II, Nagpur on 26.09.2024.

14. 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 promise of marriage promise. The conduct of non-applicant No.2 is wholly consistent only with inference of a consensual, adult romantic relationship that subsequently turned sour.

15. The concept of 'Consent' has been elaborated by the Hon'ble Supreme Court in the case of **Samadhan Manmothe Vs. State of Maharashtra & another**, reported in 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 male 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.”

16. As regards the invocation of Section 354 Indian Penal Code, 1860, the legal position has been authoritatively clarified by the Hon’ble Supreme Court in its judgment in **Naresh Kumar Aneja Vs. State of Uttar Pradesh & Anr.**, reported in (2025) INSC 19, Para 12 which reads as under :

12. *A bear perusal of Section 354, IPC reveals that for it to apply, the offence must be committed against a woman; criminal force must be applied against her; and such application of force must be with the intent to outrage her modesty. [See: Raju Pandurang Mahale v. State of Maharashtra]*

12.1 Criminal force is defined in Section 350 IPC¹¹, however, what exactly does modesty means, which is an essential aspect for this Section to apply, has not been defined so as to constitute an offence u/s 354 IPC. any discussion on this Section is incomplete without reference to Rupan Deol Bajaj (supra) wherein the Learned Judges observed :

“14. Since the word ‘modesty’ has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to

Shorter Oxford English Dictionary (3rd Edn.) modesty is the quality of being modest and in relation to woman means “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct”. The word ‘modest’ in relation to woman is defined in the above dictionary as “decorous in manner and conduct; not forward or lewd; shamefast”. Webster's Third New International Dictionary of the English Language defines modesty as “freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct”. In the Oxford English Dictionary (1933 Edn.) the meaning of the word ‘modesty’ is given as “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions”.

15. ... From the above dictionary meaning of ‘modesty’ and the interpretation given to that word by this Court in *Major Singh* case [AIR 1967 SC 63 : 1967 Cri LJ 1 : 1966 Supp SCR 286] it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman ...”

12.2 While we hold the above observations as also the discussion made in *Major Singh* (supra) in the highest esteem and regard, it must not escape us that the observations were made in the societal context and milieu of that time and its import today should be interpreted in our present context. Reference in this regard may be made to observations by Bhat, J in *Attorney General v. Satish*,

“66. ... These require an element of application of physical force, to women. The expression “modesty” was another limitation as older decisions show that such a state was associated with decorousness [*Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri)

1059] of women. This added a dimension of patriarchy and class. [Section 354 (or any other provision of IPC) does not offer a statutory definition of the term “modesty”, and over time, was interpreted broadly, contemporaneously with the developing and acknowledged role of women in society, to overcome its inherently colonial and patriarchal origins. ... One cannot be unmindful of the circumstances in which these provisions were enacted by a colonial power, at a time, when women's agency itself was unacknowledged, or had limited recognition. Further, women in India were traditionally—during the time of enactment of IPC, in the mid- Nineteenth Century—subordinated to the care of their fathers, or their husbands, or other male relatives. They had no share in immovable property; notions of gender equality were unheard of, or not permitted. Women had no right to vote. Quite naturally, the dignity of women— or indeed their autonomy, was not provided for.

67. The advent of the Constitution of India revolutionised—at least in law, all that. Regardless of gender, race, caste, religion or region, or all of the acknowledged sectarian and discrimination enabling barriers, everyone enjoyed equality of law, and equal protection of law (Article 14). Further, the provision in Article 15(1) proscribed discrimination by the State (in all its forms) on various grounds, including gender. Article 15(3) enabled the State to enact special provisions for women and children.”

12.3 Turning to the facts of the instant case, keeping in view the contents of the FIR, the statement in the final report of the investigating officer, and the statement u/s 164 CrPC of the complainant, we are of the view that even prima facie the ingredients as referred to supra, are not met. The record is silent with respect to the use of any force, apart from bald assertions of mental and physical discomfort caused to the complainant by the appellant.

12.4 It is well settled that for mens rea to be

established, something better than vague statements must be produced before the court. As evidenced by the annexures referred to above, i.e. the FIR, the preliminary investigation report as also the concluding portion of the chargesheet, no direct allegation nor any evidence in support thereof can be found attributing intent to the appellant. It cannot be said, then, that a case u/s. 354 IPC is made out against the appellant.

17. In view of the arguments advance and upon a holistic appreciation of the entire material on-record and the consistent judicial precedent on the subject. We are therefore of the view that the matter squarely falls within the laid down parameters of the judgment in the case of **State of Haryana Vs. Bhajan Lal, 1992**, reported in **AIR 604**, which read as under :

“1)

2)

3)

4)

5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

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.”*

18. The allegations made in the First Information Report

are improbable inasmuch as it is not expected of a 38 years old independent woman, actively sustained an intimate relationship with the applicant for over two years, voluntarily accompanied him on weekly outings and trip to Shegaon, and, by her own admission before the N.M.C., Samaj Kalyan Department on 26.09.2024, accepted that the physical relations of 18.06.2024 were consensual. Her continued meetings, telephonic conversations and emotional engagement with the applicant for several months even after the alleged refusal to marry on 25.06.2024, coupled with the wholly unexplained delay of more than seven months in lodging the F.I.R., render the allegations of force, deceit or vitiated consent manifestly improbable and actuated by ulterior motive.

19. In our view, therefore this is a fit case to quash the First Information Report and all consequential proceedings arising therefrom. Hence, we pass the following order.

ORDER

- (i) The application is allowed.
- (ii) The First Information Report bearing Crime No. 37/2025, dated 29.01.2025, registered with Police Station Dhantoli, Nagpur, for offences punishable under Sections 354 and 376 of the Indian Penal Code, together with consequential proceedings,

including Final Report/Charge-Sheet No.52/2025 dated 07.04.2025 pending before the District & Sessions Judge, Nagpur, are hereby quashed and set aside to the extent of applicant.

(iii) The application is disposed of.

(iv) Fees of the appointed counsel be quantified as per rules.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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