

CRL RC(MD)No.771 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.771 of 2025

and

CRL MP(MD)No.9500 of 2025

R.Kiruthiga

... Petitioner/ Petitioner

Vs.

1.The Inspector of Police,
Srirangam All Women's Police
Station,
Trichy City.
(Crime No.24 of 2024)

2.The Assistant Commissioner of
Police,
Srirangam Range,
Trichy city.

3.The Commissioner of Police,
Trichy City.

4.N.Sri Ponaiyan @ Ponaiyan

... Respondents / Respondents

(R-4 is impleaded as per order of this Court dated 15.07.2025
made in CrI.M.P.(MD)No.9193 of 2025 in CrI.RC(MD)No.771 of
2025)

PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records relating to the order dated 12.06.2025 passed in Cr.M.P.No.6806 of 2025 by the learned Additional Mahila Court (JM Level), Thiruchirappalli and set aside the said order as illegal, unjust, and arbitrary and direct appropriate action for alteration of FIR under Section 69 & 108 of the BNSS, 2023.



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CRL RC(MD)No.771 of 2025

For Petitioner : Mr.K.Sivabalan
For R-1 to R-3 : Mr.M.Sakthi Kumar,
Government Advocate
(Criminal side)
For R-4 : Mr.T.Lenin Kumar

ORDER

The present criminal revision petition has been filed challenging the order dated 12.06.2025, passed by the learned Additional Mahila Court, Judicial Magistrate Level, Thiruchirappalli, in Crl.M.P. No.6806 of 2024, dismissing the petitioner's plea under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) to direct alteration of penal provisions to Section 69 of the Bharatiya Nyaya Sanhita, 2023 (BNS) and to have the investigation monitored by the Commissioner of Police.

2. *Factual Background:*

The petitioner and the accused became acquainted through social media in November 2023, leading to a romantic relationship and repeated acts of sexual intimacy at different venues in November 2023, January 2024, and May 2024, allegedly on the false promise of marriage. On 10.06.2024, the petitioner conceived, but the pregnancy was aborted allegedly at the insistence of the accused. On 30.08.2024, the accused allegedly refused marriage outrightly. The petitioner attempted suicide in despair but was rescued. On the petitioner's complaint, Crime No.24 of 2024 was registered on 22.09.2024, initially under Sections 417 and 420 IPC,



later altered to Sections 417, 376(2)(n), and 313 IPC. A final report has since been filed before the learned Magistrate. The petitioner, however, filed CrI.M.P. No.6806 of 2024 under Section175(3) of BNSS, 2023, seeking alteration of the penal sections to Section 69 BNS, 2023, (sexual intercourse by deceitful means) and monitoring of the investigation. The learned Magistrate dismissed the petition, holding that once a charge-sheet is filed, the de facto complainant cannot insist upon alteration of sections through an application under Section175(3) of BNSS,2023.

3. **Submissions:**

Petitioner's submissions:

The alleged refusal to marry on 30.08.2024 was subsequent to the commencement of BNS, 2023, and therefore offences under Section 69 of BNS, 2023, ought to apply. The deceit was continuous; hence Section 518 BNSS, 2023, on continuing offences applies. ***Relies on Sakiri Vasu v. State of U.P.¹ and Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage²***, where the Hon'ble Supreme Court held that the Magistrate has ample power under Section156(3) CrPC, 1973, (now Section175(3) BNSS) to direct proper investigation, including correction of sections. Contends that the police wrongly recorded the offence period in Column 3 of the FIR,

¹ (2008) 2 SCC 409

² (2016) 6 SCC 277



limiting it to Nov 2023–June 2024, while the deceit continued till 30.08.2024.

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Respondents' submissions:

All acts of sexual intercourse occurred prior to 01.07.2024 (the commencement of the new codes). Substantive offences are therefore governed by IPC, not BNS, in view of Article 20(1) of the Constitution and Section 6 of General Clauses Act, 1897. Investigation has been completed; at this stage, the proper remedy lies in the trial court's power to alter or add charges under Section 239 BNSS, 2023. The refusal to marry cannot be treated as a “continuing offence”; reliance is placed on ***State of Bihar v. Deokaran Nenshi***³.

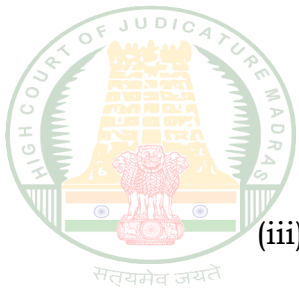
4. Issues for Consideration:

The following points arise for determination:

(i) Whether the petition under Section 175(3) of BNSS, 2023, is maintainable after a final report has been filed?

(ii) Whether the alleged conduct falls within the ambit of Section 69 of BNS, 2023, or continues to be governed by the IPC?

³ (1972) 2 SCC 890



(iii) Whether the doctrine of continuing offense extends the occurrence into the period after the BNS came into force?

(iv) Consequential relief.

5. **Discussion:**

5(i). Table of Extracted Provisions

A. Constitution of India

Article 20(1):

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

B. Bharatiya Nyaya Sanhita, 2023 (BNS) Section 69 – Sexual intercourse by employing deceitful means, etc.

“Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

C. Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)



Section 175(3):

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“Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above mentioned.”

(Equivalent to section 156(3) CrPC; empowers Magistrate to direct registration/proper investigation.)

Section 193 (9):

“Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate, and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (7) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3): Provided that further investigation during the trial may be permitted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may extend with the permission of the Court.”



CRL RC(MD)No.771 of 2025

(Equivalent to section 173 CrPC).

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Section 239 – Court may alter charge:

“(1) Any Court may alter or add to any charge at any time before judgment is pronounced.”

(Equivalent to Section 216 CrPC)

Sections 514–518 – Limitation

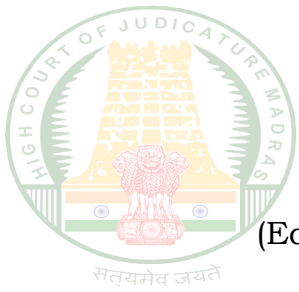
Section 514(1): “Except as otherwise provided elsewhere in this Sanhita, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.”

(Equivalent to Section 468 CrPC)

Section 515(1)(b): The period of limitation, in relation to an offender, shall commence where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier.

(Equivalent to Section 469 CrPC)

Section 518: “In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.”



CRL RC(MD)No.771 of 2025

(Equivalent to Section 472 CrPC)

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D. Indian Penal Code, 1860 (IPC)

Section 417 – Punishment for cheating:

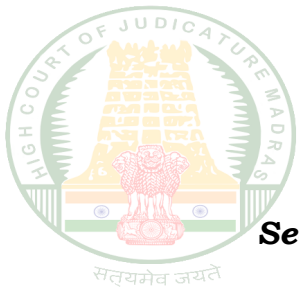
“Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Section 420 – Cheating and dishonestly inducing delivery of property:

“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 376(2)(n):

“Whoever commits rape repeatedly on the same woman shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”



Section 313 – Causing miscarriage without woman’s consent:

“Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

E. General Clauses Act, 1897

Section 6 – Effect of repeal:

“Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of



any offence committed against any enactment so repealed; or

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(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed”

5(ii) Maintainability under BNSS Section.175(3) Scope of Section 175(3) BNSS, 2023.

This provision (akin to CrPC s.156(3)) enables a Magistrate to direct proper investigation. The Supreme Court in **Sakiri Vasu v. State of U.P.**⁴, observed:

“27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

⁴ (2008) 2 SCC 409



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28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

Similarly, in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage**⁵, the Court reaffirmed:

Para 2:

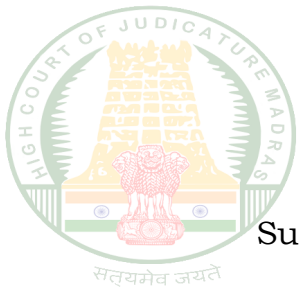
“If a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court ... but to approach the Magistrate under Section 156(3) Cr.P.C. If such an application under Section 156(3) Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done.”

However, once investigation is complete and a final report under Section 193 of BNSS, 2023, (Section 173 CrPC) is filed, the law provides recourse for alteration of charges under Section 239 of BNSS, 2023. Hence, the petition under Section 175(3) was not maintainable.

5(iii) applicability of Section 69 BNS

S. 69 BNS, 2023, criminalises sexual intercourse by deceitful means or false promise to marry. The acts of intercourse in this case are alleged to have occurred in Nov 2023, Jan 2024, and May 2024, which are all, prior to 01.07.2024, the commencement of BNS.

⁵ (2016) 6 SCC 277



Substantive penal law cannot be applied retrospectively, as mandated by Article 20(1) of the Constitution. The General Clauses Act, 1897, Section. 6, and the savings clause in BNSS/BNS preserve the continued application of IPC to acts prior to the new enactments.

Hence, while the refusal to marry on 30.08.2024 may corroborate intent, the offence of sexual intercourse by deceit was complete at the time of intercourse, prior to the commencement of BNS.

Finding: The case is governed by the IPC, not Section 69 of BNS, 2023.

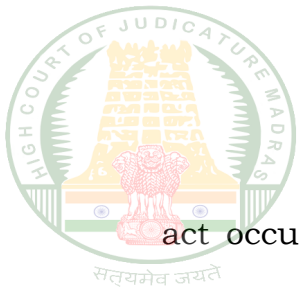
Thus, the IPC governs substantive offences occurring prior to 01.07.2024.

5(iv) Continuing Offence:

The petitioner argued that deceit continued till 30.08.2024, when the accused refused marriage. In *State of Bihar v. Deokaran Nenshi*, (1972) 2 SCC 890, the Supreme Court defined “continuing offence” thus:

“5. A continuing offence is one which is susceptible of continuance and is distinguishable from one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, liability for which continues until the rule or its requirement is obeyed or complied with.”

Sexual intercourse induced by a false promise is complete when the



act occurs. The subsequent refusal to marry may corroborate intent, but does not convert the act into a “continuing offence.”

5(v) False Promise v. Breach of Promise:

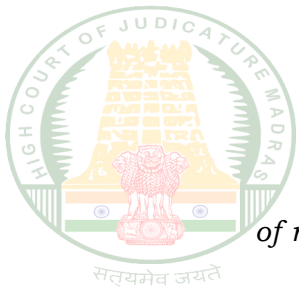
The Supreme Court in **Pramod Suryabhan Pawar v. State of Maharashtra**⁶, held:

“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:

“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 of the 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 of the IPC and can be convicted for the offence under Section 376 of the IPC.” Similar observations were made by this Court in Deepak Gulati v State of Haryana (“Deepak Gulati”):

“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

⁶ (2019) 9 SCC 608



of marriage by the accused...”]

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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.”

Similarly, in **Deepak Gulati v. State of Haryana**⁷, it was held:

“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 mis-representation made to her by the

⁷ (2013) 7 SCC 675



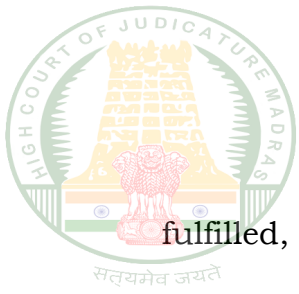
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accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be 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.”

22. In **Deelip Singh (supra)**, it has been observed as under:

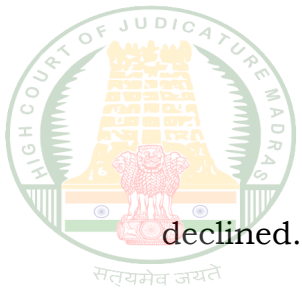
“19. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.”

6. The Hon'ble Supreme Court clarified that, “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, the consent is vitiated. On the other hand, if the promise was made in good faith but subsequently could not be



fulfilled, the same will not amount to rape, the crucial aspect is the intention of the accused at the time of making the promise. If the intention was not genuine from inception, the case would fall within the ambit of Section 375 IPC and that there is a distinction between the mere breach of a promise and a false promise. The former falls outside the scope of law, but the latter, if shown to have been made with intent to deceive the woman from the very inception, vitiates consent. Consent given on such false promise is not a valid consent". Thus, the petitioner's grievance can be fully adjudicated within the framework of IPC provisions already invoked, with the trial court empowered under Section 239 BNSS, 2023, to alter or add charges if further evidence justifies.

7. Section 175(3) of BNSS, 2023 (akin to Section 156(3) CrPC, 1973) empowers a Magistrate to direct registration of FIR and proper investigation. The Supreme Court in Sakiri Vasu (supra) held that the Magistrate is competent to order investigation when the police fail to act. However, once investigation is completed and a final report under Section 193 of BNSS, 2023 (Section 173 CrPC, 1973) is filed, the proper recourse is to seek further investigation or rely on the Court's power under Section 239 of BNSS, 2023 to alter charges. In the present case, since the final report has already been filed, the petitioner cannot insist upon alteration of sections through an application under Section 175(3) of BNSS, 2023. The Magistrate rightly



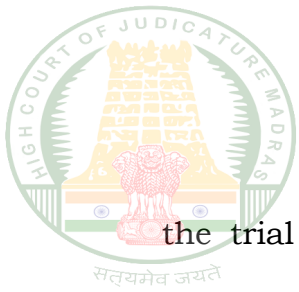
CRL RC(MD)No.771 of 2025

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8. The trial court retains power under Section 239 of BNSS, 2023 to alter or add charges at any stage before judgment. If, upon considering the evidence, the trial court finds elements of any additional or distinct offence, it may exercise its statutory power. The Investigating Officer may, if necessary, file a supplementary report under Section 193(8) of BNSS, 2023. The grievance regarding incorrect recording of the offence period in the FIR can also be addressed through such report.

9. The petition under Section 175(3) of BNSS, 2023, was rightly dismissed, as it is not maintainable after filing of the charge-sheet. The alleged sexual acts occurred prior to 01.07.2024; hence IPC provisions govern substantive liability, not Section 69 of BNS, 2023. The doctrine of continuing offence does not apply; the later refusal to marry is not an extension of the earlier acts. The proper remedy lies in the trial court's powers under Section 239 of BNSS, 2023, to alter or add charges, and in supplementary investigation under Section 193(9), if warranted.

10. Accordingly, this Criminal Revision Petition is dismissed. However, it is clarified that the petitioner is at liberty to seek appropriate reliefs before the trial court, including alteration of charges or further investigation, which



CRL RC(MD)No.771 of 2025

the trial court shall consider on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Additional Mahila Court (JM Level),
Thiruchirappalli.
- 2.The Inspector of Police,
Srirangam All Women's Police
Station,
Trichy City.
(Crime No.24 of 2024)
- 3.The Assistant Commissioner of
Police,
Srirangam Range,
Trichy city.
- 4.The Commissioner of Police,
Trichy City.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL RC(MD)No.771 of 2025

L.VICTORIA GOWRI, J.,

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CRL RC(MD)No.771 of 2025

25.08.2025