



2025:DHC:495



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 29th January, 2025**

+ **CRL.M.C. 2143/2023 & CrI.M.A. 8099/2023**

PRABHAT PRATAP RAO

.....Petitioner

Through: Mr. Manoj Swarup Sr. Advocate
with Mr. Dhawesh Pahuja, Mr.
Neelmani Pant, Mr. Hamad Tariq,
Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

.....Respondents

Through: Ms. Richa Dhawan, APP.
SI Meenakshi Mann PS North
Rohini and SI Sajjani DIU West.
Mr. Kunal Madan and Ms. Prachi
Babra , Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] seeking quashing of the FIR bearing No. 228/2016 dated 9th May, 2016, registered against the petitioner under Sections 376 and 506 of the



2025:DHC:495



Indian Penal Code, 1860 (hereinafter “IPC”) at Police Station North Rohini, Delhi and the consequential proceedings emanating therefrom pending before the learned Additional Sessions Judge, Rohini Court, New Delhi (hereinafter “ASJ”).

FACTUAL MATRIX

- a) The prosecutrix met the petitioner for the first time through a mutual friend, namely Mr. Ali Imran, in the year 2012. After a few days, a party was organized by Mr. Ali Imran, where the petitioner met the prosecutrix for the second time and allegedly gave a marriage proposal to her.
- b) It is stated in the FIR that the petitioner used to frequently call the prosecutrix and ask her about the decision of marriage. After a few days, the prosecutrix believing that the petitioner has really fallen in love with her, agreed to marry him. Thereafter, the petitioner and the prosecutrix started meeting each other frequently and going out for dinner/lunch.
- c) In July 2012, the petitioner allegedly took the prosecutrix to his apartment and asked for her consent to indulge in physical intimacy with her, while promising to marry her. It is further alleged that the prosecutrix agreed to establish physical relationship with the petitioner based on the promise of marriage made by him.
- d) In August 2013, pursuant to securing a new job, the prosecutrix moved to Pune. After shifting to Pune, the



2025:DHC:495



petitioner and the prosecutrix used to visit each other in their respective cities. It is alleged that the petitioner in his conversations with the prosecutrix, always used to promise to marry her. It is further alleged that the petitioner told the prosecutrix that his parents have agreed for their marriage and that they will get married at a later point in future.

e) In August 2014, the petitioner got a job in Gurgaon and subsequently in October 2014, the prosecutrix visited the petitioner. During her visit, it is alleged that the petitioner took the prosecutrix to his friend's house in Mukherjee Nagar, Delhi, where they both stayed the night and the petitioner forcibly made sexual relations with her while also promising to marry her.

f) It is alleged that the prosecutrix repeatedly kept on asking the petitioner about their marriage but the petitioner would always avoid the issue by saying that they will get married later. Subsequently, the prosecutrix got a job in Gurgaon and when she informed the petitioner about the same, he allegedly forbade her from coming to Gurgaon and instead asked her to look for a job in Bangalore.

g) The prosecutrix observed that the behaviour of the petitioner had changed and also that the petitioner had started speaking to her less often than earlier. In August 2015, the petitioner ended his relationship with the prosecutrix and informed her of his decision of not marrying her.





2025:DHC:495



h) It is alleged that the petitioner was in a relationship with another person since February, 2015. When the prosecutrix enquired about the same, the petitioner asked her to meet him at Connaught Place, New Delhi. It is alleged that the petitioner took the prosecutrix from Connaught Place to his friend's house in Mukherjee Nagar. However, as the said house was locked, he took her to another friend's house in Rohini, Delhi, where they stayed for a few hours. It is further alleged that the said friend left the house for a while and subsequently, the petitioner forcibly made sexual relations with her, while also reiterating his promise to marry her.

i) The prosecutrix met the petitioner again in the second week of October, 2015 in Ghaziabad, where the petitioner again refused to marry the prosecutrix.

j) Thereafter, on 9th May, 2016, the instant FIR was registered at the instance of the prosecutrix against the petitioner at Police Station, North Rohini, Delhi under sections 376 and 506 of the IPC. Subsequently, the petitioner was arrested by the investigating agency in connection with the instant FIR.

k) The learned ASJ vide order dated 4th June, 2016 allowed the regular bail application of the petitioner. Subsequently, after thorough investigation, the chargesheet was filed in the instant case, and the trial commenced against the petitioner.





1) The learned ASJ vide order dated 9th May, 2017, framed charges against the petitioner under Section 376 of the IPC. The said order was challenged by the petitioner in Criminal Revision Petition No. 377/2017 before this Court, which was dismissed as withdrawn vide order dated 16th August, 2017.

m) Aggrieved by the criminal proceedings in the instant case, the instant petition has been filed by the petitioner seeking quashing of the instant FIR and the consequential proceedings emanating therefrom.

PLEADINGS BEFORE THIS COURT

2. The grounds taken by the petitioner in the instant petition are as follows:

“A. BECAUSE the Petitioner is innocent and has been falsely implicated in the offence as alleged by the complainant in the instant case. No offence, as alleged, has ever been committed by the Petitioner herein.

B. BECAUSE both the prosecutrix and the Petitioner were known to each other since a long duration and the alleged offence was allegedly committed since June, 2012 up till September, 2015 as per the prosecutrix. It is submitted that the prosecutrix in her statement had admitted the fact that she had developed physical relations for over 3 years knowingly well the consequences of the same and therefore, the Petitioner cannot be convicted under Section 376 of IPC as alleged by the Respondent No.2.

C. BECAUSE the Petitioner and as well as the prosecutrix were not available at the given places which would be revealed from the CDRs and location charts of the mobile





phones of the Petitioner and the Respondent No.2.

D. BECAUSE the statement of prosecutrix was recorded under Section 164 of Cr.P.C. which clearly indicates that the relationship between the Petitioner and the Respondent No.2 was consensual in nature. It is submitted that a bare reading of the FIR as well as the statement under Section 164 of CrPC would indicate that there was absolutely no intent on the part of the Petitioner, when he entered upon the relationship, not to marry the Respondent No.2 nor can it be even suggested that the promise to marry was false. Hence, it has been submitted that no offence has been made out within the meaning of Section 376 of IPC.

E. BECAUSE there is distinction between rape and consensual sex. It is submitted that the allegations on the face of the FIR indicate that the physical relationship between the Petitioner and the Respondent No.2 existed for over period of three years with her consent as evidenced by multiple periods of cohabitation, visits, and lack of resistance or complaint by the Complainant.

F. BECAUSE the main contention raised on behalf of the Respondent No.2 is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had promised to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry





her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

G. BECAUSE taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature.

H. BECAUSE in the instant case, the prosecutrix who herself was a married woman who was arrayed as accused in case of suicide of her husband, could not be said to have acted under the alleged false promise given by the Petitioner or under the misconception of fact while giving the consent to have sexual relationship with the Petitioner. Undisputedly, she continued to have such relationship with him at least for about three years till she gave complaint in the year 2016. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as 'rape' by the Petitioner, would be stretching the case too far.

I. BECAUSE the prosecutrix being a married woman was matured enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she was accused in her husband's death case by having relationship with the Petitioner, for whom she had developed liking for him. She had gone to travel with him out of station with her consent, to live a better life with the Petitioner.





J. BECAUSE the prosecutrix started liking parents of the Petitioner and no time that the Petitioner had ever given a false promise of marriage as alleged by the Prosecutrix. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had been cheated by the Petitioner.

K. BECAUSE the Respondent No.2/prosecutrix in her statement states that she continued relations with the Petitioner even after deadline of February, 2014, when the Petitioner did not marry her and she continued relations with the Petitioner even after deadline of Feb 2015 which shows that the physical relations continued long after their getting married had become a disputed matter.

L. BECAUSE the Respondent No.2/prosecutrix further in cross examination states that she continued believing the assurances of the Petitioner as they were in a love relationship. The Respondent No.2/prosecutrix continued the sexual relationship even after June 2015 when she developed a feeling that the Petitioner would not marry her, although allegedly it was forcibly on assurance of marriage at Rohini in September 2015. As per CDR details, there was neither Petitioner nor Respondent No.2/prosecutrix at the alleged location of Rohini in September 2015 which shows conduct of the Respondent No.2/prosecutrix in lodging false FIR...”

3. The grounds taken by the respondent to oppose the instant petition are as follows:

“1. Most respectfully it is submitted that a case vide FIR No. 228/2016 U/s 376/506 IPC Dt 09.05.2016 PS North Rohini, New Delhi was registered on the complaint of the Prosecutrix wherein the complainant stated that she met with a person namely Prabhat Rao S/o Pratap Narayan in June 2012 through her mutual friend when she was working at IT Firm company in Kolkata and after some time they came into relationship. She further alleged in July 2012,



Prabhat Rao took her his room and asked her for physical relations wherein she refused for the same and told him that they should get married. Thereafter the accused assured her that he would marry her. The complainant further alleged that she was subjected to sexual assault by her friend Prabhat Rao, who forcefully committed rape with her on pretext of marriage.

2. *That during the course of investigation, medical examination of the victim was conducted at B.S.A. Hospital vide MLC No. 24/16 wherein as per MLC Victim was in relationship with Prabhat Rao last 3 years. H/o Sexual intercourse with him multiple times. He has promised her for marriage and now he is not keeping his promise. She filed a case against him of sexual assault. The exhibits were also seized by the doctor and the same was taken into police possession through seizure memo and sent to FSL. Rohini, Delhi for further analysis.*

3. *That on 11.05.2016 the statement of the Prosecutrix was also got recorded U/s 164 Cr.P.C. wherein the prosecutrix reiterated her initial version that she was in relationship with a person namely Prabhat Rao from June 2012 to October 2015 who made physical relations with her on the pretext of marriage...*

SUBMISSIONS

(on behalf of the petitioner)

4. Mr. Manoj Swarup, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner is not guilty and he has been falsely implicated in the present case. It is further submitted that no offence, as alleged against the petitioner, has ever been committed by him.

5. It is submitted that the prosecutrix and the petitioner knew each



2025:DHC:495



other for a long time and the said offence was allegedly committed between June, 2012 and September, 2015 as per the prosecution's version. It is further submitted that the prosecutrix, in her statement under Section 164 of the CrPC, had admitted the fact that she had developed intimate physical relationship with the petitioner fully aware of its consequences.

6. It is submitted that the statement of the prosecutrix under section 164 of the CrPC clearly establishes that the relationship between the petitioner and the prosecutrix was consensual in nature.

7. It is submitted that a bare perusal of the instant FIR in addition to the statement of the prosecutrix under section 164 of the CrPC makes it clear that there was no intent on the part of the petitioner to not marry the prosecutrix when he entered into the said relationship with her. It is further submitted that there is no reason to suggest that the promise made by the petitioner to marry the prosecutrix was false and hence, no offence is made out against the petitioner under Section 376 of the IPC.

8. It is submitted that there exists a distinction that needs to be drawn between rape and consensual sexual intercourse. It is further submitted that the allegations in the FIR clearly show that the physical relationship between the prosecutrix and the petitioner lasted for a period of over three years, which involved multiple periods of cohabitation and visits that were never objected to or resisted by the prosecutrix, which indicates that the said relationship was established with the consent and willingness of the prosecutrix.

9. It is submitted that the prosecution's case relies on the fact that the prosecutrix had given her consent for establishing sexual





relationship with the petitioner under the misconception of fact that the petitioner will marry the prosecutrix. It is further submitted that since the petitioner did not marry the prosecutrix, the prosecution's case is that there was no valid consent in the eyes of law.

10. It is submitted that there is a difference between giving a false promise and committing breach of promise to marry. It is also submitted that in case of false promise, the accused would not have any intention to marry the prosecutrix right from the beginning and would have deceived the prosecutrix by promising to marry her only to satisfy his sexual desire, whereas, in case of breach of promise, an individual may promise to marry in all honesty and yet encounter certain unforeseen circumstances beyond his control which prevent him from fulfilling his promise, thereby, causing a breach of promise. It is further submitted that in case of the latter, i.e., the breach of promise to marry, the accused cannot be prosecuted for the offence under Section 376 of the IPC.

11. It is submitted that the prosecutrix could not have acted under the alleged false promise to marry made by the petitioner while giving consent to establish sexual relationship with her. It is also submitted that the prosecutrix continued to indulge in the said relationship with the petitioner for about three years before she decided to lodge a complaint against the petitioner. It is further submitted that even if the allegations levelled against the petitioner are taken at their face value, the offence under Section 376 of the IPC is not made out.

12. It is submitted that the prosecutrix, in her statement, has admitted that she continued the relationship with the petitioner even after the



2025:DHC:495



deadline of February, 2014 to marry her lapsed. It is further submitted that the said relationship was continued even after the deadline of February 2015, which shows that the issue of marriage had become disputed.

13. It is submitted that the prosecutrix in a statement mentioned that she continued to be in relationship with the petitioner based on his assurance that he was in love with her and will be marrying her, however, the prosecutrix continued the relationship even after June, 2015 despite developing a feeling that the petitioner would not marry her.

14. It is submitted that as per the CDR details, neither the petitioner nor the prosecutrix were present in Rohini in September, 2015, which is the alleged place of the commission of the offence as per the statement of the prosecutrix and hence, the prosecutrix has lodged a false FIR against the petitioner.

15. It is submitted that the prosecutrix has failed to show the house of the petitioner's friend and most of the places where she allegedly used to visit the petitioner, which only shows that the instant FIR lodged against the petitioner is false.

16. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and reliefs be granted as prayed for.

(on behalf of the respondent)

17. *Per Contra*, learned APP appearing on behalf of the State vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed for being devoid of any merit.



2025:DHC:495



18. It is submitted that the prosecutrix met with the petitioner in June 2012 through a mutual friend when she was working in Kolkata. It is further submitted that subsequently they started speaking with each other frequently and entered into a relationship with each other.

19. It is submitted that the petitioner took the prosecutrix to his room and asked her to establish physical relationship with him, which was initially refused by the prosecutrix. It is further submitted that the petitioner thereafter assured the prosecutrix that he would marry her, and based on the said assurance, she gave her consent to the petitioner for establishing physical relationship with her.

20. It is submitted that the prosecutrix was subjected to sexual assault by the petitioner who obtained her consent on the pretext of marriage. It is further submitted that the petitioner also forcibly established sexual relationship twice with the prosecutrix.

21. It is submitted that the medical examination of the victim revealed that the prosecutrix was in a physical relationship with the petitioner and they had engaged in sexual intercourse multiple times. It is further submitted that the prosecutrix had engaged in sexual intercourse based on the promise made by the petitioner to marry the prosecutrix, which was subsequently breached by him.

22. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

ANALYSIS AND FINDINGS

23. Heard the learned counsel for the parties and perused the material placed on record including the FIR, chargesheet, etc. This Court has also



perused the judgments relied upon by the parties.

24. Before advertng to the merits of this case, it is important at this stage to discuss the settled law on the issue of quashing of criminal proceedings. In the case of *State of Haryana v. Bhajan Lal*,¹ the Hon'ble Supreme Court had set out the broad categories of cases in which the inherent powers of the Court could be exercised for quashing criminal proceedings. The relevant portion of the judgment is reproduced as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)

¹1992 Supp (1) SCC 335



of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(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.”

25. Upon perusal of the above, it is observed that the inherent powers of the Courts must be exercised sparingly and with great caution. From the above said judgment, it is clear that the Court may quash an FIR under Section 482 of the CrPC if it is satisfied that the allegations made



2025:DHC:495



against the accused, even when they are taken at face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. Further, the Court may also invoke its extraordinary powers to quash a complaint if the allegations made in the FIR are so absurd and improbable that no prudent person may reach a conclusion that there are sufficient grounds for proceeding against the accused.

26. Therefore, it is clear that the question of exercise of the Court's inherent powers under Section 482 of the CrPC to quash criminal proceedings would depend on the facts and circumstances of each case. However, while deciding this question, the Court does not need to determine the genuineness of the evidence placed before it. The Court's exercise is merely limited to a determination as to whether the allegations when taken at their face value, disclose the commission of the offence in question by the accused.

27. In light of the settled position, this Court is duty bound to look into whether the allegations made against the petitioner satisfy the Court that a *prima facie* case is made out against the petitioner for the commission of the offence in question. It is important to note that while considering whether a *prima facie* case is made out, the Court is not required to minutely examine the correctness of the alleged facts and it only needs to consider that when the said facts are accepted in their entirety, a *prima facie* case is made out disclosing the commission of the offence in question.

28. Having underscored the inherent powers of the High Court under Section 482 of the CrPC for quashing of FIR, we need to understand



the scope of the offence under Section 375 of the IPC which deals with rape, punishable under Section of the 376 of the IPC. While the said Section 375 of the IPC deals with various aspects of rape, in the present case, the allegations made against the petitioner in the FIR stand are twofold – *firstly*, it is alleged that the petitioner obtained the consent of the prosecutrix to engage in a sexual relationship with her on the pretext of marriage; and *secondly*, the petitioner forcibly established sexual relation with her without obtaining her consent.

29. Section 375 of the IPC defines the offence of rape, which reads as under:

“375. Rape. —A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she





believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age. Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

30. Section 375 of the IPC clearly provides that a person is said to have committed rape if he conducts any of the sexual acts as mentioned under clauses (a), (b), (c) and (d) without the consent of the woman. In terms of Section 90 of the IPC, if the consent is given under a misconception of fact, such consent is no consent in the eyes of law and cannot be considered to be a willful and voluntary consent on the part of the woman. Section 90 of the IPC reads as under:

“90. Consent known to be given under fear or misconception. —A consent is not such a consent as is





intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception...”

31. In the case of **Pramod Suryabhan Pawar v. State of Maharashtra**,² the Hon’ble Supreme Court clarified the position of law on consent under “misconception of fact” in case of an offence committed under Section 375 of the IPC which involves a false promise to marry the victim, and the relevant portion of the same is produced as under:

“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 [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , 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

²(2019) 9 SCC 608



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 Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (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;

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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 [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] 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.”

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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.

32. It is clear from a perusal of the above judgment that if the



2025:DHC:495



consent of a woman for engaging in sexual acts with her is obtained by promising to marry her without having the intention to do the same, the said consent is said to be vitiated as it is obtained by deceiving the said woman and would amount to consent under misconception of fact.

33. The consent of a woman under Section 375 of the IPC would stand vitiated in case of a misconception of fact which emerges from a promise made to marry her. In this regard, it is well-settled in law that there must be a two-pronged inquiry that the Court must conduct – *firstly*, if the promise to marry as alleged to be a false promise was made in bad faith without any intention of keeping it when the said promise was made; and *secondly*, the promise so made must bear immediate relevance and have a direct nexus to the woman's decision to engage in sexual acts with the accused.

34. In the present case, the prosecution's case is that the petitioner established physical relation with the prosecutrix over a period of time from July, 2012 to September, 2015 based on a false promise to marry her. In addition to this, the prosecution's version also suggests that the petitioner had established physical relation twice with the prosecutrix without her consent during this period.

35. *Firstly*, this Court will consider the allegations regarding the petitioner's false promise to marry the prosecutrix. The allegations in the FIR show that the consent to engage in sexual intercourse with the petitioner was given by the prosecutrix only based on his promise to marry her. There were multiple instances when assurance was given by the petitioner to the prosecutrix for marrying her. However, it is alleged that the said assurance was actually never adhered to by the petitioner.





2025:DHC:495



36. At this stage, this Court considers it imperative to consider the nature of relationship between the petitioner and the prosecutrix based on the relevant facts as alleged against the petitioner in the FIR, which are corroborated by the statement of the prosecutrix and the chargesheet. The said facts are as follows:

- a). The petitioner and the prosecutrix met each other for the first time in the year 2012 and subsequently, the petitioner expressed his love for the prosecutrix and told her that he wanted to marry her as they belonged to the same community.
- b). In July 2012, the petitioner established physical relation with the prosecutrix for the first time and the prosecutrix consented to it after the petitioner promised her that he would seek his parents' permission to marry her.
- c). Thereafter, there were multiple instances when the petitioner and the prosecutrix met each other and established physical relation.
- d). The prosecutrix asked the petitioner multiple times to marry her during the course of their relationship and she was repeatedly assured by the petitioner that he would marry her.
- e). Ultimately, in August, 2015 the petitioner ended his relationship with the prosecutrix and informed her that he will not marry her.
- f). The prosecutrix met with petitioner again in September, 2015 when he took her to his friend's house in Rohini and established sexual relation with her without her



2025:DHC:495



consent, while also reiterating his promise to marry her.

g). The petitioner also engaged in sexual act with the prosecutrix without her consent in October, 2014 at his friend's house in Mukherjee Nagar.

37. Based on the allegations made against the petitioner, it is clear that the petitioner made promise to the prosecutrix on multiple instances during the course of their relationship that he will marry her. The prosecutrix enquired the petitioner multiple times if he will be marrying her and the petitioner gave repeated assurances to the prosecutrix regarding their marriage, giving the impression that he is willing to marry her in future.

38. It is the petitioner's case that there is a difference between false promise and committing breach of promise, and hence, the prosecutrix's consent was not vitiated because of misconception of fact. In order to establish that the consent given to the petitioner by the prosecutrix to engage in sexual acts with her was vitiated by misconception of fact regarding his promise to marry her, it has to be shown as per the settled law that the allegations against the petitioner disclose that he never intended to marry the prosecutrix and that the promise made by the petitioner had a direct nexus with the prosecutrix's decision to engage in a sexual relation with the petitioner.

39. The allegations against the petitioner are that he deceived the prosecutrix from the beginning by obtaining her consent to engage in sexual acts with her on the pretext of marriage and that he never intended to marry her. The allegations further disclose that the petitioner was asked multiple times by the prosecutrix if he would





2025:DHC:495



marry her and the petitioner would always assure her that he would marry her at a later point but he never intended to actually fulfill his promise. Further, when the petitioner and the prosecutrix met in September, 2015 after the petitioner had ended the relationship with her and informed her that he would not marry her, the allegations disclose that they again engaged in sexual relation with each other as the petitioner reiterated his promise to marry her.

40. The allegations made in the FIR also disclose that the prosecutrix asked the petitioner multiple times if he would marry her before engaging in sexual acts with her and always received assurances from the petitioner that he intended to adhere to his promise. The allegations also disclose that the prosecutrix's consent to establish physical relation with her was based on the petitioner's promise to marry her.

41. Therefore, it is clear that the allegations if taken at their face value and accepted in their entirety, disclose that the petitioner never intended to marry the prosecutrix and gave repeated assurances to her regarding the same in order to obtain her consent for engaging in sexual acts with her, which was only given by her under a misconception of fact that the petitioner will marry her in future.

42. It is the petitioner's case that the possibility of the petitioner encountering certain unforeseen circumstances beyond his control which prevented him from fulfilling his promise, cannot be ruled out. However, no argument and evidence in support of it has been put forth before this Court to show that the petitioner could not marry the prosecutrix due to any obstacle which deterred him from doing the same. Instead, the allegations in the FIR disclose that the petitioner was



already involved in a relationship with another person when he ended his relation with the prosecutrix and refused to marry her in August, 2015.

43. *Secondly*, it is alleged that the petitioner engaged in sexual acts with the prosecutrix twice without her consent. As per the FIR, the first instance of establishing sexual relation with the prosecutrix without her consent occurred in October, 2014 in Mukherjee Nagar, Delhi and the second instance occurred in September, 2015 in Rohini, Delhi.

44. It is the petitioner's case that as per the available call detail records, neither the petitioner nor the prosecutrix was present at the alleged location in September, 2015, which is recorded in the Chargesheet as well, and therefore, the prosecutrix has lodged a false FIR against the petitioner. The relevant portion of the chargesheet is produced below:

"The details of mobile number XXXXXXXXXXXX of accused Prabhat and mobile number XXXXXXXXXXXX of the complainant were obtained from the service provider, in which the conversation between the two and living together with each other has been described. However, as per the call detail records available, neither the mobile number XXXXXXXXXXXX of the accused Prabhat nor the mobile number XXXXXXXXXXXX of the complainant has been found in the area of North Rohini in September 2015."

45. Even if the petitioner's submission is taken at its best case, the allegations also disclose that the petitioner established physical relation forcibly with the prosecutrix in October, 2014 as well, which needs to be determined in trial in light of the evidence adduced by the parties, as there is nothing placed on record before this Court to suggest at this



2025:DHC:495



point that the said allegation is baseless. Therefore, this Court is of the view that the allegation against the petitioner regarding establishment of physical relation forcibly with the prosecutrix needs to be examined in trial before the Court concerned.

46. It is observed upon perusal of the FIR, chargesheet, the statement of the prosecutrix and the material placed on record that the prosecutrix had asked the petitioner multiple times regarding their marriage. However, the petitioner would always give her a future timeline for the same, and ultimately refused to marry despite promising the same multiple times. Further, it is also alleged in the FIR that the petitioner engaged in sexual relation twice with the prosecutrix forcibly without her consent, while also promising to marry her in order to seek her consent. Therefore, this Court is of the view that a *prima facie* case is made out against the petitioner under Section 376 of the IPC as the allegations disclose that he induced the prosecutrix to give her consent to engage in physical relation based on the false promise of marriage made by him, and the veracity and genuineness of the allegations and evidence adduced in support of it requires to be examined in trial before the Court concerned.

CONCLUSION

47. After a thorough consideration of the entire facts and circumstances of the case, the allegations made against the petitioner when taken at their face value and accepted in their entirety, *prima facie* disclose the commission of the offence under Section 375 of the IPC as the consent given by the prosecutrix was vitiated on account of



2025:DHC:495



it being given under a misconception of fact. Further, the allegations against the petitioner also disclose that the petitioner forcibly engaged in a sexual relationship with the prosecutrix, and therefore, a *prima facie* case is made out against the petitioner in the present case for the commission of the offence under Section 375 of the IPC.

48. In view of the aforesaid discussions on facts and law, this Court is of the considered view that the present matter is not a fit case for the exercise of the Court's inherent powers under Section 482 of the CrPC to quash the FIR bearing No. 228/2016 dated 9th May, 2016, registered against the petitioner under Sections 376 and 506 of the IPC at Police Station North Rohini, Delhi and the consequential proceedings emanating therefrom.

49. Accordingly, the instant petition along with pending applications, if any, stands dismissed.

50. It is made clear that the observations made herein are only for the purpose of deciding the instant petition and the same shall not be taken as an expression of this Court on the merits of the case in the trial pending against the petitioner before the Court concerned.

51. The judgment to be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JANUARY 29, 2025
rt/st/ryp

Click here to check corrigendum, if any