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

+ CRL.REV.P. 91/2025 & CRL.M.A. 7003/2025

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.....Petitioner

Through: Mr. Jatin Raheja and Ms.
Mansi Joshi, Advocates.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Durgesh, PS Dwarka
North.

Mr. Jai Singh Yadav,
Advocate for R-2 (through
VC).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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08.07.2025

1. The present petition is filed challenging the order dated 03.02.2025 (hereafter '**impugned order**'), passed by learned Additional Sessions Judge ('**ASJ**'), South West District, Dwarka Court, New Delhi, in SC No. 752/2024 arising out of FIR No. 395/2025, registered at Police Station Dwarka North ('**FIR**').

2. By the impugned order, the learned ASJ discharged Respondent No.2 of the offence under Section 376 of the Indian Penal Code, 1860 ('**IPC**').

3. The brief facts of the case are as under:

3.1. On 23.08.2024, the FIR was registered for offences under Sections 376/506 of the IPC against Respondent No.2, pursuant to a complaint made by the petitioner. Petitioner alleged that she came in contact with Respondent No.2 in the year 2023 since they worked in the same office. It is alleged that Respondent



No.2 confessed his love to the petitioner and expressed his desire to marry her. Even though the petitioner blocked Respondent No.2, he allegedly kept trying to contact her and told her that he was going to get divorced from his wife as she was torturing him. Eventually, the petitioner accepted the proposal of Respondent No.2. After a few days, Respondent No.2 allegedly took the petitioner to a Hotel and forcefully established sexual relations with her. Respondent No.2 repeatedly assured the petitioner that he will marry her. It is alleged that in June, 2024, the petitioner found out that she was pregnant, however, Respondent No.2 pressured her to get an abortion and assured that he would marry her later. It is alleged that Respondent No.2 also gave miscarriage inducing medicine by mixing it with chocolate to the petitioner. On 07.08.2024, after the wife of Respondent No.2 left their home, Respondent No.2 asked the petitioner to look for a place for them to live in together, but he did not take any serious steps towards marriage. When the petitioner demanded commitment, Respondent No.2 allegedly asked her to move on and expressed that he had no intention to marry her, despite which, he kept establishing physical relations with the petitioner. Respondent No. 2 ultimately blocked the contact of the petitioner. On 16.08.2024, the wife of Respondent No.2 came to the house of the petitioner and beat her. On the following day, the petitioner forcefully entered the house of the petitioner and tried to convince her to sort the matter. Respondent No.2 also allegedly misbehaved with the petitioner.

3.2. On 24.08.2024, the statement of the victim was recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'). The petitioner reiterated the allegations and stated that after she had entered into a relationship with



Respondent No. 2, she found out through mutual acquaintances that he is married and has two children. She stated that Respondent No.2 told her that he was going to get divorced and that he wanted to marry her instead, after which, the parties established physical relations on multiple occasions.

3.3. Chargesheet was filed against Respondent No. 2 for the offences under Sections 376/506/313 of the IPC.

3.4. By the impugned order, the learned ASJ discharged Respondent No. 2 of the offence under Section 376 of the IPC. Since the Court was one that was specially constituted to adjudicate rape cases, considering the discharge of Respondent No. 2 for the offence of rape, the learned ASJ did not consider it apposite to comment upon allegations in relation to the other offences. The matter was placed before the learned Principal District and Sessions Judge, South West District for allocation of the case to the appropriate Court for further proceedings.

3.5. Aggrieved by the same, the petitioner filed the present petition.

4. The learned counsel for the petitioner submits that the learned ASJ has erroneously discharged Respondent No.2 of the offence under Section 376 of the IPC by conducting a mini trial, even though the petitioner had made clear allegations that she was induced into entering sexual relations through deception.

5. He submits that the accused in his disclosure statement had categorically stated that he had made a false promise to marry the petitioner. He further submits that charges ought to have been framed against the petitioner by the learned ASJ after it was ascertained that there was a breach of the promise of marriage.

6. He submits that the learned ASJ has failed to consider as to whether Respondent No.2 had deceived the petitioner into



believing that he would divorce his wife and marry her. He submits that it was wrongly assumed that just because the petitioner was aware of the marital status of Respondent No.2, she could not have been deceived into engaging in sexual relations with Respondent No.2.

7. *Per contra*, the learned counsel for Respondent No.2 submits that the learned ASJ has aptly considered the material on record before discharging Respondent No.2 of the offence under Section 376 of the IPC.

8. I have heard the counsel and perused the record.

9. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

10. Since the petitioner has assailed the impugned order whereby Respondent No.2 has been discharged of the offence under Section 376 of the IPC, it will be apposite to succinctly discuss the law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the



following principles in regard to the scope of Sections 227 and 228 of the CrPC:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the



trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

11. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

12. It is the case of the prosecution that Respondent No.2 had established sexual relations with the petitioner on the false pretext of marriage. It is alleged that the petitioner had established consensual physical relations with Respondent No.2 solely for the reason that the accused had promised to marry her after taking divorce from his wife.

13. The case of the prosecution in the present case is essentially based on the statement of Respondent No.2. It is trite law that mere testimony of the prosecutrix can be sufficient for the purpose of conviction for the offence under Section 376 of the IPC and the same requires no corroboration, however, to frame charge under Section 376 of the IPC on allegations of false promise to marry, it is to be seen whether a *prima facie* case is made out that the person who has made the promise to marry was dishonest from the beginning and had no intention of upholding his word even at the time of making such a promise. Mere breach of a promise to marry at a belated stage after significant time has elapsed cannot be termed as a false promise. The Hon'ble Apex



Court in ***Pramod Suryabhan Fawar v. State of Maharashtra*** :
(2019) 9 SCC 608, held that:

“12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...”

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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.

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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.

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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.

(emphasis supplied)

14. In the case of ***Mahesh Damu Khare v. State of Maharashtra*** : 2024 SCC OnLine SC 3471, the Hon’ble Apex Court reiterated the legal principles concerning consensual



relationships and the initiation of criminal proceedings on allegations of sexual relationship on the false promise of marriage. The Hon'ble Apex Court quashed the FIR against the appellant therein and held as under :

“22..... 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.

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27.... In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of



consent under misconception of fact.



31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.”

(emphasis supplied)

15. While discharging Respondent No.2, the learned ASJ noted that the statement given by the petitioner clearly reflects that she was already aware of the marital status of the accused. It was also noted that the allegations were in regard to the accused establishing physical relations with the petitioner on assurance that he will marry her. It was thus observed that the petitioner was well aware of the marital status of the accused and as the petitioner was a mature working woman, she was also fully aware as to the consequences of her actions. It was further noted that merely because divorce proceedings were going on, the same does not give any ground to the petitioner to believe that the marriage would have taken place in any fixed time. It was observed that the MLC indicates history of consensual sex and while there may have been a breach of promise by the accused, however, the same is not equivalent to the promise by itself being false.

16. It is argued that the learned ASJ was unduly weighed by the fact that the petitioner was aware of the marital status of Respondent No.2 and it has not been duly considered as to whether the accused had deceived the petitioner to induce her consent. It is alleged that the petitioner continued the relationship with the accused even after finding out about his marital status as



she was under the impression that he would divorce his wife. It is pertinent to note that apart from clearly admitting in the FIR that she was aware of the marital status of the accused, it is categorically mentioned that when the petitioner insisted on commitment, the accused communicated his intention to not marry her and asked her to move on. It is mentioned that despite the same, the parties continued to establish physical relations. The relevant portion of the FIR is reproduced hereunder:

*“When I started demanding a commitment, he began avoiding me and eventually told me that he had no intention of marrying me. He suggested that I find another man and move on. **Yet, he kept getting physically involved with me.** When I finally realized he was manipulating me, I asked him to give me a written statement confirming that he wouldn’t marry me. He refused, saying it would be an insult to him. Then, he blocked me and stopped answering my calls.”*

17. Considering that the parties continued to engage in physical relations even after the accused had explicitly communicated his intention to not marry the petitioner, *prima facie*, it is improbable that the consent of the petitioner was tethered on any misconception of fact in relation to the promise of marriage.

18. Even otherwise, there is no material on record to show that the promise made by the accused to marry the petitioner was false at the very outset and that the same was made in bad faith. As per the case of the prosecution, the parties entered into a relationship in the year 2023 and were together till the accused ultimately blocked the petitioner in August, 2024. It appears from the FIR that the wife of the accused had only left their matrimonial home on 07.08.2024 and for the majority of their relationship, the wife of the petitioner was living with him. Even so, the relationship between the petitioner and the accused continued over a period of time where the petitioner was aware



that the divorce of the accused had not been finalised.

19. The learned ASJ has also rightly noted that the petitioner is a mature woman who was gainfully employed as well. Being an adult, the petitioner continued a relationship with the accused, out of her own volition, and it cannot be said that she did not understand the significance and consequences of her actions. It is relevant to note that undisputably, the accused was undergoing divorce proceedings at the time when he entered into the relationship with the petitioner and the present case is not one where the petitioner had established physical relations with the accused under any misconception of fact in this regard.

20. Much emphasis has also been laid by the counsel for the petitioner on the alleged admission made by Respondent No.2 in his disclosure statement. Concededly, the statement relied upon by the petitioner was recorded pursuant to the arrest of Respondent No. 2, and such a confession cannot be relied upon.

21. It is argued that having found that there was a breach of the promise of marriage, the learned ASJ ought to have framed the charges and put the accused to trial for the offence of rape. In the opinion of this Court, the said argument is untenable. While conviction can be based solely on the statement of a prosecutrix, however, mere presence of bald averments in relation to promise of marriage being false is insufficient to frame charges against an accused in such circumstances. It is imperative that the statement of the prosecutrix is able to canvas such circumstances that relay credibility to the case of the prosecution in this regard and show that the promise was made in bad faith. Otherwise, the Court will be bound to frame charges in every case where there is even a breach of the promise of marriage.



22. Considering the totality of circumstances, in the opinion of this Court, grave suspicion is not raised against Respondent No.2 insofar as the offence under Section 376 of the IPC is concerned. This Court is of the opinion that the material on record does not establish a *prima facie* case against Respondent No.2 so as to warrant subjecting the petitioner to a trial for the aforesaid offence.

23. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order.

24. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 8, 2025