



2025:DHC:11995



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 22.12.2025

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CRL.M.C. 7397/2025 & CRL.M.A. 31023/2025**AMIT KUMAR**

.....Petitioner

Through: Mr. Ashish Kumar Pandey, Adv. with
petitioner in person.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Ajay Vikram Singh, APP for
State with Insp. Rajesh Sharma, SHO
SI Suruchi PS F.P. Beri. W/SI Nitesh
(Main IO).Mr. Rajesh Mishra, Mr. Shivang
Singh Rawat, Ms. Anita R. Mishra
and Ms. Divyam, Advs. for R-2. With
R-2 in person.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The present petition has been filed under Section 528 BNSS seeking quashing of FIR No. 549/2017 under Sections 376/377 IPC registered at Police Station Fatehpur Beri, New Delhi and all consequential proceedings emanating therefrom on the ground that the parties have arrived at a settlement.
2. Issue notice. Mr. Ajay Vikram Singh, learned APP for the State accepts notice. He has handed over the status report across the bar, the same is taken on record.
3. The petitioner, as well as, respondent no. 2 have joined through VC and they have been identified by their respective counsels, as well as, by the

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Investigating Officer Insp. Rajesh Sharma, SI Suruchi PS Fatehpur Beri and W/SI Nitesh (Main IO).

4. The case set out in the present petition is that the petitioner/accused and respondent no.2/prosecutrix, knew each other for some time and were already married to their respective spouses.

5. It is stated that out of the relationship between the petitioner and respondent no.2, a baby girl was born on 07.04.2014 at Dr. Ram Manohar Lohia Hospital, New Delhi, who is in the custody of respondent no.2. It is further stated that the petitioner and respondent no. 2 stayed together till October, 2017. However, on 30.12.2017 the present FIR came to be registered at the instance of respondent no.2.

6. It is further stated that a Maintenance Petition No. 270/2018 has also been filed on behalf of the daughter of the parties at Saket Family Court, New Delhi which has further given rise to an execution petition and contempt petitions.

7. During pendency of the proceedings, parties have arrived at a settlement, terms whereof have been reduced in writing in the form of a settlement agreement dated 17.09.2025, a copy of which has been annexed as Annexure P-4 to the present petition.

8. It is a term of the settlement that respondent no.2 shall withdraw all the cases filed by her against the present petitioner and shall further cooperate with the petitioner for the quashing of present FIR. The relevant terms of the settlement agreement dated 17.09.2025:

“B. WHEREAS the following cases were instituted by the First Party (Mother) against the Second Party (Father) and are pending at present:

a. Criminal case arising out of FIR No. 549 of 2017 lodged at



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PS Fatehpur Beri, New Delhi (presently charge sheet has been filed before the Ld. Session Court, Saket however charges are yet to be framed; a protest petition has also been filed by the First party towards dispute related to jewellery); and

b. Maintenance Petition No. 270 of 2018 on behalf of her Minor daughter xxxxxxxxxxxx at Saket Family Court, New Delhi and related execution and contempt petitions.

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3. In pursuant to the aforesaid settlement, it is agreed between the Parties that a joint Petition for quashing of FIR No. 549 of 2017 lodged at PS Fatehpur Beri, New Delhi and all the consequential proceedings arising out of the same including the Charge-sheets shall be filed within a week from the date of signing of the present Settlement Agreement before the High Court of Delhi. Both the Parties agree and undertake to file appropriate Petition/ Application (s) Affidavits for quashing of the aforesaid FIR. The First Party further undertakes that she shall sign all the necessary documents, affidavits, undertakings and/or No Objection Certificates in the Quashing Petition supporting the Second Party for quashing of the abovesaid FIR No. 549 of 2017 lodged at PS Fatehpur Beri, New Delhi and all the consequential proceedings.

4. After the quashing of FIR No. 549 of 2017 lodged at PS Fatehpur Beri, New Delhi and all the consequential proceedings, both the parties shall appear before the Ld. Family Court, Saket New Delhi in the Maintenance Petition No. 270 of 2018 titled xxxxxxxxxxxxxxxx for the purpose of the withdrawal of the cases. In the event of non-quashing of the present FIR, both the parties will have the right to pursue their respective pending cases without prejudicing their rights.

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6. It is agreed and undertaken by both the Parties that no other complaint(s)/cases (s) (Civil/Criminal) are pending before any Court of law except the litigations mentioned at Para B above. In case, it is found that any other complaint(s)/case(s)/ (Civil/Criminal) has been filed against each other, the same shall be deemed to be settled / withdrawn unconditionally in terms of the present Settlement Agreement. ”

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9. The learned counsel for the petitioner submits that though it is not recorded in the settlement with regard to the maintenance to be paid by the petitioner to his daughter, but out of love and affection for the child, the petitioner had also volunteered to pay an amount of Rs.30 Lakhs.

10. He submits that a demand draft of Rs. 30 Lakhs bearing No.341683 dated 07.10.2025 issued by State Bank of India, P.B.B. Boring Road, Patna was handed over by the petitioner to the respondent no.2.

11. Respondent no.2, who is present in Court, acknowledges the receipt of demand draft of Rs.30 Lakhs and encashment thereof.

12. Respondent no. 2 further states that she does not wish to prosecute the criminal proceedings in the interest of the child, as well as, in the interest of her own future. She urges the Court that the settlement may be accepted and the FIR may be quashed.

13. The learned counsel for the parties have placed reliance on the decision in ***Kapil Gupta v. State (NCT of Delhi), (2022) 15 SCC 44.***

14. This Court is cognizant of the fact that offences under Sections 376/377 IPC are non-compoundable. Therefore, before considering whether the decision of the Hon'ble Supreme Court in ***Kapil Gupta*** (supra) shall be applicable to the facts of the present case, this Court also deems it appropriate to advert to the facts of the present case.

15. The record reveals that the allegations made in the FIR as well as in the statement under Section 164 Cr.P.C. are essentially that the petitioner sexually abused respondent no.2/prosecutrix number of times on the false pretext of marriage. It is alleged that respondent no.2/prosecutrix married her ex-husband on 10.05.1998 and out of the said wedlock, a girl child was



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born. Respondent no.2/prosecutrix got a divorce from her husband as per mutual consent on 23.03.2015. In the meanwhile, respondent no.2/prosecutrix met the petitioner while she was in emotional distress. Taking advantage of respondent no.2/prosecutrix's vulnerable position, the petitioner started his overtures towards respondent no.2/prosecutrix, which was initially resisted by her but after a while, she gave in. The petitioner also made respondent no.2/prosecutrix to understand that he too is a victim of a troubled marriage and is in the process of divorcing his wife. When respondent no.2/prosecutrix got a divorce, the petitioner moved in with her and sexually abused her on the pretext that they shall get married very soon.

16. In March, 2017, respondent no.2/prosecutrix became doubtful about the petitioner's divorce proceedings and she finally came to know that there were no such proceedings between the petitioner and his wife. Finally, the petitioner left respondent no.2/prosecutrix in October, 2017 and thereafter the present FIR came to be registered. The statement of respondent no.2/prosecutrix recorded under section 164 CrPC is almost on the similar lines.

17. The allegations in the FIR indicate that respondent no.2/prosecutrix was aware that the petitioner is married and despite that fact, she had admittedly remained in a live-in relationship with the petitioner from 2015 to November/December, 2017.

18. The fact that the petitioner is married was known to respondent no.2/prosecutrix, which suggests that she was aware that there existed an impediment in marrying the petitioner, but despite that she continued in live-in relationship with the petitioner and engaged in sexual relations with him.

19. The law is well settled that the "consent of woman under Section 375



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IPC is vitiated on the ground of misconception of fact”, where such misconception was the basis for her choosing to engage in the sexual act. In the facts and circumstances of the present case, the consent is evidently not obtained under any ‘misconception of fact’ since it was known to respondent no.2/prosecutrix from the very beginning that the petitioner is already married.

20. Further, the very fact that a baby girl was also born on 07.04.2014 from their relationship, and thereafter from 2015 to November/December 2017, the petitioner, respondent no.2 and the baby girl stayed together ostensibly as a family, it is difficult to hold that respondent no.2 was deceived by the petitioner’s promise of marriage, even if petitioner may have possibly, made a false promise of marriage to respondent no.2. In the backdrop of factual matrix of the instant case, the sexual intercourse in the course of a relationship between the petitioner and respondent no.2/complainant, which seems have continued at least from July, 2013¹ or may be prior thereto, till November/December, 2017, cannot be held as “rape”. Therefore, taking the allegations made in the FIR as well as the statement of the petitioner under Section 164 Cr.P.C. on their face, an offence under Section 375 IPC is not made out.

21. At this stage, it is apt to refer to the decision of the Hon’ble Supreme Court in ***Pramod Suryabhan Pawar v State of Maharashtra, (2019) 9 SCC 608***, wherein Hon’ble Supreme Court dealing with somewhat similar circumstances made following pertinent observations:

“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

¹ Since girl child was born on 07.04.2014.



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, [Ed. : The matter between two asterisks has been emphasised in original.] unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her [Ed. : The matter between two asterisks has been emphasised in original.] .”

(emphasis supplied)

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.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3. The appellant expressed his reservations about marrying



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the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

*22. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. **The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter.** Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. **The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred.**"*

(emphasis supplied)

23. Likewise, in *Shiva Shankar v. State of Karnataka and Ors. (2019) 18 SCC 204*, the Supreme Court quashed the proceedings for offence under Section 376 IPC with the following observations:

*"2. The gravamen of the charge against the appellant-accused is that he has raped Respondent 2 complainant. **We find from the complaint filed by the complainant that Respondent 2 complainant has lived with the appellant for a period of about eight years.** Further, Respondent 2 complainant has stated that the appellant "pretended to have loved me" on the promise of marriage, that he applied the kumkum on her forehead, and tied the Arishina thread to her neck. She further stated that she has been treating the appellant as her husband for the past eight years, and*

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now he is trying to escape from her and cheat her.

3. Though we are not here concerned with the question whether the appellant and the Respondent 2 complainant were, in fact, married, we have no doubt that they lived together like a married couple even according to the complainant.

4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as “rape” especially in the face of the complainant's own allegation that they lived together as man and wife.

5. In the circumstances, we allow this appeal, set aside the aforesaid impugned order [Shivashankar v. State of Karnataka, 2016 SCC OnLine Kar 4204] passed by the High Court, and quash the criminal proceedings in CC No. 6820 of 2015 arising out of Crime No. 254 of 2014, initiated against the appellant.”

24. Insofar as allegations under Section 377 are concerned, this Court finds that there is no allegation regarding unnatural sex in the FIR. Only in the statement of respondent no.2/complainant recorded under Section 164 CrPC there is a vague allegation of unnatural sex, but there is no allegation that when and where such an act was committed. The vague allegation in the statement under Section 164 CrPC, bereft of material details, is clearly an after thought and an improvement over the allegations in the FIR, which itself was detailed.

25. Now coming to the decision in ***Kapil Gupta*** (supra), the question which had fallen for consideration of the Hon’ble Supreme Court was as to whether an FIR under Section 376 could be quashed on the basis of settlement. The Apex Court in the light of the decision in ***Narinder Singh v. State of Punjab, (2014) 6 SCC 466***, considering the facts and circumstances, which were peculiar to the said case, quashed the FIR

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observing as under:

“12. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

13. The Court has further held that it is also relevant to consider as to what is the stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.

14. The facts and circumstances as stated hereinabove are peculiar in the present case. Respondent 2 is a young lady of 23 years. She feels that going through trial in one case, where she is a complainant and in the other case, wherein she is the accused would rob the prime of her youth. She feels that if she is made to face the trial rather than getting any relief, she would be faced with agony of undergoing the trial.

15. In both the cases, though the charge-sheets have been filed, the charges are yet to be framed and as such, the trial has not yet commenced. It is further to be noted that since Respondent 2 herself is not supporting the prosecution case, even if the criminal trial is permitted to go ahead, it will end in nothing else than an acquittal. If the request of the parties is denied, it will be amounting to only adding one more criminal case to the already overburdened criminal courts.

16. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise



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the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

(emphasis supplied)

26. Having noted the above observations of the Hon'ble Apex Court, this Court finds that the benefit of decision in ***Kapil Gupta*** (supra) shall enure to the parties in present case. The case before the learned Trial Court is at the stage of arguments on charge and the testimony of respondent no.2/prosecutrix has not been recorded. Further, the petitioner and respondent no.2 parted their ways and the custody of the girl child born out of their relationship, is with respondent no.2. Respondent no.2 has decided to put quietus to all the proceedings in the larger interest of the child as well as in the interest of her own future. The petitioner, as a father of the girl child, out of his love and affection, has paid lumpsum amount of Rs.30,00,000/- towards her maintenance. In the facts of the present case, this Court is of the view that the settlement between the parties will result into harmony between them and improve their mutual relationship which would be in the ultimate interest of the girl child born out of their relationship.

27. As noted above, respondent no.2/prosecutrix has also shown reluctance to continue the prosecution and expressed her earnest wish to give quietus to all the litigation including the one arising out of the present FIR.

28. In view of the above discussion, this Court is of the view that that it is a fit case for exercising extraordinary powers of this Court to quash the FIR



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and the criminal proceedings arising therefrom.

29. Consequently, the petition is allowed and the FIR No. 549/2017 under Sections 376/377 IPC registered at Police Station Fatehpur Beri, New Delhi along with all other proceedings emanating therefrom, is quashed.

30. The petition stands disposed of in the above terms.

31. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

DECEMBER 22, 2025

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