IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10957 of 2017

CNR No. BRHC010741032017

Arising Out of PS. Case No.-217 Year-2015 Thana- KARPI District- Jehanabad

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Deo Kumar Singh @ Deo Kumar Prasad @ Dev Kumar S/O Late Parmeshwar Prasad, R/O Daudnagar Ward No.17, Brahmin Tola, P.S.- Daudnagar, District- Aurangabad.

... ... Petitioner

Versus

1. State of Bihar
2. Sunita Singh, S/o Late Ajay Yadav, R/o Village Basan Bigha, P.S.- Karpi, District- Arwal.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Ashok Kumar Singh, Advocate
For the Opposite Party/s : Mr. Parmanand Kumar, APP
For the O.P. No. 2 : Mr. Manish Kumar No-2
Mr. Gajendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

7 29-10-2026 Heard the learned counsel for the petitioner, learned counsel for the State and the learned counsel for the O.P. No. 2.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, for quashing the order dated 25.11.2016 passed by the learned Chief Judicial Magistrate, Arwal, in G.R. No. 1304 of 2015, arising out of Karpi (Shahar Telpa) P.S. Case No. 217 of 2015, whereby cognizance has been taken against the petitioner for the offence punishable under Section 376 of the Indian Penal Code.

3. The prosecution originated from Complaint Case

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No. 451 of 2015 instituted by the complainant, Sunita Singh, on 10.09.2015. The complaint was referred to the police under Section 156(3) CrPC, pursuant to which the aforesaid police case was registered.

4. The prosecution case, in brief, is that the complainant/informant came into contact with the petitioner while he was employed at Magadh Gramin Bank, Usri Branch. The petitioner allegedly represented himself to be unmarried, promised to marry her and established physical relations with her from 21.11.2000, which allegedly continued for approximately fourteen years. It is further alleged that the complainant/informant conceived twice and the petitioner subsequently filed a matrimonial case against his wife after the complainant/informant discovered that he was already married. The petitioner allegedly continued the relationship but subsequently stopped providing financial assistance and refused to maintain the complainant/informant.

5. Upon completion of investigation, the police submitted a charge-sheet under Section 376 IPC. The learned Magistrate, by the impugned order, took cognizance of the said offence.

6. Learned counsel for the petitioner submits that even

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if the allegations in the complaint petition, the statement under Section 164 and the materials collected during investigation are accepted in their entirety, the ingredients of the offence under Section 376 of the Indian Penal Code are not made out. The opposite party no. 2 was a major woman when the relationship commenced and on her own showing the relationship continued without interruption for about fourteen years. A relationship of such duration, it is urged, is one of consent and not of submission under any misconception of fact.

7. It is next submitted that the complaint petition itself discloses that the opposite party no. 2 came to know of the marital status of the petitioner, that she protested, and the petitioner thereupon instituted Matrimonial Case No. 24 of 2005 against his wife. Her knowledge of the marriage thus dates back at least to the year 2005. Notwithstanding such knowledge, she continued in the relationship, resided with the petitioner at Daudnagar and accepted maintenance from him for close to a decade thereafter. Learned counsel contends that whatever be the character of the alleged representation at the inception, no misconception of fact could have operated upon her mind after the year 2005, and the continuance of the relationship for so long thereafter severs any nexus between the alleged assurance

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and her consent.

8. It is further submitted that the complaint petition itself identifies the immediate cause of grievance as the refusal of the petitioner to continue bearing the expenses of the opposite party no. 2. The complaint was filed on 10.09.2015, nearly fifteen years after the alleged commencement of the relationship. Learned counsel further points out that the petitioner had, on 09.12.2014, filed Informatory Petition No. 1787 of 2014 before the Sub-Divisional Magistrate, Daudnagar, apprehending false implication on account of a monetary dispute, which preceded the complaint by about nine months. According to him, the prosecution is an attempt to give a criminal colour to a long consensual association which ended in a dispute over money.

9. Reliance is placed upon ***Pramod Suryabhan Pawar vs. State of Maharashtra & Anr.*** reported as ***(2019) 9 SCC 608***, ***Naim Ahamed vs. State (NCT of Delhi)*** reported as ***(2023) 15 SCC 385***, ***Mahesh Damu Khare vs. State of Maharashtra*** reported as ***(2024) 11 SCC 398*** and ***Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra*** reported as ***(2019) 18 SCC 191*** in support of the submission that continuation of the prosecution would amount to an abuse of the

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process of the Court.

10. Learned counsel for the opposite party no. 2 opposes the application. He submits that the complaint petition specifically alleges that the petitioner induced the opposite party no. 2 into a physical relationship by falsely representing himself to be unmarried and by promising marriage, and the police, after investigation, found sufficient material to submit charge-sheet under Section 376 of the Indian Penal Code. The truth of the allegations, the nature of the relationship and the question whether the consent was obtained under a misconception of fact are, according to him, matters of evidence to be examined at the trial, and the impugned order calls for no interference at this stage.

11. Learned A.P.P. for the State adopts the submissions advanced on behalf of the opposite party no. 2 and submits that the investigating agency having found a prima facie case, the petitioner should face the trial.

12. I have heard the learned counsels for the parties and perused the materials available on record. The accusation of the opposite party no. 2 is that the petitioner, by holding himself out as an unmarried man and assuring her of marriage had obtained her consent to a physical relationship which

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commenced in the year 2000 and continued for about fourteen years. When she came to know of his marriage in the year 2005, the complainant//informant protested and nevertheless continued in the relationship until he ceased to bear her expenses. The question that falls for consideration is whether a consent so given and so continued is one vitiated by a misconception of fact within the meaning of Section 90 of the Indian Penal Code, so as to render the relationship an offence punishable under Section 376, or whether prosecution as an afterthought seeks give a criminal colour to a consensual association between two adults which ended in acrimony.

13. The contours of the jurisdiction under Section 482 of the Code are well settled. In the case of ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** reported as ***1992 Supp (1) SCC 335***, the Hon'ble Supreme Court enumerated, by way of illustration, the categories of cases in which the power may be exercised, of which the first and the third are relevant here:

> *"102 (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.*
>
> *xxxx*
>
> *(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."*

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14. In the case of ***Pramod Suryabhan Pawar (supra)***, the Hon'ble Supreme Court has held as follows:-

> *"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."*

15. The distinction between a false promise and a breach of promise was explained in ***Naim Ahamed (supra)***, a case in which the prosecutrix was herself a married woman with three children who had continued in the relationship for about five years:

> *"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. 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 deceited 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*

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> *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 fulfil 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."*

16. In ***Mahesh Damu Khare (supra)***, the Hon'ble Supreme Court held:

> *"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent."*

17. It is further held in that case that the physical relationship must be traceable directly to the false promise and must not be qualified by other circumstances or considerations, and that where the woman knowingly maintains the relationship for a prolonged period, it cannot be said with certainty that it was purely on account of the promise of marriage. Applying that principle in ***Rajnish Singh @ Soni vs. State of U.P. & Anr.*** reported as ***(2025) 4 SCC 197***, where the relationship had subsisted for sixteen years, the Hon'ble Supreme Court quashed the proceedings and observed:

> *"27. It is hard to believe that the complainant, being*

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> *a highly qualified and well-placed major woman, kept on bending to the demands of the appellant for a period of nearly 16 years without raising any protest to any quarter that the appellant was exploiting her sexually under the pretext of a false promise of marriage. The prolonged period of 16 years during which the sexual relations continued unabatedly between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship."*

18. Further, in the case of ***Dr. Dhruvaram Murlidhar Sonar (supra)***, the complainant was a widow who, on being told by the accused that he was a married man having differences with his wife, began living with him as husband and wife and lodged the F.I.R when she learnt that he had married another woman. The Hon'ble Supreme Court quashed the F.I.R and the charge-sheet holding that the complainant had taken a conscious decision after active application of mind, that it was not a case of passive submission under psychological pressure, and her tacit consent was not the result of any misconception created in her mind. Furthermore, in ***Biswajyoti Chatterjee vs. State of West Bengal reported as (2025) 5 SCC 749***, where the complainant knew that the accused was in a subsisting though estranged marriage, it was held:

> *"15. Even if we take the case of the complainant at the face value or consider that the relationship was based on an offer of marriage, the complainant cannot plead "misconception of fact" or "rape on the false pretext to marry". It is from day one that she had knowledge and was*

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> *conscious of the fact, that the appellant was in a subsisting marriage, though separated. It is upon having an active understanding of the circumstances, actions and the consequences of the acts, that the complainant made a reasoned choice to sustain a relationship with the appellant."*

19. Recently, in the case of ***Pramod Kumar Navratna vs. State of Chhattisgarh & Ors.*** reported as ***(2026) 6 SCC 629***, in which the Hon'ble Supreme Court quashed a prosecution under Section 376(2)(n) of the Indian Penal Code, it was held that where one of the parties has a living spouse, a promise of marriage is not one which is capable of being acted upon in law, and a person aware of that marital status cannot turnaround to contend that her consent was induced by such a promise:

> *"20. Therefore, even for the sake of argument, if the contention of Respondent 1 State and the complainant Respondent 3 is accepted that there indeed was a false promise of marriage based on which the appellant-accused indulged in sexual activities, such a promise would not be legally enforceable or even capable of being acted upon as the victim herself was not eligible for marriage, neither on the date of the first alleged act of offence i.e. 18-9-2022 nor on any subsequent dates wherein the parties indulged in the sexual activities, till the point of the date of registration of FIR i.e. 6-2-2025. The said embargo arises from sub-clause (i) of Section 5 of the Hindu Marriage Act, 1955 which categorically prohibits marriage between two individuals if either of them have a living spouse. The said position of law has been reiterated under sub-clause (i) of Section 4 of the Special Marriage Act, 1954.*
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> *xxxxx*

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> *23. The courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n)IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind."*

20. Tested on the settled principles, the allegations in the complaint, FIR, statement under Section 164 CrPC and case diary, even if accepted in their entirety, do not disclose the offence of rape. The complainant was an adult when the relationship commenced way back in the year 2000. She continued the relationship for approximately fourteen years, during which she conceived twice, without approaching any authority or making any complaints. Such prolonged continuation, as held in the case of ***Rajnish Singh @ Soni*** **and** ***Mahesh Damu Khare (supra)***, cannot be attributed solely to a promise of marriage.

21. Significantly, the complainant admittedly came to know about the petitioner's marriage by 2005, yet continued the relationship, cohabited with him at Daudnagar and accepted

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his financial support for nearly a decade. Thus, after acquiring knowledge of his marital status, her consent could no longer be said to have been obtained under any misconception of fact under Section 90 IPC. Her voluntary cohabitation and the petitioner's institution of matrimonial proceedings against his wife also indicate that the case, at its highest, concerns an unfulfilled promise of marriage rather than a false promise from inception, as distinguished in ***Pramod Kumar Navratna (supra)***, ***Biswajyoti Chatterjee (supra)***, ***Naim Ahamed (supra)*** and ***Deepak Gulati (supra)***.

22. Further, the immediate grievance appears to have arisen from the petitioner's refusal to continue financial assistance, leading to the complaint dated 10.09.2015, nearly fifteen years after commencement of the relationship. The allegations regarding termination of pregnancy and conspiracy under Sections 313, 119 and 120B IPC did not survive investigation, and the charge-sheet and cognizance were confined to Section 376 IPC. The statement under Section 164 CrPC introduces no additional circumstance establishing absence of consent. Accordingly, the essential ingredients of the offence under Section 376 IPC are not made out.

23. In the considered opinion of this Court, the

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allegations, read in their entirety and accepted at their face value, disclose a prolonged consensual relationship between two consenting adults which came to an end in acrimony, and not an offence punishable under Section 376 of the Indian Penal Code. The Hon'ble Supreme Court has repeatedly cautioned that to convert every soured relationship into an offence of rape trivialises the gravity of that offence and inflicts an indelible stigma upon the accused. Continuation of the prosecution would amount to an abuse of the process of the Court.

24. Accordingly, the application is allowed. The order dated 25.11.2016 passed by the learned Chief Judicial Magistrate, Arwal in G.R. No. 1304 of 2015, arising out of Karpi (Shahar Telpa) P.S. Case No. 217 of 2015, taking cognizance of the offence punishable under Section 376 of the Indian Penal Code against the petitioner, and the entire criminal proceeding of the said case, so far as the petitioner is concerned, stand quashed.

(Sandeep Kumar, J)

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