

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82945 of 2023

Arising out of PS. Case No.-33 Year-2021 Thana- MAHILA THANA District- Begusarai

Mithlesh Kumar Son of Arbind Poddar @ Pravin Poddar R/o Village- Taraiya,
P.S.- Muffasil, Dist.- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar Patna
2. Pinki Kumari Wife of Janardan Singh R/o Village- Teghra, P.S.- Teghra,
Dist.- Begusarai At Present Residing at Village- Pokhariya, P.S.- Nagar,
Dist.- Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate
For the Opposite Party/s : Mr. Braj Kishore Pd.(APP)

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 12-05-2026

Heard learned counsel for the petitioner, learned counsel
for the Informant and learned Additional Public Prosecutor for the
State.

2. Petitioner seeks quashing of the order of cognizance
dated 05.09.2023 passed by learned Sub-divisional Judicial
Magistrate, Begusarai in connection with Mahila P.S. Case No. 33
of 2021 for the offences under Sections 323, 326, 498, 504 and
379/34 IPC.

3. The allegation as per the F.I.R is that the petitioner
claiming himself to be a Government staff came to her beauty
clinic, thereafter, he raped her and then his brother Amit Kumar



shot a video. She did not tell anybody due to fear. On 09.12.2019, he called to a particular place and forcibly married her. She also alleges that he asked her to sign a stamp paper. He got her signature on stamp paper and thereafter started demanding money and jewellery. On 09.06.2021, he kept her at his home but thereafter all the family members started assaulting and torturing her. The case was finally lodged under Sections 323, 326, 498, 504 and 379/34.

4. Learned counsel for the informant alleges that the informatory petition would show that the petitioner admits the relationship with the informant, however, he exploited her physically and economically and left her high and dry.

5. Learned Additional Public Prosecutor for the State has vehemently opposed the quashing of the order dated 05.09.2023.

6. The perusal of the F.I.R on records would show that a lady aged about 30 years entered into consensual relationship with a person. This may be illicit but it cannot be termed as illegal in terms of the judgment rendered in the case of **Sonu alias Subhash Kumar vs. State of Uttar Pradesh and Anr.** reported in (2021) 18 SCC 517 and in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and Anr.** reported in (2019) 9 SCC 608.



The relevant paras 16 and 18 of the aforesaid case of **Pramod Suryabhan Pawar** are as under:-

“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, [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.”



7. In view of such, the order of cognizance dated 05.09.2023 passed by learned Sub-divisional Judicial Magistrate, Begusarai in connection with Mahila P.S. Case No. 33 of 2021 (Tr. No. 68 of 2023) for the offences under Sections 323, 326, 498, 504 and 379/34 IPC is quashed so far as the petitioner is concerned.

(Ansul, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

