

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1244 OF 2025

Dixit Ramlal Solanki Prajapati,
Age : 25 years, Occ. : Photographer,
Add-Mukkam Post, Taluka-Tampura,
District-Sirohi, Rajasthan-307 001.

...Applicant

Versus

1. The State of Maharashtra
(Through Versova Police Station,
Mumbai)

2. X.Y.Z.
Through Versova Police Station,
Mumbai.

(Complainant)

...Respondents

Ms. Sheetal Mishra a/w Mr. Dhananjay Kadam & Mr. Animesh Jadhav,
learned Advocates for the Applicant.

Mr. Prasanna P. Malshe, learned A.P.P. for the State/Respondent.
Ms. Grishma Lad (Through VC) (Appointed Advocate through Legal-Aid
Panel), learned Advocate for Respondent No. 2.
PSI Mr. Paresh Gargade (Pairavi Officer) attached to Versova Police
Station, Mumbai is present in the Court.

CORAM : ASHWIN D. BHOBE, J.

DATE : 10th FEBRUARY 2026.

JUDGEMENT :

1. Heard Ms. Sheetal Mishra, learned Advocate for the Applicant, Mr. Prasanna Malshe, learned A.P.P. for the State/Respondent and Ms. Grishma Lad, learned Advocate for Respondent No. 2.

2. The facts in the case, which are not in dispute, are that Respondent No. 2, a married lady aged 27 years with a 6-year-old child, became acquainted with the Applicant, aged 25 years, at a club. Their friendship developed, and they soon began meeting more frequently. The Applicant and Respondent No. 2 continued meeting outside and started holidaying in different places. After their friendship developed, they entered into a physical relationship. Respondent No. 2 alleges that the Applicant had sexual intercourse with her on the assurance of marriage. The relationship is said to have commenced on 18.11.2023 and continued until 13.05.2024.

3. Respondent No. 2 lodged her complaint on 25.02.2025, alleging that the Applicant persuaded her into a physical relationship with him on the false promise of marriage. First Information Report No. 171 of 2025 dated 01.02.2025, was registered with the Versova Police Station, Mumbai, for an offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 (“IPC”).

4. Subsequently, the charge-sheet bearing No. 1521/PW/2025 was filed before the Judicial Magistrate First Class, 44th Court at Andheri, Mumbai (“the Magistrate”). The Magistrate took cognizance vide order dated 28.04.2025. Vide the Committal order dated 28.04.2025, Case No. 1521/PW/2025 was committed to the Sessions Court at Dindoshi, Mumbai and registered as Sessions Case No. 289 of 2025.

5. Ms. Sheetal Mishra, learned Advocate for the Applicant

submits that the relationship between the Applicant and Respondent No. 2 was consensual. She submits that the Applicant and Respondent No. 2 visited places together during the period from November 2023 to 13.05.2024. She submits that Respondent No. 2 was neither under a misconception of fact, nor misled by the allegations or the material collected by Respondent No. 1, given the remoteness of all such misconceptions of fact. She submits that the FIR has been maliciously registered against the Applicant and no case is made out to attract the ingredients of Section 376(2)(n) of the IPC.

6. Ms. Grishma Lad, learned Advocate for Respondent No. 2, submits that Respondent No. 2 was married during the period of her relationship with the Applicant. She, however, submits that according to Respondent No. 2, she obtained a community divorce by signing an Affidavit.

7. Mr. Prasanna Malshe, learned A.P.P. submits that Respondent No. 1 has acted in accordance with law and registered the FIR. He submits that after the investigation was completed, the Respondent-woman filed the charge-sheet.

8. Perused the records with the assistance of the learned Advocates.

9. Even if the allegations and the evidence collected are taken as true and correct, it does not appear that the consent of Respondent No. 2 was obtained against her will, merely on the assurance of marriage. Respondent No. 2, a married lady, cannot be heard to claim that she was persuaded by the Applicant into

having a physical relationship with him on the false pretext of marriage. Respondent No. 2 continued her relationship with the Applicant from November 2023 to May 2024. Respondent No. 2 travelled to various places with the Applicant and engaged in a physical relationship. There is no material on record to suggest “inducement or misrepresentation” on the part of the Applicant to secure Respondent No. 2’s consent for a sexual relationship. The material on record neither supports Respondent No. 2’s claim that the consent was obtained under a misconception, as defined under Section 90 of the IPC, nor the claim that Respondent No. 2 was coaxed by the Applicant into having physical relations.

10. Ms. Sheetal Mishra is justified in her submission that the relationship between the Applicant and Respondent No. 2 was purely consensual and involved two mature adults. The unexplained 10 months’ delay in filing the complaint raises doubts about the veracity of the allegations.

11. The facts in the instant case are comparable to those before the Hon’ble Supreme Court in ***Pramod Kumar Navratna v/s. State of Chhattisgarh and Others***¹, wherein in paragraph nos. 19 to 24, 26 & 27, the following observations have been made :-

“19. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate towards a classic case of a consensual relationship turning acrimonious. Upon perusal of the records of the case, it is evident that the complainant-respondent No. 3 is a married lady with a ten

1. Criminal Appeal of 2026 (arising out of Special Leave Petition (Crl.) No. 4452 of 2025 decided on 5th February, 2026.

years old child. The said marriage was solemnized on 02.06.2011 and although divorce proceedings are currently pending adjudication between her and her husband, by no stretch of imagination can it be held that the complainant respondent No. 3 was eligible for being married with the accused/appellant on 18.09.2022, the date on which the first of the multiple instances of acts of rape on the false pretext of marriage has been committed by the accused-appellant are alleged. Therefore, even for the sake of argument, if the contention of the respondent No. 1-State and the complainant-respondent No. 3 is accepted that there indeed was a false promise of marriage based on which the accused-appellant 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. 18.09.2022 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. 06.02.2025. 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.

20. In other words, the law prohibits bigamous unions and therefore disallows parties from entering into a second marriage during the subsistence of their first marriage. It is, therefore, difficult to accept the view that the complainant-respondent No. 3, who herself is an advocate, was oblivious to the said settled position of law and hence was duped and induced by the accused/appellant into having sexual relations with him on different occasions on the pretext of marriage especially when both the parties were cognizant of the marital status of the complainant/Respondent No. 3.

21. At this juncture, it is also pertinent to mention that the complainant-respondent No. 3 is a thirty-three years old woman and an advocate by profession and not a naive or gullible woman incapable of taking decisions for herself. It

would be remiss not to mention, at the cost of repetition, that the complainant/Respondent No. 3 is herself an advocate and therefore she should have exercised her prudence and discretion before engaging the already burdened State machinery into a roving criminal litigation.

22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the 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. In view of the aforesaid settled position of law, the respondent No. 1-State and the complainant-respondent No. 3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No. 3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No. 3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant.

23. At this stage, it is material to refer to the decision of this Court in **Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398**, wherein the following observations were made :

“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. ...”

24. On a perusal of the allegations made in the present case, it is an admitted fact that the complainant-respondent No. 3, within the first initial meetings told the accused-appellant that she was a married woman with divorce proceedings pending before the Family Court. Therefore, in the same breath, she cannot be allowed to claim and allege that she was also coaxed by the accused-appellant into having a physical relationship with him on the false pretext of marriage as the two facts cannot stand together on the same plane and simultaneously as both are antagonistic and antithetical to each other. In our opinion, the facts of the present case clearly indicate a consensual relationship gone sour whereas both the parties should have exercised restraint and should have refrained from involving the State into their personal relationship turning rancour.

26. In this regard, it would be apposite to rely on the judgment in the case of **State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335 (“Bhajan Lal”)** with particular reference to paragraph 102 therein, where this Court observed thus :

“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 have given 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.

XXX

(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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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, 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.”

*27. On a careful consideration of the aforementioned judicial dictum, we find that the offence alleged against the accused-appellant herein is not made out at all. In fact, we find that the allegation of rape on false pretext of marriage even when taken on its face value, does not amount to an offence of rape and hence not liable for punishment under Section 376(2)(n) of the IPC in the instant case and therefore, the judgment of this Court in the case of **Bhajan Lal** squarely apply to the facts of these cases. Therefore, it is neither*

expedient nor in the interest of justice to permit the present prosecution emanating from the FIR and consequent Sessions Case No. 89/2025 to continue.”

12. Respondent No. 2, being married, was not eligible to marry the Applicant on 18.11.2023, the date on which the first of the multiple instances of rape, allegedly committed by the Applicant on the false pretext of marriage, is alleged to have occurred. There is no material to suggest that the intentions of the Applicant were, from the very beginning, to deceive the Respondent No. 2 and persuade her to have a physical relationship. The facts of the present case clearly indicate a consensual relationship that has soured. The ingredients of the offence under Section 376(2)(n) of the IPC are not established. The present case squarely falls within the categories enumerated in paragraph 102(5) & (7) of the case of ***State of Haryana and Others v/s. Bhajan Lal and Others***², for the exercise of powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the impugned FIR and the charge-sheet arising out of the said FIR, so as to prevent abuse of the process of law.

13. Accordingly, the Criminal Application is allowed in terms of the prayer clauses (b) and (bb). Consequently, the FIR bearing No. 171 of 2025, dated 01.02.2025, registered with the Versova Police Station, Mumbai, for an offence punishable under Section 376(2) (n) of the Indian Penal Code, 1860, and the subsequent charge-sheet registered as Sessions Case No. 289 of 2025, pending before the Sessions Court at Dindoshi, Mumbai, arising out of the said FIR, are quashed. Criminal proceedings against the Applicant

2. 1992 Supp (1) Supreme Court Cases 335.

arising out of the impugned FIR are closed.

14. Criminal Application No. 1244 of 2025 is disposed of.

15. No order as to costs.

[ASHWIN D. BHOBE, J.]

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by GITALAXMI
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