



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.219/2024

Mr. Mohit s/o Dewanand Gawande, aged
about 33 years, Occu.: Business, R/o.
Vaibhavi Heritez Apartmen, New MHADA
Colony Datala, Chandrapur, Tehsil and Dist.
Chandrapur, Maharashtra

... **APPLICANT**

...VERSUS...

1. State of Maharashtra,
Through the Police Station Officer,
Police Station Rajura, Tahsil- Rajura,
Dist. Chandrapur
2. Victim XYZ
Crime No.0238
PS Rajura,
Dist. Chandrapur

...**NON-APPLICANTS**

Ms Tejal A. Agre, Advocate h/f Shri S.P. Bhandarkar, Advocate for applicant
Ms Soniya Thakur, APP for non-applicant No.1/State
Shri P.D. Saliokar, Advocate (appointed) for non-applicant No.2

CORAM : PRAVIN S. PATIL, J.

DATED : 02.02.2026

ORAL JUDGMENT

Heard. By consent of the parties, this matter is taken
for final disposal at admission stage.

2. By this application, the applicant is seeking quashment of the proceedings registered in Sessions Case No.105/2023 arising out of Crime No.238/2023 and Charge-sheet No.78/2023 for the offence punishable under Sections 376, 376(2)(n), 417, 504 and 506 of the Indian Penal Code.

3. It is the case of the present applicant that he was in love relation with the complainant and their physical relations were established between 2018 to 2023, out of consent and therefore, no case is made out under Section 376(2)(n) of the Indian Penal Code and hence, seeks indulgence of this Court in the matter.

4. The case of the prosecution is that the complainant lodged a complaint alleging that in the year 2018, she came in a contact with the applicant. Initially, the applicant has visited her deliberately and, thereafter, he proposed her by stating that he liked the complainant. At that time, non-applicant No.2 has specifically stated him that she is two years elder than the applicant and, therefore, their marriage would not be permitted. At that time, applicant has stated that only if she conceived a pregnancy, only then her family members will be accepted by his family members as

they are well-educated members of the family. As such, on that basis, their physical relations were established. After that time and again, there physical relations were established for a period of 5 years. It is also alleged that the applicant had time and again borrowed the amount at around of Rs.2 to 3 lakhs. The same was paid by the complainant by breaking her fix deposit of Bank.

5. It is also alleged that as applicant was avoiding to perform marriage on the ground that his family members will not be ready for marriage, therefore, the complainant put a proposal that she will visit to his house and met his family members. Accordingly, she visited to the house of the applicant and met with the mother of the applicant. At that time, the mother of the applicant told her that she being elder than applicant, marriage cannot be performed. After that the applicant and complainant were at Pobhurna for certain work. At that time, she got knowledge that applicant is performing the marriage with another girl and, therefore, the complaint came to be lodged in the matter and accordingly offence is registered.

6. It is well settled position of law as laid down by the catena of the judgment particularly in the case of ***Deepak Gulati Vs. State of Haryana reported in (2023) 2 SCC 675***, wherein the Hon'ble Supreme Court has specifically clarified what is the difference between rape and consensual relation. Paragraph Nos. 21 and 24 of the judgment which are relevant in the matter as under:

“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, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

7. So also in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra reported in (2019) 9 SCC 208***, in paragraph 18 summarized legal position as under:

"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."

8. The case of the present applicant is that since year 2018, he was in contact with the present complainant. It is case of the complainant that she being elder than the applicant, it will not

be possible of their marriage to be solemnized and, therefore, she has initially denied the proposal of the applicant. However, on the proposition of applicant that in case she conceived pregnancy from him, then his family members will agree for their marriage, she accepted the proposal with clear understanding the applicant wants to establish sexual relation with her. After accepting this proposal, they regularly established sexual relations. Thus only conclusion can be drawn that she was ready for sexual intercourse with applicant and, therefore, their physical relations were established.

9. It is pertinent to note that the applicant is a mature and educated lady. At the time of their first meeting, she was working as a Career Counsellor at Somya Polytechnic College, Chandrapur. Hence, she was aware of the consequences of such relations with a person who is younger than her. But she has kept continued the relations with the applicant. It is important to note that their relations were continued from year 2018 to 2023. During this period, though it is alleged that applicant used to threaten her and abused her in filthy language, but even then she kept continue the relations with the present applicant. As such, it is clear that the

complainant was also desires physical relations with the applicant and therefore, no conclusion can be drawn that under the pretext of false marriage, she was exploited by applicant.

10. It is well settled position of law, the breakdown of the relations between the parties cannot be a reason to set in motion the criminal process in law. Therefore, in my opinion, the relations between the applicant and non-applicant No.2 being of a consensual nature and same were existing for a considerable period of 5 years, no case is made out against the applicant.

11. It will be relevant to refer the judgment of the Hon'ble Supreme Court of in the case of ***Mahesh Damu Khare Vs. State of Maharashtra in Criminal Appeal No.4882/2024***, wherein the Hon'ble Supreme Court has observed "the longer the duration of 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 facts." The observations of the Hon'ble Supreme

Court in para 28 and 29 of the judgment are also relevant in the matter which is as under:

“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 Indian Penal Code and therefore, there was no vitiation of consent under misconception of fact.”

12. Hence, considering the entire factual as well as legal position in the matter, I am of the considered opinion that the relations between the applicant and non-applicant No.2 being of the consensual nature and for the duration of 5 years, it has to be held that same were consensual in nature and not case of false promise of marriage and, therefore, offence under Sections 376(2)(n), 417, 504 and 506 of the Indian Penal Code is not attracted in the matter.

13. Accordingly, I proceed to pass the following order:

ORDER

- i) The application is allowed.
- ii) The proceedings registered in Sessions Case No.105/2023 arising out of Crime No.238/2023 and Charge-sheet No.78/2023 for the offence punishable under Sections 376, 376(2)(n), 417, 504 and 506 of the Indian Penal Code is hereby quashed and set aside.
- iii) Fees of the appointed Counsel be quantified as per Rules.

14. The application stands disposed of. No order as to the costs.

(PRAVIN S. PATIL, J.)

R.S. Sahare