



Judgment

14 apl277.25

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

CRIMINAL APPLICATION APL NO.277/2025

Nitin Harihar Kamdi,
age 32 years, occupation: private job
r/o Antargaon, tahsil Sindewahi,
district Chandrapur. **Applicant.**

:: VERSUS ::

1. the State of Maharashtra,
through its Police Station Officer,
Police Station, Sindewahi,
district Chandrapur.

2. XYZ (victim Crime No.17/2025). **Non-applicants.**

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Shri V.Kataria, Counsel for the Applicant.
Shri A.M.Kadukar, APP for NA No.1/State.
Shri M.N.Ali, Amicus Curiae for NA No.2.

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CORAM : **URMILA JOSHI-PHALKE, J.**

DATE : **23/02/2026**

ORAL JUDGMENT

1. Heard learned counsel for applicants and learned APP
for non-applicant/State. Despite service, none appears for
non-applicant No.2 (the complainant) and, therefore,

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Advocate Shri M.N.Ali is appointed as *amicus curiae*. **Admit.**

Heard finally by consent.

2. The applicant has approached this court by invoking jurisdiction under Section 528 of the BNSS 2023 for quashing of FIR in connection with Crime No.17/2025 registered with the non-applicant No.1 police station for offences under Sections 376(2)(n), 504, and 506 of the IPC and under Section 3(2)(v), 3(1)w(i), and 3(1)w(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 and consequent proceeding arising out of the same bearing Special Case No.49/2025 pending in Sessions Court at Chandrapur.

3. The crime is registered on the basis of a report lodged by the complainant who is aged about 34 years old on allegations that when she was taking education in the year 2015-2016, she got acquaintance with the applicant. Thereafter, friendship was developed between them and the

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said friendship subsequently was converted into love affair. In the year 2018, the applicant has proposed for marriage for which she consented. She also alleged that since then there was physical relationship developed between them. It is alleged by her that in the year 2018, when she was residing at Nagpur, as she was doing job, the applicant was visiting her room on various occasions and on the promise of marriage, he subjected her for forceful sexual assault. On the basis of the said report, the police have registered the crime against the applicant and investigation was carried out. During the investigation, the complainant was referred for medical examination. Written statements were recorded. After completion of the investigation, chargesheet was submitted against the applicant.

4. Learned counsel for the applicant submitted that recital of the FIR itself shows that it was consensual relationship developed between the complainant and the applicant. Being it is consensual relationship, no offence is made out against

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the applicant. He submitted that by no stretch of imagination, it can be said that there was forceful sexual assault by the applicant. He submitted that even there is no substance in the contention that the consent was obtained under misconception of fact. In view of that, he prays for quashing of the FIR and the consequent proceeding.

5. Learned APP for the State strongly opposed the said contentions on the ground that she was subjected for forceful sexual assault by proposing her for marriage and, thereafter, the marriage was not performed. It is first promise of marriage and intention of the applicant since inception was there. In view of that, the application deserves to be rejected.

6. Learned *amicus curiae* also endorsed the same contentions.

7. After hearing both sides and perusing the recital of the FIR, it reveals that acquaintance between the applicant and the complainant was in the year 2015-2016. Recital of the FIR

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further shows that friendship was developed into love affair and in the year 2018 itself, the applicant has proposed her for marriage for which she has consented and since then there was physical relationship developed between them. This sentence itself is sufficient to show that it was consensual relationship developed between the applicant and the complainant who are grown up adults and were knowing consequences of the their acts. The physical relationship was also due to love relationship between both of them.

8. Admittedly, the applicant is aged about 32 years. Whereas, at the time of lodging of the FIR, the complainant was 34 years old.

9. It is apparent that both are grown up adults and know consequences of their acts.

10. As far as allegation regarding “consent” was obtained under misconception of fact, is not reflected either from the

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recital of the FIR or from the subsequent statements of the complainant.

11. This aspect is considered by the Hon'ble Apex Court in the celebrated judgment in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and anr, reported in (2019)9 SCC 608**. The Hon'ble Apex Court, after considering catena of decisions, held that, "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."

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12. Under Section 90 of the IPC, a “consent” given under a misconception of fact is not “consent” in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years.

13. In the present case, admittedly, the FIR is lodged on 17.1.2025. As per the allegations, the relationship was since 2017 i.e. more than six years and, therefore, it cannot be said that it was misconception of fact as there is has to be in proximity of time to the occurrence and cannot be spread over a period of more than six years.

14. In the instant case, the complainant herself is a grown up lady and could not be said to have acted under misconception of fact.

15. The applicant is charged under the provisions of the Atrocities Act. As far as ingredients to attract the offence under the Atrocities Act are concerned, mere knowledge of

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fact that the victim is a member of Scheduled Caste or Scheduled Tribe is not sufficient to attract the said provisions.

16. The Hon'ble Apex Court in **Criminal Appeal No.2622/2024 (Shajan Skaria vs. The State of Kerala and anr) decided on 23.8.2024**, while expressing term "intent to humiliate" observed that "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables."

17. In the present, it is not the case of the complainant that being she belongs to the Scheduled Caste, with an intention to humiliate or within an intention to insult her, the applicant has developed physical relationship with her and subsequently he denied to perform marriage with her. Therefore, the provisions the Atrocities Act are also not applicable to the present case.

18. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) FIR in connection with Crime No.17/2025 registered with the non-applicant No.1 police station for offences under Sections 376(2)(n), 504, and 506 of the IPC and under Section 3(2)(v), 3(1)(w)(i), and 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 and consequent proceeding arising out of the same

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bearing Special Case No.49/2025 pending in Sessions Court
at Chandrapur.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.) !!

BrWankhede !!

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