



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

CRIMINAL APPLICATION (APL) NO. 455 OF 2025

Krishna s/o Shankar Kadam

Aged about 24 years,

Occupation : student

R/o. Kalambeshwar,

Tah. and District-Akola

APPLICANT

// V E R S U S //

1. **The State of Maharashtra,**
Through Police Station Officer,
Police Station Shegaon City,
Tah. Shegaon
District Buldhana

2. **XYZ (Victim informant)**
in Crime No.191/2024 registered
by Police Station Shegaon City
District Buldhana

NON-APPLICANTS

Mr. N.R. Tekade, Advocate for the applicant.

Mr. N.B. Jawade, APP for non-applicant No.1/State.

Mr. K.H. Anandani, Advocate for the non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 29.01.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent
of learned counsel for the parties.

3. The present application is preferred by the applicant for quashing of the First Information Report in connection with crime No.191/2024 registered with the non-applicant No.1-Police Station Shegaon City District Buldhana for the offence punishable under Sections 376(2)(n), 417 and 506 of the Indian Penal Code, 1860 and under Section 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and charge-sheet No.5/2025 and consequent proceeding bearing Special Atrocity Case No.12/25 pending before the learned Sessions Court, Khamgaon.

4. The crime is registered on the basis of report lodged by the victim aged about 20 years, on an allegation that she got acquaintance with the present applicant as they were studying in one college and love relationship was developed between them and it was continued for two years. She further alleged that applicant was promising her for marriage and therefore, she trusted him and on the promise of marriage the present applicant has taken her in various lodges and subjected her for the forceful sexual assault and subsequently, he denied to perform the marriage with her. He has also obtained her photograph and by

threatening her that he would make said photograph viral, he subjected her for the sexual forcible assault. On the basis of the said report police have registered crime against him.

5. Heard learned counsel for the applicant who submitted that considering the entire statement of the victim, it reveals that out of love affair they came to close and there was physical relationship developed between them out of the love relationship. Thus as far as promise of marriage is concerned or breach of promise is concerned, which is not sufficient to attract the offence punishable under Section 376 of the Indian Penal Code. On the contrary the statement of the victim itself discloses that out of the love affair she has given consent and the act of physical relationship is consensual act and in view that the application deserves to be allowed.

6. Per contra, learned APP for the State strongly opposed the said contentions and submitted that on the false pretext of marriage she was subjected for the forcible sexual assault and thereby applicant has committed offence and therefore, application deserves to be rejected.

7. Learned counsel for non-applicant No.2 also endorsed the same contention and submitted that present applicant is having such type of relations with various girls and the statements of that girls were also recorded during investigation, which show the conduct of present applicant. In view of that application deserves to be rejected.

8. In the light of the above submissions I have perused the FIR and investigation papers which shows that victim got acquaintance with the present applicant as they were studying in the same college. Thereafter friendship was developed into love relationship. Out of love affair they were meeting each other and during meeting they entered into physical relationship. Thus, it is apparent from the statement of the victim itself that relation between her and the present applicant was consensual in nature. More over the victim is grown up girl knows the consequences of her act. The applicant is also an adult man. They both entered into such relationship after understanding the consequences of the said act.

9. As far as misconception of the fact that is concerned, which is now considered by the Hon'ble Apex Court in the case of *Maheshwar Tigga vs. State of Jharkhand* reported in *AIR 2020 SC 4535 464* wherein the Hon'ble Apex Court has observed that under Section 90 IPC, a consent given under a misconception of fact is no 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. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

10. In the light of the above observations of the Hon'ble Apex Court, if the facts of the present case are taken into consideration, admittedly, it covers under consensual relationship. As far as consent under misconception of fact is concerned, there

is no proximity between two acts as the non-applicant no.2 was in relationship with the present applicant for more than two years.

11. In the instant case, the victim who herself has attained the age of majority knows the consequences of her act. From the recitals of the FIR and statement of the victim reveals it is mere breach of promise. Now it is well settled that mere breach of promise is not sufficient to attract the offence punishable under Section 376 of the IPC. More over the facts and circumstances are looked into in the light of fact that there was love affair between the applicant and victim and out of love affair there was physical relationship developed between them. Thus, considering all these facts the application deserves to be allowed.

12. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Application is allowed.

(ii) The First Information Report in connection with crime No.191/2024 registered with the non-applicant No.1- Police Station Shegaon City Distrit Buldhana punishable under Sections 376(2)(n), 417 and 506 of the Indian Penal Code, 1860 and under Section 3(1)(w)(i)(ii) and 3(2)(v) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, charge-sheet No.5/2025 and consequent proceeding bearing Special Atrocity Case No.12/25 pending before the learned Sessions Court, Khamgaon is quashed and set aside to against the present applicant- Krishna s/o Shankar Kadam.

13. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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