



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

CRIMINAL APPLICATION (APL) NO. 822 OF 2025

1. **Ashish Tukaram Bartine**

Aged about 25 years,
Occupation : Service,
R/o. Chandankheda, Tah.
Bhadrawati Dist. Chandrapur

APPLICANT

// V E R S U S //

1. **The State of Maharashtra,**
Through Police Station Officer,
Bhadrawati,
Dist. Chand

2. **XYZ (Victim)**
in Crime No.164/2025 registered
with PSO, Bhadrawati
Dist. Chandrapur

NON-APPLICANTS

Mr. Mahesh Rai, Advocate for the applicant.
Mrs M. A. Barbade, APP for non-applicant No.1/State.
Ms Bhavika Hindustani, Adv. (appointed) 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.164/2025 registered with the non-applicant No.1-Police Station Bhadrawati District Chandrapur punishable under Sections 376(2)(n) and 417 of the Indian Penal Code, 1860 and charge sheet No.97/2025.

4. The crime is registered on the basis of report lodged by the victim aged about 21 years on an allegation that she got acquaintance with the present applicant and present applicant on the promise of marriage subjected her for forceful sexual assault despite her resistance and on various occasions since in 2022 he has continued the relationship with her. On the basis of the said report police have registered the crime against the applicant.

5. Heard learned counsel for the applicant who submitted that there was love affair between the victim and present applicant which reveals from her statement before the Members of the Tanta Mukti Samittee. He further submitted that relationship between applicant and victim was continued for more than one year. FIR is lodged thereafter on 04.04.2025. No

explanation as far as the delay is concerned. He submitted that the act of physical relationship between both of them was consensual act. He submitted that victim who is adult lady knows about the consequences of her act and she willingly entered into the relationship by knowing the consequences. In view of that mere breach of promise is not sufficient to attract the offence punishable under Section 376 of the IPC.

5. Per contra, learned APP and learned counsel for the complainant strongly opposed the said contentions and submitted that considering the statement of the victim that under the false promise of marriage she was subjected for forceful sexual assault and therefore, application deserves to be rejected.

6. In the light of the above submissions I have perused the FIR and investigation papers which show that victim got acquaintance with the present applicant and they were meeting each other. Victim is an adult lady knows the consequences of her act as well as applicant is also an adult man. They both entered into the relationship after knowing the consequences of the act. The issue was raised before the Tanta Mukti Samittee of the

village wherein also statements of both applicant and victim were considered from which it reveals that there was love affair between applicant and victim. Thus, it is apparent that the relationship between the applicant and non-applicant No.2 was consensual in nature.

7. As far as misconception of the fact that is concerned, which is now considered by the Hon'ble Apex Court in ***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.

8. 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.

9. In the instant case, the victim who herself has attained the age of majority knows the consequences of her act. She entered into relationship out of love affair. Mere breach of promise is not sufficient to attract the offence punishable under Section 376 of the IPC. In view of that the application deserves to be allowed.

10. 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.164/2025 registered with the non-applicant No.1-Police Station Bhadrawati District Chandrapur punishable under Sections 376(2)(n) and 417 of the Indian Penal Code,

1860 and charge sheet No.97/2025 is quashed and set aside to the extent of applicant-Ashish Tukaram Bartine.

11. The fees of the appointed counsel be quantified as per rules.

12. 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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