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

CRIMINAL APPLICATION (APL) NO.879 OF 2025

1. Darshan s/o Prabhakar Bavane,
Aged about 32 Years,
Occupation : Private,
R/o. Plot No.37A,
Near Hanuman Mandir,
Indraprasth Nagar, Bhamti,
Nagpur.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Sonegaon, Nagpur.
2. XYZ
Crime No.55/2025,
Police Station: Sonegaon, Nagpur.

....NON-APPLICANTS

Mr. P. K. Bezalwar, Advocate for applicant.
Mr. N. B. Jawade, APP for non-applicant No.1/State.
Smt. S. W. Chavan, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/03/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel
for the applicant, learned APP for the State and learned counsel
for the non-applicant No.2.

(2)

4. By this application, the applicant is seeking quashing of the FIR in connection with Crime No.55/2024 registered with Police Station Sonegaon, Nagpur for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the consequent proceeding arising out of the same bearing Special Case No.289/2024 pending before the District and Sessions Court, Nagpur.

5. The crime is registered on the basis of a report lodged by the non-applicant No.2 on an allegation that she is a married lady and having two children from the said wedlock. In the year September 2021, she got acquaintance with the present applicant and the said acquaintance turned into the love relationship. It is alleged by her that on 25.06.2023, the present applicant has subjected her for the forceful assault on the promise of marriage, and thereafter, on various occasions, he has subjected her for the forceful sexual assault and subsequently denied to perform the marriage with her. On the basis of the said report, police have registered the crime against the present applicant.

6. After registration of the crime, the investigation started rotating. During investigation, the investigating agency

(3)

has recorded the relevant statements of the witnesses and after completion of the investigation, the charge sheet was submitted against the present applicant.

7. Heard learned counsel for the applicant, who submitted that from the recitals of the FIR, it reveals that the victim - non-applicant No.2, is a married lady aged about 32 years, having two children, knows the consequences of her act. Two adults entered into the relationship, which was consensual in nature and the physical relationship was also consensual. Subsequently, this FIR came to be lodged. He further submitted that even accepting the allegation as it is, there was a promise of marriage, but their promise is not broken by the present applicant, but due to the denial by his family members he could not perform the marriage with the non-applicant No.2, therefore, mere breach of promise is not sufficient to attract the offence punishable under Section 376 of IPC. In view of that, the application deserves to be allowed.

8. Per contra, learned APP and learned counsel for the non-applicant No.2 strongly opposed the said contention and submitted that it was an intentional promise of the applicant to cheat the informant, and thereafter subsequently, he has denied to perform the marriage with her, and therefore, the *prima facie*

(4)

case is made out and hence, the application deserves to be rejected.

9. On hearing both sides and on perusal of the statement of the victim, it reveals that she is a married woman having two children. She got acquaintance with the present applicant, thereafter love relationship was developed between them and they entered into the physical relationship also. As per the allegations of the non-applicant No.2, there was a promise of marriage. Even accepting the same, it is apparent that the victim who herself was married woman having two children could not be said to have acted under the alleged false promise given by the present applicant and under the misconception of fact, while giving the consent to have sexual relationship with the applicant. It is now well settled that there has to be some proximity between the misconception of fact and the occurrence of the incident. Under Section 90 of 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 more than two years. It hardly needs any elaboration that the consent by the non-applicant No.2 was a conscious and informed choice made by her after due deliberation.

(5)

10. This aspect is now considered by the Hon'ble Apex Court in celebrated judgment of **Pramod Suryabhan Pawar vs State of Maharashtra and another reported in (2019) 9 SCC 608**, wherein after referring the catena of decision the Hon'ble Apex Court has observed 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."

11. The allegation in the FIR indicate that since 2021 she was in relationship which is more than three years. From the recitals of the FIR and the statement of the victim, it reveals that it was the consensual relationship.

12. By applying the parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and others Vs Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335**, which reads as under:

(6)

“(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(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.”

(7)

13. Admittedly, no *prima facie* case is made out and in that circumstances forcing the present applicant to face the trial could be an abuse of the process of law. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.55/2024 registered with Police Station Sonegaon, Nagpur for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the consequent proceeding arising out of the same bearing Special Case No.289/2024 pending before the District and Sessions Court, Nagpur, are hereby quashed and set aside to the extent of the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)