



Judgment

5 apl929.25.25

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

CRIMINAL APPLICATION APL NO.929 of 2025

1. Sumit s/o Shankar Khedgarkar,
aged about 28 years, occupation: service,
r/o Nehru Ward Ramtek, Near Hatwar
School, tahsil- Ramtek, Nagpur.
2. Shanker s/o Mansaramji Khedgarkar,
aged about 52, years, occupation: labour,
r/o Nehru Ward Ramtek, Near
Hatwar School, tahsil Ramtek,
Nagpur.
3. Kalyani w/o Atul Rewatkar,
aged about 24 years, occupation: housewife,
r/o ward No.2, Sawargaon, tahsil
Narkhed, Nagpur.
4. Shila w/o Shanker Khedgarkar,
aged about 50 years, occupation: housewife,
r/o Nehru Ward Ramtek, Near Hatwar
School, Nagpur.
5. Priya w/o Amit Khedgarkar,
aged about 28 years, occupation: housewife,
r/o Nehru Ward Ramtek, Near Hatwar
School, Nagpur.
6. Atul s/o Tukaramji Rewatkar,
aged about 33 years, occupation: service,

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r/o ward No.2, Sawargaon, tahsil
Narkhed, Nagpur.

7. Amit s/o Shankar Khedgarkar,
aged about 28 years, occupation: private,
r/o Nehru Ward Ramtek, Near Hatwar
School, Nagpur. Applicants.

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Kanhana, Police Station, Nagpur.

2. XYZ (complainant),
through Police Station Officer,
Police Station, Kanhana, Nagpur.
Crime No.844/2024. Non-applicants.

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Shri C.B.Barve, Counsel for the Applicants
Shri N.B.Jawade, APP for Non-applicant No.1/State.
None for the Non-applicant No.2 (complainant)

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CORAM : URMILA JOSHI-PHALKE, J.
DATE : 05/02/2026

ORAL JUDGMENT

1. Heard learned counsel for the applicants and learned
APP for the State. Despite service, none appears for the non-

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applicant No.2 (the complainant). **Admit.** Heard finally by consent.

2. The applicants have approached this court by filing the present application under Section 528 of the BNSS seeking quashing of the FIR dated 17.11.2024 in connection with Crime No.1/2024, subsequently numbered as FIR No.844/2024, registered with Parseoni Police Station, district Nagpur for offences under Sections 3(5), 69, 89, and 64(2) of the BNS and 3(1)(R), 3(i)(ii), 3(1)(w), 3(2)(vii), and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and consequent proceeding arising out of the same bearing Special Case No.53/2025.

3. As per the FIR lodged by the complainant, in the year 2019-2020, she got acquaintance with the applicant No.1 and friendship was developed between them and subsequently, the said friendship turned into love affair. It is further alleged that in the year 2021, the applicant No.1 was preparing for

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recruitment in the Police Department and in the year 2021, he got job in CRPF as Police Constable. However, the said relationship between them was continued and whenever the applicant No.1 came on vacations, she used to meet him and there was physical relationship developed between them as the applicant No.1 promised her for marriage. She further alleged that in the month of April 2024, again, she met the applicant No.1 and, at the relevant time, there was physical relationship between them. Thereafter, engagement ceremony was performed and in the said engagement ceremony, all the other applicants were present and after that the applicant No.1 called her and disclosed that he is unable to perform the marriage with her as she belongs to the Scheduled Caste Community. Due to the physical relationship between the applicant No.1 and the complainant, she carried pregnancy. On the basis of the said report, the police have registered the crime against the applicants.

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4. Learned counsel for the applicants submitted that from recital of the FIR itself, it reveals that it was consensual act between the applicant No.1 and the complainant. They came together out of the love affair and continued the said relationship for a considerable period and it cannot be said that mere breach of promise of performance of the marriage would be sufficient to attract the offence punishable under Section 69 fo the BNS.

5. In support of his contentions, learned counsel for the applicants placed reliance on **Criminal Application APL No.998/2021 (Shri. Shardul Shivdas Ukey vs. The State of Maharashtra, Through Police Station Officer, Police Station, Beltarodi, Nagpur and anr) decided on 23.12.2025** wherein various decisions of the Hon'ble Apex Court were considered and submitted that in view of that, the present application deserves to be allowed.

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6. *Per contra*, learned APP for the State has strongly opposed the said contentions and submitted that on the basis of false promise of marriage, the complainant was subjected for forceful sexual assault and, therefore, the application deserves to be rejected.

7. On hearing both the sides and perusing recital of the FIR, it reveals that the complainant belongs to the Scheduled Caste. Recital of the FIR discloses that there was acquaintance with the applicant No.1 and the complainant and due to the said acquaintance, they came together. Love affair was there between both of them. Out of the love and affection, there was physical relationship developed between them and the engagement was also performed between them, but for one or the other reason, the applicant No.1 has not performed the marriage and it is alleged that he disclosed that he is unable to perform the marriage and abused her and humiliated her as she belongs to the Scheduled Caste Community.

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8. There is no dispute that the relationship between the applicant No.1 and the complainant was out of love affair. Admittedly, the applicant No.1 and the complainant came together and physical relationship was developed between them due to love and affection between them.

9. As far as the complainant is concerned, she is a grown up lady and knows consequences of her act as well as the applicant No.1 is also a grown up man.

10. It is settled law that, “where a woman does not consent to sexual act as described, it is not a consent”.

11. Admittedly, the term “consent” has not been defined under the law. However, Section 90 of the IPC states that a consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the

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consent was given in consequence of such fear or misconception.

12. 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".

13. The FIR itself reveals that the applicant No.1 and the complainant were having love relationship and, therefore, the said relationship was continued upto four years from 2021 to 2024.

14. 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. It hardly needs any elaboration that the “consent” by the complainant 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 complainant in her FIR itself shows that out of love affair, they came together and the relationship was continued.

15. The complainant, who herself 28 years lady, knows consequences of her act and could not be said to have acted

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under misconception of fact while giving the “consent” to have sexual relationship with the applicant No.1.

16. As far as the present application as to provisions of the SC and ST Act are concerned, admittedly, there is no whisper in the FIR that merely because she belongs to the Scheduled Caste, the applicant No.1, under misconception of fact, subjected her for forceful sexual assault.

17. 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

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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.”

18. In the light of the above observations, if the facts and the allegations are taken into consideration, it is evident that the relationship between the applicant and the complainant was consensual in nature and continued for a substantial period of time. The allegations are founded on long standing relationship that developed gradually from 2021 to 2024. Even assuming the allegations as it is, at the most, it is unbroken chain of voluntary interaction and continued intimacy long after the alleged incident and, therefore, no *prima facie* case is made out against the applicants.

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

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ORDER

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

(2) The FIR dated 17.11.2024 in connection with Crime No.1/2024, subsequently numbered as FIR No.844/2024, registered with Parseoni Police Station, district Nagpur for offences under Sections 3(5), 69, 89, and 64(2) of the BNS and 3(1)(R), 3(i)(ii), 3(1)(w), 3(2)(vii), and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and consequent proceeding arising out of the same bearing Special Case No.53/2025 are hereby quashed and set aside to the extent of the present applicants.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)