



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

CRIMINAL APPLICATION (APL) NO. 1168 OF 2025

Manoj Gajanan Ghatolkar,
Aged about 30 Yrs., Occ: Private Job,
R/o Renuka Nagar, Near Wadekar
Kirana, Dabki Road, Akola,
Tq. & Dist. Akola.

APPLICANT

Versus

1. The State of Maharashtra,
Through Police Station Officer, Police
Station Dabki Road, Akola,
Tq. & Dist. Akola.

2. XYZ in Crime No. 147/2025,
Thr. PSO- Dabki Road, Akola,
Tq. & Dist. Akola.

NON-APPLICANTS

Ms. Gauravi Mishra, Advocate a/w Mr. V.S. Mishra, Advocate for
the Applicant.

Mr. A.M. Kadukar, APP for the Non-applicant No.1/State.

Mr. S.S. Purwar, Advocate h/f Mr. N.R. Tekade, Advocate for the
Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 12th FEBRUARY, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.

3. The present Application is preferred by the Applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for quashing of the First Information Report in connection with Crime No.147/2025 registered with Police Station Dabki Road, Akola for the offence punishable under Sections 64(2)(m), 351(2)(3) of the Bharatiya Nyaya Sanhita (BNS) 2023 and the consequent proceeding arising out of the same bearing R.C.C. No. 1007/2025.

4. The crime is registered on the basis of a report lodged by the Victim/Non-applicant No.2 on an allegation that the Victim met the present Applicant prior to her marriage in the year 2020 and there was love affair developed between them but the marriage of the Victim was performed with another person. There was some dispute between her and her husband, and therefore, she again started residing alongwith her parents. It is alleged that, as the present Applicant came to know that she is now residing alongwith her parents he again tried to contact her and promised her for marriage and on the

promise of marriage he subjected her for the forceful sexual assault. She alleged that, the present Applicant lured her on the promise that after the decree of divorce is passed he will perform marriage with her and by taking her on various places has subjected her for the forceful sexual assault. On the basis of the said report Police have registered the crime against the present Applicant.

5. Heard learned Counsel for the Applicant who submitted that, the recitals of the FIR itself shows that there was love affair between the Applicant and the Non-applicant No.2 and thereafter the marriage of Victim was performed. After marriage there was some dispute between husband and wife, therefore she started residing alongwith her parents. Thereafter, again the Applicant and Non-applicant No.2 started meeting each other and physical relationship was developed between them. She invited my attention towards the fact that the Non-applicant No.2 is 29 years old woman and knows the consequences of her act and she is also serving in the Municipal Corporation. Thus, she submitted that, she is not a layman who is not aware about the consequences of her act. On the contrary,

she is educated and grown up lady and knowing the consequences of her own act she entered into the physical relationship with the present Applicant, is sufficient to infer that the relationship between both of them is consensual in nature. She submitted that considering the various Whats App chat exchanged between both of them it reveals that the relationship was consensual in nature and there was no force used by the present Applicant and there was no false promise also. In view of that, the Application deserves to be allowed.

6. *Per contra*, learned APP strongly opposed the said contention and submitted that considering that the Non-applicant No.2 was falsely promised for marriage. After marriage when there was some dispute between the husband and wife, she came to reside alongwith her parents and by taking disadvantage of the same, the present Applicant lured her and subjected her for forceful sexual assault, and therefore, the Application deserves to be rejected.

7. Learned Counsel for the Non-applicant No.2 also endorsed the same contentions.

8. On hearing both the sides and on perusal of the entire recitals of the FIR it reveals that there is no dispute as to the fact that initially they got acquaintance with each other in the year 2020 and love affair was developed between them. However, the marriage of the Non-applicant No.2 was performed with some other person but there was rift between the relationship, and therefore, she started residing alongwith her parents and again there was communication between her and the present Applicant. The various Whats App chats which was collected during the investigation discloses the nature of relationship between both of them. Admittedly, the Victim is 29 years old serving in Municipal Corporation knows the consequences of her act. The Applicant is also a grown up man. Thus, two adult persons entered into the relationship and the relationship was consensual in nature. On the contrary, the petition filed by the Non-applicant No.2 for obtaining the decree of divorce is still pending and despite of that she entered into the relationship. Therefore, it could not be said that she has acted under the false promise of marriage given by the present Applicant.

9. As far as the consent under the misconception of fact is concerned, which is not applicable in the present case as under Section 90 of IPC, the consent is given under the 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. Here in the present case since year 2020 the present Applicant and the Non-applicant No.2 are in touch with each other, physical relationship was developed between them. Thus, 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.

10. This aspect whether the consent was obtained under the misconception of fact or not is considered by the Hon'ble Apex Court in the celebrated judgment in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra & Anr., (2019) 9 SCC 608***, wherein after considering the various judgments the Hon'ble Apex Court in para 18 held as under :

“18. 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. By applying the principles laid down by the Hon’ble Apex Court in the case of ***State of Harayana & Ors. Vs. Ch. Bhajan Lal & Ors., 1992 AIR 604***, while considering the Application under Section 482 of Cr.P.C., which reads as under:

“(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.”

12. The present case is covered under the parameters laid down by the Hon’ble Apex Court. In view of that, the Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report in connection with Crime No. 147/2025 registered with Police Station Dabki Road, Akola for the offence punishable under Sections 64(2)(m), 351(2)(3) of the Bharatiya Nyaya Sanhita (BNS) 2023 and the consequent proceeding arising out of the same bearing R.C.C. No. 1007/2025 pending before the 6th Joint J.M.F.C.

Akola, are hereby quashed and set aside to the extent of present Applicant.

13. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte