



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

CRIMINAL APPLICATION (APL) NO. 1183 OF 2025

Vaibhav S/o Dipak Sadanshiv,
Age 32 Years, Occ. Business,
R/o Anand Nagar, Ward No. 4,
Post Mudza, Ta & Dist. Gadchiroli.

APPLICANT

Versus

1. The State of Maharashtra,
Through its Police Station Officer,
Police Station Gadchiroli,
Ta & Dist. Gadchiroli.

2. X.Y.Z. (Victim) in Crime
No.266/2025, Thr. Police Station
Officer, Police Station Gadchiroli,
Dist. Gadchiroli.

NON-APPLICANTS

Mr. S. Deshpande, Advocate a/w Mr. S.D. Borkute, Advocate for
the Applicant.
Mr. N.H. Joshi, APP for the Non-applicant No.1/State.
Mr. V.V. Sharma, Advocate (Appointed) for the Non-applicant
No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 13th JANUARY, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.
3. The Applicant has approached this Court by filing the present Application under Section 528 of the Bharatiya Nagrik Suraksha Sanhita (BNSS) 2023 for quashing of the First Information Report in connection with Crime No.266/2025 dated 02.05.2025 registered with Police Station Gadchiroli, District Gadchiroli under Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No.77/2025 pending before the Additional Sessions Judge-1, Gadchiroli.
4. The crime is registered on the basis of the report lodged by the Non-applicant No.2 on an allegation that she was serving at Gadchiroli in the year 2018 and she got acquaintance with the present Applicant in the year 2019 who proposed her for marriage. It is further alleged that, on the promise of marriage he used to visit her room and subjected her for the forceful sexual assault and subsequently he declined to perform

marriage with her. It is the allegation that, on the promise of marriage he established physical relations with her. On the basis of the said report Police have registered the crime against the present Applicant. During investigation, the Investigating Officer has recorded the relevant statements of the witnesses, collected the medical certificate and after completion of the investigation submitted charge-sheet against the present Applicant.

5. Heard learned Counsel for the Applicant who submitted that, the entire relationship between the Applicant and Non-applicant No.2 was consensual and there was no iota of concealment or misrepresentation. He submitted that, the Non-applicant No.2 obtained a report itself and submitted that, there was a promise of marriage and on that count there was physical relationship between them. Thus, the relationship which is of a consensual in nature out of mutual affection developed between them, no offence is made out as far as the offence under Section 69 of the BNS is concerned. He submitted that, by no stage of imagination it can be said that the Applicant has lured the Non-applicant No.2 and out of lust the said

offence is committed. On the contrary, the statement of Victim/ Non-applicant No.2 itself shows that, out of the promise of marriage she has developed the relationship with the Applicant, and therefore, no *prima facie* case is made out. In view of that, the Application deserves to be allowed.

6. *Per contra*, learned APP strongly opposed the contentions of the learned Counsel for the Applicant and pointed out the various statements of the witnesses and submitted that, on the promise of marriage i.e. under the misconception of the fact the Applicant has subjected for forceful sexual assault, and therefore, *prima facie* case is made out, and therefore, the Application deserves to be rejected.

7. Learned appointed Counsel for the Non-applicant No.2, has endorsed the same contentions and submitted that the Non-applicant No.2 was exploited by the Applicant not only physically but he has also extracted money from her and he invited my attention towards the statement recorded under Section 164 of the Code of Criminal Procedure as well as some screen shots showing that the amounts are extracted from the

Non-applicant No.2. He submitted that, considering all these facts the Application deserves to be rejected.

8. On hearing both the sides and on perusal of the entire investigation papers it reveals that, the Applicant and the Non-applicant No.2 got acquaintance with each other in the year 2018 and thereafter till 2024 the said relationship was continued. Thus, it is relevant that it was a consensual relationship between the Applicant and Non-applicant No.2 by understanding the consequences of the act. This aspect is considered by the Hon'ble Apex Court in various decisions.

9. In view of these facts, I am of the considered opinion that the relationship was nothing but consensual in nature between two major persons. The concept of 'consent' has been elaborated by the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra & Anr., (2019) 9 SCC 608**, which reads as under :

"16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false

promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act.”

10. In **Deepak Gulati vs. State of Haryana, (2013) 7 SCC 675**, this Court observed:

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at the initial stage itself, the accused had no intention whatsoever of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 of IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, “unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.

(Emphasis supplied)”

11. In *Uday Vs. State of Karnataka, (2003) 4 SCC 46*, the complainant was a college going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accused promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors: (SCC P.58, Para 25)

"25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or

had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married...

(Emphasis supplied)”

12. To summarize 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. I am therefore of the view that, the matter squarely falls within the parameters laid down in the judgment in the case of *State of Harayana & Ors. Vs. Ch. Bhajan Lal and others, 1992 AIR 604*, which read as under:

“1)

2)

3)

4)

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)

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.”*

14. The allegations made in the First Information Report, upon careful perusal, appear to be inherently improbable and devoid of material substance. It is difficult to accept that a woman of mature understanding, would continue to voluntarily meet and maintain physical intimacy with him over an extended period if such acts were indeed induced by deception or coercion.

15. In my considered opinion, this is a fit case to quash the charge-sheet/final report form. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
 - ii. The First Information Report in connection with Crime No. 266/2025 dated 02.05.2025 registered with Police Station Gadchiroli, District Gadchiroli under Section 69 of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No.77/2025 pending before the Additional Sessions Judge-1, Gadchiroli, are hereby quashed and set aside to the extent of present Applicant.
 - iii. Fees of the learned Appointed Counsel be quantified as per rules.
16. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)