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

CRIMINAL APPLICATION (APL) NO.1189 OF 2025

1. Suraj s/o Ramesh Kodape,
Aged about 29 Years,
Occupation : Service,
R/o. Mudolhi, Check No.2,
Tahsil Chamorshi, District Gadchiroli,
Presently at Police Training Centre,
Nashik.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Gadchiroli,
Tahsil and District Gadchiroli.
2. XYZ,
the victim in FIR/Crime
No.543/2025 registered by
respondent No.1 Police Station,
Gadchiroli.

....NON-APPLICANTS

Mr. Madhur Deo, Advocate for applicant.
Ms. M. A. Barabde, APP for non-applicant No.1/State.
Mr. Akash Joshi, Advocate h/f Mr.R. T. Bansod, Advocate for
non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/03/2026

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/complainant.

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4. Present application is preferred by the applicant for quashing of the FIR in connection with Crime No.543/2025 registered with Police Station, Gadchiroli, District Gadchiroli for the offence punishable under Sections 351(2), 352, 69 and 89 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and consequent proceeding arising out of the same bearing Sessions Case No.3/2026 pending before the learned Ad-hoc District Judge -1 and Additional Sessions Judge, Gadchiroli.

5. Heard learned counsel for the applicant, who submitted that the crime is registered on the basis of a report lodged by the non-applicant No.2 on an allegation that she got acquaintance with the present applicant in the year 2018 and the said acquaintance was developed into the friendship and thereafter into the love affair. They were visiting each other's house and the applicant has disclosed that he would perform marriage with her and he started residing to her house. In the year 2023, she came to know that he is having relationship with another lady, and therefore, she has broken the relationship with him. It is further alleged that she has visited the house of the present applicant and the family members of the present applicant gave them understanding that whenever there would be the result of the present applicant of the examination of MPSC, they would perform the marriage. She further alleged that she was also helped economically to the present applicant,

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but the present applicant on the promise of marriage subjected her for the sexual assault time to time, which resulted into her pregnancy. After she was pregnant, the applicant started asking her to terminate the pregnancy and also given her some tablets for terminating the said pregnancy. In February 2025, he had been to Nashik and disclosed to her that now he is having in relationship with another lady and he will not perform the marriage with her. However, she told him that she will lodge a complaint against him, and therefore, he was having apprehension of losing his job, and therefore, he performed the marriage with her on 22.06.2025 in Buddha Vihar, Gokulnagar, Gadchiroli, and thereafter also on various occasions, on the promise of marriage, he has subjected her for the sexual assault.

6. After registration of the crime, the investigation was started rotating, she was referred for the medical examination, various statements are recorded, she filed an application with the Investigating Officer and also produced on record her WhatsApp chats. After completion of the investigation, the charge sheet was submitted against the present applicant.

7. Heard learned counsel for the applicant, who submitted that the non-applicant No.2 is 31 years old serving as Nurse, city Hospital at Gadchiroli. She knows the consequences of her act. The relationship was not of some days, but it was for

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seven years. In the year 2023 itself, she came to know about the relationship of the present applicant with another lady. As per the allegations levelled in the FIR, despite having knowledge she continued with relationship and on 22.06.2025 performed the marriage with the present applicant, sufficiently shows that it was the consensual relationship between the applicant and the non-applicant No.2 and subsequently, as there was some dispute between them, this FIR came to be lodged on 17.07.2025. He also invited my attention towards the WhatsApp chats and submitted that these WhatsApp chats itself is sufficient to show that it was not a forceful termination of the pregnancy, but it was the non-applicant No.2, who was willing to terminate the pregnancy and therefore, she has terminated the pregnancy. Thus, he submitted that offence under Section 89 of the BNS is also not made out against the present applicant. As far as the offence under Section 351(2) and 352 of the BNS is concerned, the ingredients of offence itself are not made out. In view of that, the application deserves to be allowed.

8. Per contra, learned APP strongly opposed the said contention and submitted that the statement of the victim itself sufficiently shows that on the promise of marriage and since inception, there was no intention to perform the marriage, he has subjected her for the forceful sexual assault and thereby

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committed an offence, *prima facie* case is made out and hence, application deserves to be rejected.

9. Learned counsel for the complainant/non-applicant No.2 also endorsed the same contentions and invited my attention towards the reply filed by him and also the statement of one Akanksha Bhaurao Kunghadkar and submitted that from her statement, it reveals that in the year 2022 itself the applicant and the said lady was in relationship, this fact was not disclosed to the non-applicant No.2 and the applicant has continued the relationship with present non-applicant No.2 as well as this lady which sufficient to shows his intention and therefore, the application deserves to be rejected.

10. On hearing both sides and on perusal of the entire investigation papers, it reveals that in the year 2018 itself the applicant and the non-applicant No.2 got acquaintance, thereafter the said acquaintance developed into the friendship and friendship into the love affair. The recitals of the FIR itself shows that the non-applicant No.2 came to the knowledge that he is having relationship with the another lady in the year 2023 also, thereafter she visited the house of the present applicant and thereafter with the intervention of the family members, it was decided that after MPSC result of the present applicant, they will perform the marriage. Thereafter, she continued with the

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relationship of the present applicant. Thus, it is relevant to mention that after she came to the knowledge that he is having the relationship with the another lady, then also she continued with the said relationship and thereafter, they performed the marriage on 22.06.2025. The photographs which are collected during the investigation also shows that the marriage was performed between the present applicant and the non-applicant No.2, but due to some disputes between the relationship, the said relationship was broken. The law is settled as far as such type of the relationship is concerned. Learned counsel for the applicant placed reliance on **Mahesh Damu Khare Vs. State of Maharashtra and another** reported in **(2024) 11 SCC 398**, wherein it is observed that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered, certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a

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false promise and to prosecute a person for the offence under Section 376 of IPC.

11. In the present case, the prosecutrix who herself is a grownup lady of 31 years got acquaintance with the present applicant in the year 2018, thereafter the relationship was continued till 2025. The photographs on record shows that they have performed the marriage and thereafter there was dispute between them and therefore, the said relationship was broken. After going through the facts of the case, it could not be said to have acted that the present non-applicant No.2 was acted under the alleged false promise given by the present applicant and under the misconception of fact.

12. 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 seven 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.

13. On perusal of WhatsApp chats, it further reveals that it was the present non-applicant No.2, who was not willing to carry out the pregnancy and therefore, she also was having

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apprehension that the present applicant will not perform the marriage with her, and therefore, she wanted to terminate her pregnancy. Thus, this aspect is also requires to be considered which shows that the termination of pregnancy was not forceful termination, but it was the non-applicant No.2, who was not ready to carryout the pregnancy.

14. Learned counsel for the non-applicant No.2 invited my attention towards the statement of the another lady, which shows that the applicant got acquaintance with the said lady in the year 2022 and he was having the friendship with the said lady. Her engagement was performed with another boy and she has disclosed her parents that she wants to continue the relationship with the present applicant. Even accepting the statement as it is, this fact was brought to the knowledge of the non-applicant No.2 in the year 2023 itself. Thereafter also she continued with the said relationship is sufficient to show that it was the consensual relationship between the present applicant and the non-applicant No.2. The judgment on which the learned counsel for the applicant relied upon i.e. **Mahesh Damu Khare Vs. State of Maharashtra and another** referred supra, wherein the Hon'ble Apex Court has considered the various judgments and thereafter the scope of Section 482 of the Code of Criminal Procedure and by referring the decision of **State of Haryana and others Vs Bhajan Lal and others** reported in

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1992 Supp. (1) SCC 335, wherein the parameters are laid down which reads as under:

"102. (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.

(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."

15. The power of the High Court to exercise inherent power under Section 482 CrPC for quashing of FIR, we need to understand the scope of the offence under Section 375 IPC which deals with rape, punishable under Section 376 IPC.

16. In para No.28 it is observed by the Hon'ble Apex Court thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being

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influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact. It is further observed that it must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 of IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent.

17. In view of the above observations of the Hon'ble Apex Court, admittedly, the relationship between the present applicant and the non-applicant No.2 was more than seven years. After she got the knowledge of the relations between present applicant and the other lady, then also she continued with the said relationship is sufficient to show that it was the consensual relationship. Moreover, even it is assume that the false promise of marriage was made to the complainant initially by the present accused, even though no such cogent evidence has been brought on record to show that the said promise was false promise and since inception, there was intention not to fulfill the said promise. In view of that, and in the light of the facts and circumstances and for the reasons discussed above, I am of the opinion that this is a fit case wherein the powers under Section 482 of CrPC

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to be exercised in favour of the present applicant. In view of that, the I proceed to pass following order:

ORDER

- (i) The application is **allowed**.
- (ii) FIR in connection with Crime No.543/2025 registered with Police Station, Gadchiroli, District Gadchiroli for the offence punishable under Sections 351(2), 352, 69 and 89 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing Sessions Case No.3/2026 pending before the learned Ad-hoc District Judge - 1 and Additional Sessions Judge, Gadchiroli, are hereby quashed and set aside to the extent of the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.