



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

CRIMINAL APPLICATION (APL) NO. 1439 OF 2025

1. **Manoj s/o Sundarlal Dhurve**

Aged about 30 years,
Occupation : Service,
R/o Allapalli, Tahsil- Aheri,
District Gadchiroli

APPLICANT

// V E R S U S //

1. **The State of Maharashtra,**
Through Police Station Officer,
Police Station, Gadchiroli, Tahsil
& District Gadchiroli

2. **XYZ**
the victim in FIR/Crime
No.112/2025 registered with Police
Station Gadchiroli, Tahsil & District
Gadchiroli

NON-APPLICANTS

Mr. Madhur Deo, Advocate for the applicant.
Mr. Nikhil Joshi APP for non-applicant No.1 /State.
Ms Radha Mishra, Advocate (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 11.02.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. The present application is preferred by the applicant for quashing of the First Information Report in connection with crime No.112/2025 registered with non-applicant No.1-Police Station Gadchiroli under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing Sessions Trial No.68/2025 pending on the file the District and Additional Sessions Judge, Gadchiroli.

4. The brief facts which are necessary for the disposal of the application are as under:-

The FIR came to be registered on the basis of report lodged by victim who is aged about 26 years on an allegation that she studied up to 12 standard and thereafter she was admitted for the nursing training. In September, 2024 she got acquaintance with the present applicant through Facebook and thereafter they were sending messages to each other and there was communication between them. The applicant has proposed her and she also liked him and they were like each other. Accordingly, applicant has taken her in lodge and there was physical

relationship between them as the applicant promised her for marriage and thereafter it was continued. She alleged that present applicant subsequently denied to perform marriage with her. On the basis of said report, police have registered crime against applicant. After registration of crime investigation was carried out. During investigation, Investigating Officer has recorded the statements of witnesses and after completion of the investigation charge-sheet is filed against the present applicant.

5. Heard learned counsel for the applicant who submitted that the recitals of the FIR itself shows that it was a consensual relationship. There is clear distinction between the rape and physical relationship and in catena of decisions the Hon'ble Apex Court has distinguished mere breach of the promise as well as the consensual relationship and the misconception of fact. Thus, considering the statement of the victim it clearly reveals that out of love affair the physical relationship was developed between them and subsequently, the marriage could not be performed for some reasons. Therefore, the offence under Section 69 is not made out against the present applicant. Therefore, application deserves to be allowed.

6. Per contra learned APP opposed the application and submitted that under misconception of fact the non-applicant No.2 was subjected for sexual assault and therefore, prima-facie case is made out. Therefore, application deserves to be rejected.

7. Learned counsel for the non-applicant No.2 also endorsed the same contention and submitted that the statement of the victim itself sufficient to show that the under misconception of fact, consent was obtained and therefore, it is not consent at all. In view of that application deserves to be rejected.

8. After considering the rival submissions of both the parties and on perusal of the recitals of the FIR and investigation papers it reveals that the applicant and non-applicant No.2 got acquaintance with each other through the social media. Thereafter exchange of messages as well as there was proposal of the applicant, which was accepted by the non-applicant No.2 and out of love affair physical relationship was developed between them. Admittedly non-applicant No.2 and applicant both are grown up adults and knows the consequences of their act. They entered into

the relationship after understanding the consequences of the said act. The recitals of the FIR itself depicts that relationship between the applicant and non-applicant No.2 was consensual in nature.

9. Though learned APP submitted that it is misconception of fact under which the consent was obtained but this aspect is clarified by the Hon'ble Apex Court in the celebrated judgment *Pramod Suryabhan Pawar vs The State Of Maharashtra* reported in *(2019) 9 SCC 608* wherein after referring the catena of decisions the Hon'ble Apex Court 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.

10. Learned APP though submitted that the consent was obtained under the misconception of facts admittedly under Section 90 of the IPC the consent 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 more than one years. It hardly needs any elaboration that the consent by non-applicant No.2 was conscious and inform choice made by her after due deliberation.

11. In the above circumstances the application deserves to be allowed.

12. Hence, I proceed to pass the following order:-

ORDER

(i) The Criminal Application is allowed.

(ii) The First Information Report in connection with crime No.112/2025 registered with the non-applicant No.1- Police Station Gadchirole under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing Sessions Trial No.68/2025 pending on the file the District and Additional Sessions Judge, Gadchiroli

is quashed and set aside to the extent of applicant-Manoj
s/o Sundarlal Dhurve.

(iii) The fees of the appointed counsel be quantified
as per rules.

13. The criminal application stands disposed of in
the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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