



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.1337 OF 2022

... APPLICANT

...VERSUS...

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Nandgao Peth,
Tq. and Dist: Amravati.

...NON-APPLICANTS

Shri S.S. Shingane, Advocate for applicant
Shri N.B. Jawade, APP for non-applicant No.1/State
Ms Deepali Sahare, Advocate (Appointed) for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 06.11.2025
PRONOUNCED ON : 12.11.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. **Admit.** Heard finally with the consent of learned
Counsel for both the parties.

2. The applicant has approached this Court by filing the present application under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the First Information Report dated 08.12.2020, bearing Crime No. 0324/2020, registered at Police Station, Nandgaon Peth, Amravati, for the offences punishable under Sections 376(2)(n), 294, 506(2), read with Section 34 of the Indian Penal Code, 1860, as also, for offences punishable under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va), 3(2), 3(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The applicant further seeks to quash and set aside the charge sheet bearing No. 107/2020, dated 31.12.2020, pending before the Hon'ble Special Sessions Judge, Court No. 4, Amravati, wherein, an additional charge under Section 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been invoked.

3. As per the averments contained in the First Information Report lodged by the non-applicant No.2, the applicant and non-applicant No.2 came into contact with each other on 04.08.2017, following which, a romantic relationship developed between them.

The relationship continued thereafter till the month of November 2020. During which period, the applicant and non-applicant No.2 voluntarily engaged in the sexual activities on multiple occasions. It is the allegation of the non-applicant No.2 that the applicant portrayed a false picture of marriage and continued to maintain physical relations with her under the pretext of marrying her. It is further stated in the First Information Report that upon learning that the applicant was engaged to another woman, the non-applicant No.2 demanded the applicant to break of the engagement with the said woman. The family members also intervened in the matter, which prompted the non-applicant No.2 to lodge the First Information Report.

4. We have heard Shri S.S. Shingane, learned Counsel for the applicant, Shri N.B. Jawade, learned Additional Public Prosecutor for the non-applicant No.1/State and Mrs. Deepali Sahare, learned Counsel for the non-applicant No.2.

5. Learned Counsel for the applicant states that the non-applicant No.2 is aged 35 years, while the applicant is also an adult, major. He further submits that the parties were into a voluntarily

sexual relationship out of their own consent and free will, and therefore, no offence much less as mentioned in the First Information Report can be made out against the applicant. It is therefore his submission that, even if, the allegations in the First Information Report are taken on their face value, the offence is not made out. He, therefore, prays for quashing the First Information Report and the consequent charge sheet.

6. On the other hand, the learned Additional Public Prosecutor vehemently opposes the submissions made by the learned Counsel for the applicant and states that the aspect of consent cannot be inferred at this stage, and therefore, the applicant should face the trial. Learned Counsel for the non-applicant also supports learned Additional Public Prosecutor and states that the applicant has forcefully coerced the non-applicant No.2 to enter into a relationship under the false pretext of marriage.

7. In the backdrop of these submissions, we have perused the entire case papers including the charge sheet and the First Information Report, which contains statement of witnesses. At the

outset, we may state that parties are 30 years and 27 years of age respectively, thereby denoting that they are adult and major. The parties are therefore sane enough to understand the repercussions of engaging and continuing any relationship. Looking at the ages of the parties, and looking at the length for which relationship continued i.e. for more than three years, it can safely be inferred that parties engaged themselves into sexual relationship out of their own consent and free will and without any promise of marrying. It is only when the applicant got engaged with some other woman that the non-applicant No.2 lodged the First Information Report. No material has been placed on record or can be deduced from the charge sheet in question that the applicant never intended to marry the non-applicant No. 2, nor such intention was there at the initiation of the relationship.

8. In the judgment of ***Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608***, the Hon'ble Supreme Court while enunciating the law on subject has stated as under:

“12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active

*understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In **Dhruvaram Sonar** which was a case involving the invoking of the jurisdiction under Section 482, this Court observed: (SCC para 15)*

"15.... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of." This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala: (SCC p. 118, para 12)

"12.... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above). Section 3(1)(w) of the SC/ST Act also incorporates this concept of consent:

3(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is

without the recipient's consent;

Explanation - For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh, this Court held: (SCC para 12)

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can

be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in Deepak Gulati v. State of Haryanas (Deepak Gulati): (SCC p. 682, para 21)

"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;"

9. It is therefore clear that there is a clear distinction between breach of promise and not fulfilling a false promise. It is therefore the duty of the Court to examine that the false promise was made only at the inception thereof and not thereafter.

10. In view of the facts of the present case, and in view of the law laid down by the Hon'ble Supreme Court stated supra, we are of the considered opinion that the relationship was between two major adults spanning for more than four years, and therefore, consensual in nature. The consent of the non-applicant No.2 was not obtained under a misconception or a false promise to marry. The situation would therefore squarely falls within the well laid down parameters of the judgment of Hon'ble Supreme in the case of the *State of*

Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC

335. That the continuance of proceedings against the applicant would amount to abuse of process of the Court. We are therefore of the considered view that further continuance of proceedings against the applicant would result into miscarriage of justice and triversity of justice. We therefore, proceed to pass the following order :

ORDER

- i) The application is allowed.
- ii) The First Information Report dated 08.12.2020, bearing Crime No. 0324/2020, registered at Police Station, Nandgaon Peth, Amravati, for the offences punishable under Sections 376(2) (n), 294, 506(2), read with Section 34 of the Indian Penal Code, 1860 and for offences punishable under Sections 3(1)(w)(i), 3(1) (w)(ii), 3(2)(va), 3(2), 3(V) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as also, charge sheet bearing No. 107/2020, dated 31.12.2020, pending before the learned Special Sessions Judge, Court No. 4, Amravati, wherein an additional charge under Section 3(1)(r)(s) of the Scheduled Castes

and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, are quashed and set aside.

iii) Fees of the appointed Counsel be quantified as per the Rules.

iv) Parties to bear their own costs.

11. Pending applications, if any, shall stand disposed of.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..