

BENGALURU – 560 001.

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XXXX ... RESPONDENTS

(BY MISS.ASMA KOUSER, ADDL.SPP FOR R-1;
SRI AKSHAY R.HUDDAR, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, 2023, PRAYING TO QUASH THE FIR AND COMPLAINT IN CR.NO.789/2024, BY THE BYADARAHALLI POLICE, WHICH IS PENDING BEFORE THE CHIEF JUDICIAL MAGISTRATE (CJM) BANGALORE RURAL DISTRICT, BANGALORE, THE FIR ALLEGES OFFENCES P/U/S 3(5), 318(2), 351(2), 69, 89, 64(2)(m) OF BNS, 2023.

IN CRIMINAL PETITION No.2826 OF 2025

BETWEEN:

- 1 . SMT. MALA R.,
D/O RAJESH KUMAR
AGED ABOUT 34 YEARS.
- 2 . SRI MURTHY T.V.,
S/O LATE K.VENKATAPPA
AGED ABOUT 48 YEARS

BOTH ARE R/AT
TARABANAHALLI VILLGE
CHIKKA JALA HOBLI
YELAHANKA TALUK
BENGALURU RURAL DISTRICT – 560 064.

... PETITIONERS
(BY SRI PUNITH C., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY BYADARAHALLI POLICE
BENGALURU RURAL DISTRICT
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU – 560 001.

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... RESPONDENTS

(BY MISS.ASMA KOUSER, ADDL.SPP FOR R-1;
SRI AKSHAY R.HUDDAR, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, PRAYING TO QUASH THE FIR IN CR.NO.789/2024 FOR THE OFFENCES P/U/S 3(5), 318(2), 351(2), 69, 89, 64(2)(m) OF BNS ACT, 2023 AS PER ANNEXURE-A AND B BY THE RESPONDENT - BYDARAHALLI POLICE, NOW PENDING ON THE FILE OF LEARNED CHIEF JUDICIAL MAGISTRATE, BANGALORE RURAL DISTRICT AT BANGALORE, BY ALLOWING THE ABOVE PETITION.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.01.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

Criminal Petition No.1225 of 2025 is filed by accused No.1 and the companion petition in Criminal Petition No.2826 of 2025 is filed by accused Nos. 2 and 3. These petitioners challenge a common crime in Crime No.789 of 2024. The complainant is common. Therefore, these petitions are taken up together and considered by this common order.

2. For the sake of convenience, the facts obtaining in Criminal Petition No.1225 of 2025 would be narrated. In this order, accused No.1 would be referred as the petitioner, for easy reference.

3. Facts, in brief, germane are as follows: -

3.1. The petitioner is said to be in relationship with the complainant. Accused 2 and 3 in the companion petition are the relatives of accused No.1. It is the averment in the petition that the 2nd respondent/complainant is a resident of Anjananagara for

the last 4 to 5 years and her marriage had taken place 10 years ago with a particular person and the complainant has a child born from the said wedlock. In the year 2014, the averment in the petition is that the complainant again married one Yathish Kumar T.R. and the said marriage got dissolved in the year 2020 and from the said wedlock she has a child of 4 years now. In the year 2020, it appears that she gets acquainted with the present petitioner, a practicing Advocate in a case pertaining to Negotiable Instruments Act. The complainant alleges that during the conversation with the petitioner, he took the telephone number of the complainant and began conversation. The conversation turned into personal and the petitioner thereafter in the year 2022 sent a friend request on Instagram of the complainant and also made phone call to the complainant requesting her to accept his request. Accordingly, friendship between the complainant and the petitioner developed and the friendship further blossomed into having physical relationship as well.

3.2. The petition further narrates that in the month of July 2023 the petitioner came to the house of the complainant and

expressed that he is willing to marry her and on the pretext of marriage has had physical relationship which continued thereafter and on the breach of said promise of marriage, the complainant registers a complaint before the jurisdictional Police on 09-12-2024 not only against the petitioner but also against relatives of the petitioner. Registration of crime has driven the petitioners to this Court in the subject petitions.

4. Heard Sri Abhishek Kumar, learned counsel for the petitioner/accused No.1, Sri Punith C, learned counsel appearing for the petitioners/accused 2 and 3; Ms. Asma Kouser, learned Additional State Public Prosecutor appearing for respondent No.1 in both the petitions and Sri Akshay R. Huddar, learned counsel appearing for respondent No.2/complainant in both the petitions.

SUBMISSIONS:

PETITIONER'S:

5. The learned counsel appearing for the petitioners would vehemently contend that there is no physical relationship between the petitioner and the 2nd respondent/complainant at all. It is all

concocted story which the complainant is used to. He would contend that the complainant is already married not once but twice, and a person who is already married cannot project physical relationship on the promise of marriage. He would submit that the complainant is in the habit of indulging in such acts of trapping every man and registering crimes against them. He would submit that if further proceedings are permitted to be continued, it would become an abuse of the process of law. To buttress his submissions, he takes this Court through the documents appended to the petition to demonstrate marriage of the complainant with one Yathish Kumar T. R. and proceedings of annulment of marriage with Yathish Kumar T. R. and a crime being registered for offences punishable under Section 363 of the IPC when the child that the complainant had from the first marriage who was by then 13 years old goes missing, only to contend that the complainant who was married not once but twice, is wanting to project that the petitioner has had physical relationship with the complainant on the promise of marriage. He would submit that there is neither physical relationship nor promise of marriage.

COMPLAINANT AND STATE:

6. Contrariwise, the learned counsel appearing for the 2nd respondent/complainant would vehemently refute the submissions in contending that the crime is registered only on 09-12-2024. The investigation should be permitted to continue. It is only then the truth will come out. The petitioner has had relationship with the complainant as an Advocate and a client for the last 3 years prior to registration of crime. The physical relationship have happened between the two on the pretext of promise of marriage. The complainant, though is married, came in contact with the petitioner on divorce. In the light of her being single, all possibilities of physical relationship on the pretext of marriage can spring. It cannot be said that the crime should be nipped in the bud.

7. The learned Additional State Public Prosecutor Ms. Asma Kouser would toe the lines of the learned counsel for the complainant in contending that the crime must not be obliterated and at the outset investigation should be permitted in the case at hand.

8. The learned counsel for the petitioner would now join issue to contend that divorce between Yatish Kumar.T.R. and the complainant though has happened in the year 2020, they are still living together. He would take this Court through the documents and the photographs to demonstrate that they are living together. Therefore, he would submit that all the narration of physical relationship on pretext of marriage is a figment of imagination of the complainant.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

10. The relationship of the parties to the *l/s* are as narrated hereinabove covering both these petitions. The facts, dates and link in the chain of events are again not in dispute. It would suffice if the narration would commence from the complainant getting married to one Yathish Kumar T. R. The marriage between the complainant and Yathish Kumar T. R. happens on 30-05-2014. The

certificate of marriage is appended to the petition. It appears that the complainant's relationship with the said Yathish Kumar T. R. flounders and floundering of the relationship leads the complainant seeking annulment of marriage in M.C.No.3017 of 2015. The said matrimonial case is disposed of on account of settlement and the marriage got dissolved on 22-10-2016. The petitioner was nowhere in the picture till the said date. According to the complainant after the grant of decree of divorce, a child is born from the wedlock in the year 2020. In the year 2023, for legal assistance in a case concerning Negotiable Instruments Act, the petitioner and the complainant come to know each other. It is here, the petitioner comes into the picture. Two years pass by. The complainant then seeks to register a complaint before the jurisdictional Police on 09-12-2024. Since the subject issue is triggered from the registration of complaint, I deem it appropriate to notice the complaint. It reads as follows:

“ರವರිග්,
ප්‍රොලීස් තුන්ස්පේක්ස්ර්.
බායුදරක්ෂී ප්‍රොලීස් තාක්,
ඡෝජ්ජ්‍යාලු නගර.
ඡංඡල.

ನಾಗರತ್ವ ಎನ್ ಬಿನ್ ನಾಗರಾಜು, 29ವರ್ಷ
 ವಾಸ ನಂ.ಇಲ್ಲ, ಬಳ್ಳಿ ಬಿಲ್ಲಿಂಗ್, ಶ್ರೀವಿನಾಯಕ ಶಾಲೆಯ ರಸ್ತೆ,
 ಅಂಜನನಗರ ಮಾರ್ಗದ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560091.
 ಜಾತಿ: ಒಕ್ಕಲೀಗ, ಮೊಬೈಲ್ ನಂಜ್ಯೆ:9686382940
 Email Id: nagarathana75@gmail.com

ಮಾನ್ಯರೇ.

ವಿಷಯ:- xxxx, ಮಾಲ ಮತ್ತು ಮೂತ್ರ ರವರಿ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿ ದೂರು.

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ಈ ಮೇಲ್ಮುಂದ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಹೋರುವುದೇನೆಂದರೆ, ನಾನು ಸುಮಾರು 4-5 ವರ್ಷದಿಂದ ಅಂಜನನಗರದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತೇನೆ. ನಾನು ಸುಮಾರು 10 ವರ್ಷದ ಹಿಂದೆ ಒಬ್ಬರನ್ನು ಮದುವೆಯಾಗಿರುತ್ತೇನೆ. 2020 ರಲ್ಲಿ ಕಾನೂನು ಅಡಿಯಲ್ಲಿ ವಿಭೇದನ ಪಡೆದಿರುತ್ತೇನೆ. ನನಗೆ 4 ವರ್ಷದ ಮಗುವಿದ್ದು, ಅದನ್ನು ನಾನೇ ನೋಡಿಕೊಳ್ಳುತ್ತಿರುತ್ತೇನೆ. ಹೀಗಿರುವಾಗ ನನ್ನ ಒಂದು ಚರ್ಕ ಬೌನ್ನು ಕೇನ್ ಕೇನ್ (ಕೇನ್ ನಂ.0000403/2022) ವಿಚಾರಣೆಗೆ ಸಂಬಂಧ ಪಟ್ಟಂತೆ xxxx (ಪಕೀಲರು) ಇವರ ಹತ್ತಿರ ಸದರಿ ಕೇನ್ ವಿಚಾರವಾಗಿ ಮಾತನಾಡುವಾಗ ಸಿವಿಲ್ ಕೋಟ್ ಬಳಿ ನಮ್ಮ ದೂರವಾಣಿ ಸಂಜ್ಯೆಯನ್ನು ಸ್ಪಷ್ಟಿಸಿಕೊಂಡಿರುತ್ತಾರೆ. ಹೀಗೆ 3-4 ತಿಂಗಳಾಗಿ ಕಾಲ ಅವರೊಂದಿಗೆ ಕೇನ್ ವಿಚಾರ ಕೇಳಬು ಮೆನೇಜರಿಗಳನ್ನು ಮಾಡಿರುತ್ತೇವೆ. ಹೀಗಿರುವಾಗ ಅವರು ಕೇನ್ ವಿಚಾರದ ಜೊತೆಗೆ ನನ್ನ ವ್ಯೇಹಾರ ವಿಚಾರಗಳನ್ನು ಕೇಳಬು ಆರಂಭಿಸಿ, ನನ್ನ ಸಂಸಾರದ ವಿಷಯಗಳನ್ನು ತಿಳಿದುಕೊಂಡಿರುತ್ತಾರೆ. ಹೀಗಿರುವಾಗ ನಮ್ಮ ಪೂರ್ವಿಕರಿಗೆ ಸಂಬಂಧಿಸಿದ ಒಂದು ಜಾಗದ ಬಗ್ಗೆ ಅವರೊಂದಿಗೆ ಚರ್ಚಿಸಿರುತ್ತೇನೆ. ಆ ಜಾಗದ ದಾಖಲೆಗಳನ್ನು ತೆಗೆಸಿ ಅವರೆ ಆ ಕೇನನ್ನು ನೋಡಿಕೊಳ್ಳುವುದಾಗಿ ಹೇಳಿ, ಕೋಟ್ ನಲ್ಲಿ ಕೇನ್ (0000025/2024) ಹಾಕಿರುತ್ತಾರೆ.

ನಂತರ ಫೆಬ್ರವರಿ 2022 ರಂದು xxxx ರವರು ನನ್ನ ಇನ್ನೊಂದು ಗ್ರಾಹಿಗೆ ಪ್ರೇರಿತ ರಿಕ್ಷನ್ನು ಕಳುಹಿಸಿರುತ್ತಾರೆ. ಹಾಗೂ ನನ್ನ ದೂರವಾಣಿಗೆ ಕರೆ ಮಾಡಿ ರಿಕ್ಷನ್ನು ಅರ್ಹಸ್ಥ ಮಾಡಲು ಸೂಚಿಸಿರುತ್ತಾರೆ. ಹೀಗೆ ನಮ್ಮ ನಡುವಿನ ಸ್ಥಿತಿ ಸಂಬಂಧವು ದಿನದಿಂದ ದಿನಕ್ಕೆ ಹೆಚ್ಚಾಗುತ್ತಾ ಹೋಗಿರುತ್ತದೆ. xxxx ರವರು ಮಾತನಾಡಿಸಲೆಂದು ದಿನಕ್ಕೆ ಹಲವಾರು ಬಾರಿ ಕರೆ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ಒಂದು ವೇಳೆ ನಾವು ದೂರವಾಣಿಯನ್ನು ತೆಗೆಯದ್ದಲ್ಲಿ ಹಲವಾರು ಮೆನೇಜರಿಗಳನ್ನು ಕಳುಹಿಸುತ್ತಿರುತ್ತಾರೆ ಜೊತೆಗೆ ವಿಡಿಯೋ ಕಾಲ್ ಸಹ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ನನಗೆ ಇಷ್ಟವಿಲ್ಲದಿದ್ದರು ವ್ಯತಿದಿನ ವಿಡಿಯೋ ಕಾಲ್ ನಲ್ಲಿ ಗಂಟೆಗಟ್ಟಲೆ ಮಾತನಾಡಿಸುತ್ತಾ, ನನ್ನ ಸೌಂದರ್ಯವನ್ನು ವರ್ಣಿಸುತ್ತಿರುತ್ತಾರೆ.

ಹೀಗೆ ಒಂದು ದಿನ ದಿನಾಂಕ :07/06/2023 ರಂದು ಅವರ ಹುಟ್ಟಬ್ಬ ಇಡ್ಡಿದ್ದರಿಂದ ಅವರಿಗೆ ಹುಟ್ಟಬ್ಬದ ಶುಭಾಶಯವನ್ನು ತಿಳಿಸಲು ಕರೆ ಮಾಡಿರುವಾಗೆ, ನನ್ನನ್ನ ಹುಟ್ಟಬ್ಬದ ಸಲುವಾಗಿ ಹೊರಗಡೆ ಉಣಿಕ್ಕೆ ಬರುವಂತೆ ಒತ್ತಾಯಿ ಪೊರ್ವತೆವಾಗಿ ಬಂದೆ ಬರಬೇಕೆಂದು ಹೇಳಿರುತ್ತಾರೆ.

ದಿನಾಂಕ :07/07/2023 ರಂದು ಓರಿಯನ್ ಮಾಲ್ ನಲ್ಲಿ ಪರಸ್ಪರ ಬೇಟಿಯಾಗುತ್ತೇವೆ. xxxx ರವರು ಅಲ್ಲಿಯೇ ಇದ್ದ ಒಂದು ರೆಸ್ತ್ರೋರೆಂಟ್‌ಗೆ ನನ್ನನ್ನ ಉಣ ಮಾಡಲು ಕರೆದುಕೊಂಡು ಹೋಗಿರುತ್ತಾರೆ. ಅಲ್ಲಿಯೇ ಅವರು ನನ್ನನ್ನ ಬಹಳ ಇಷ್ಟೆವಡುತ್ತಿದ್ದೇನೆ ಎಂದು ಹಾಗೂ ನನ್ನನ್ನ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುವುದಾಗಿ ತೇಳಿಕೊಂಡಿರುತ್ತಾರೆ. ನಾನು ನನಗೆ ವಿಜ್ಞೇದನವಾಗಿರುವ ಬಗ್ಗೆ ಮತ್ತು ನನಗೆ ಒಂದು ಮಗು ಇರುವುದನ್ನು ಸಹ ಅವರಿಗೆ ಮತ್ತೊಮ್ಮೆ ಮನವರಿಕೆ ಮಾಡಿರುತ್ತೇನೆ. ಆದರೂ ಕೂಡ ಅವರು ನನ್ನನ್ನ ಬೇರೆಯವರ ಉದಾಹರಣೆ ಹೊಟ್ಟೆ ನನ್ನ ಮನಹೊಲಿಸಲು ವ್ಯಯಿಸ್ತಿಸುತ್ತಾರೆ. ನಾನು ಈ ವಿಚಾರದ ಬಗ್ಗೆ ಯೋಚಿಸಿ ನನ್ನ ನಿರ್ಧಾರ ತಿಳಿಸುವುದಾಗಿ ಹೇಳಿ ಹೊರಟಿರುತ್ತೇನೆ. ಆ ದಿನ ನಾನು ಮನಗೆ ಹೋಗುತ್ತಿದ್ದಂತೆ ಸುಮಾರು ಸಮಯ 10.00 ರಾತ್ರಿ ಸಮಯದಲ್ಲಿ ವೀಡಿಯೋ ಕಾಲ್ ಮಾಡಿ ನಿಮ್ಮ ಕುಟುಂಬವರನ್ನು ನಾನೇ ಒಪ್ಪಿಸಿ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳುತ್ತೇನೆ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ. ನಾನು ಅವರ ಮಾತನ್ನ ನಂಬಿ ಅವರನ್ನು ಮದುವೆಯಾಗಲು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತೇನೆ. xxxx ರವರು ಇದೇ ನೆವೆ ಇಟ್ಟುಹೊಂದು 2023 ಜುಲೈ 7 ರಂದು ರಾತ್ರಿ 11.00 ಗಂಟೆಗೆ ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಯಾರು ಇರುವುದಿಲ್ಲವೆಂಬ ವಿಷಯ ತಿಳಿದುಕೊಂಡು ನಮ್ಮ ಮನಗೆ ಬಂದು, ನಾನು ನಿನ್ನನ್ನ ತುಂಬಾ ಪ್ರೀತಿ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಮುಂದೆ ನಾನು ನಿನ್ನನ್ನ ಮದುವೆಯಾಗುತ್ತೇನೆ ಎಂದು ಹೇಳಿ ನಾನು ಬೇಡ ಎಂದು ಹೇಳಿದರು ಸಹ ತೇಳಿದೆ ನನ್ನ ಜೊತೆ ಬಲವಂತವಾಗಿ ಲ್ಯಾರಿಂಗ್ ಟ್ರೀಯಿ ನಡೆಸಿರುತ್ತಾರೆ. ಇದೇ ರೀತಿ xxxx ರವರು ವಾರಕ್ಕೆ ಮೂರು ಬಾರಿ ಮನಗೆ ಬಂದು ಮನೆಯಲ್ಲಿ ಯಾರು ಇಲ್ಲದ ಸಮಯದಲ್ಲಿ ಬಂದು ಬಲವಂತವಾಗಿ ನನ್ನೊಂದಿಗೆ ಲ್ಯಾರಿಂಗ್ ಟ್ರೀಯಿ ನಡೆಸಿರುತ್ತಾರೆ. ಹೀಗೆ ಹಲವಾರು ಬಾರಿ ನನ್ನನ್ನ ನಂಬಿಸುತ್ತಾ ನೇಟ್ ಬೈರ್, ಶಾಪಿಂಗ್, ಮಾಲ್, ಟ್ರೀಪ್ ಮತ್ತು ರೆಸಾಲ್ಟ್ ಗಳಿಗೆ ಕರೆದುಕೊಂಡು ಹೋಗುತ್ತಿರುತ್ತಾರೆ. ಇದಾದ ಬಳಿಕ ಜನವರಿ 2024 ಹಾಗೂ ಆಗಸ್ಟ್ 2024 ರಲ್ಲಿ ನಾನು ಗಭೀರಿಯಾಗಿದ್ದು, ನಾನು xxxx ರವರಿಗೆ ಹೇಳಿರುತ್ತೇನೆ. ಅವರು ನಷ್ಟಕ್ಕೆ ನಮಗೆ ಮಗು ಬೇಡ, ನಾವು ಮದುವೆಯಾದ ನಂತರ ಮಗು ಮಾಡಿಕೊಳ್ಳುತ್ತಾನೆ ಎಂದು ಹೇಳಿ ನನ್ನನ್ನ ನಂಬಿಸುತ್ತಾ ನಾನು ಬೇಡ ಎಂದರು ಸಹ ಬಲವಂತಮಾಡಿ, ಹೆಡರಿಸಿ, ಗಭ್ರಾತವಾಗುವ ಮಾತ್ರೆಗಳನ್ನು ತಂದುಕೊಟ್ಟು ನುಂಗಿಸಿದನು, ಇದರಿಂದ ಗಭ್ರಾತವಾಗಿರುತ್ತದೆ. ಇದೇ ರೀತಿ ಎರಡು ಭಾರಿ ಗಭ್ರಾತ ಮಾಡಿಸಿದ. ಇದರಿಂದ ನನ್ನ ಅರೋಗ್ಯ ಹದಗೆಟ್ಟು ವ್ಯಾದ್ಯಕೆಯ ಬಿಕಿನಿಯನ್ನು ಪಡೆಯುತ್ತಿದ್ದೇನೆ. ಇದರ ಖಚಿತ ಹಾಗೂ ಮನೆಯ ಎಲ್ಲಾ ಖಚಿತಗಳನ್ನು xxxx ರವರೇ ನೋಡಿಕೊಳ್ಳುತ್ತಿರುತ್ತಾರೆ. ಹಾಗೂ ನಾನು ಸಹ ಅವರು ಒತ್ತಾಹಿಸಿದಂತೆ 25ಗ್ರಾಂ ಗೊಲ್ಲ್ ಬೈನ್, 6ಗ್ರಾಂ ಉಂಗುರವನ್ನು ಮದುವೆಯಾಗುವ ಉದ್ದೇಶದಿಂದ ವರದಕ್ಕಣೆ ಎಂದು ಅವರು ತೇಳಿದಂತೆ ಹೊಟ್ಟಿರುತ್ತೇನೆ. ಹೀಗೆ ನನ್ನನ್ನ ನಂಬಿಸಿ ದ್ವೋಹ ಮಾಡಿರುತ್ತಾರೆ.

ಹೀಗಿರುವಾಗ್ ನಾನು XXXX ರವರಿಗೆ ಹಲವು ಬಾರಿ ನನ್ನನ್ನು ಮದುವೆಯಾಗಲು ತೇಳಿಕೊಳ್ಳುತ್ತಿರುತ್ತೇನೆ. ಆದ್ದರಿಂದ ಅವರ ವರ್ತನೆ ದಿಫಿರ್ ಬದಲಾಗಿ ನನ್ನನ್ನು ಮತ್ತು ನನ್ನ ದೂರವಾಣಿ ತರೆಗಳನ್ನು ನಿರ್ಜ್ಞಿಸುತ್ತಿರುತ್ತಾರೆ. ನನ್ನ ಜೊತೆ ಮಾತನಾಡದೆ ಅವರ ಮನೆಯಲ್ಲಿ ಮದುವೆಗೆ ಹೆಣ್ಣು ಮಡುಕುತ್ತಿದ್ದಾರೆ. ನಮ್ಮ ಕುಟುಂಬದವರು ನಮ್ಮ ಮದುವೆಗೆ ಒಪ್ಪುವದಿಲ್ಲ ಎಂದು ಕಾರಣಗಳನ್ನು ಹೇಳುತ್ತಿರುತ್ತಾರೆ. ನಾನು ಅವರ ಮನೆಯವರ ಜೊತೆ ಅಂದರೆ ಅವರ ಅಕ್ಷನವರಾದ ಮಾಲಾ ಮತ್ತು ಅವರ ಸೋದರ ಮಾವ ಮೂರ್ಕಿಯವರ ಜೊತೆ ಮಾತನಾಡಿರುತ್ತೇನೆ. ಅವರು ನನಗೆ ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ. ಕಾಗೂ ಈ ವಿಜಾರವನ್ನು ಯಾರೋಂದಿಗಾದರು ಹಂಚಿಕೊಂಡರು ಕಾಗೂ ಹೊಲೀನ್ ರಾಷ್ಟ್ರೀಯ ದೂರನ್ನು ದಾಖಲಿಸಿದರು ನನ್ನನ್ನು ಕೊಲ್ಲುವುದಾಗಿ ಬೆದರಿಸಿರುತ್ತಾರೆ.

ಸ್ವಾಮಿ, ನನ್ನನ್ನು ಮದುವೆಯಾಗುವುದಾಗಿ ನಂಬಿಸಿ ಬಲವಂತದಿಂದ ನನ್ನನ್ನು ಹಲವು ಬಾರಿ ಬಲತ್ವಾರ ಮಾಡಿ ಮದುವೆ ಮಾಡಿಕೊಳ್ಳಬೇಕೆ ಹೆದರಿಸಿ ಮಾತ್ರೆಗಳನ್ನು ನೀಡಿ, ಗಭ್ರವಾತ ಮಾಡಿ ಹೊಲೆ ಬೆದರಿಕೆ ಹಾಕಿರುವ XXXXX ಎಂಬವರ ಮೇಲೆ ದಾರು ದಾಖಲಿಸಿ, ನನಗೆ ಪ್ರಾಣ ರಕ್ಷಣೆ ನೀಡಿ, ನನಗೆ ನ್ಯಾಯ ಬದಿಸಬೇಕೆಂದು ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳುತ್ತೇನೆ.

ದಿನಾಂಕ: 09-12-2024.

ಸ್ಥಳ: ಬೆಂಗಳೂರು ನಗರ.

ತಮ್ಮ ವಿಶ್ವಾಸಿ.

Sd/-

Nagarathna N."

The narration in the complaint is with regard to certain sexual escapades of the petitioner with the complainant. At the penultimate paragraph, the complainant narrates that the attitude of the petitioner suddenly changed and began to ignore the calls of the complainant. Later it is the narration that she comes to know that the parents of the petitioner are searching for a girl to get accused No.1 married. Therefore, the complaint comes to be registered as the petitioner has, on several occasions committed the offence of rape for two years, on the pretext of marriage, but he is wanting to get married with someone else. She further

narrates that due to the acts of the petitioner in the year 2024 she had even become pregnant and the petitioner told the complainant to get the pregnancy terminated. Immediately after registration of the complaint, these petitions are preferred.

11. A perusal at the complaint would indicate that even if it is taken on its face value, they were consensual acts for two years whether on the pretext of marriage or otherwise. Jurisprudence is replete with the judgments rendered by the Apex Court from time to time, which has intertwined the concept of rape and consensual sex and how consensual sex on the promise of marriage cannot amount to rape. I deem it appropriate to notice the said judgments.

JUDICIAL LANDSCAPE:

12.1. The Apex Court in the case of **DR. DHRUVARAM MURLIDHAR SONAR v. THE STATE OF MAHARASHTRA¹** has held as follows:

"....

¹ (2019) 18 SCC 191

11. In *State of Karnataka v. M. Devendrappa* [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , it was held that while exercising powers under Section 482 CrPC, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It was further held as under : (SCC p. 94, para 6)

"6. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

...
...
...

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide

intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. **They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."**

(Emphasis supplied)

12.2. Later, the Apex Court in the case of **SHAMBHU KHARWAR v. STATE OF UTTAR PRADESH**² has held as follows:

"....

9. In *Pramod SuryabhanPawar v. State of Maharashtra* [Pramod SuryabhanPawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] a two-Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud, J.), held in *Sonu v. State of U.P.* [Sonu v. State of U.P., (2021) 18 SCC 517] observed that: (*Pramod SuryabhanPawar case* [Pramod SuryabhanPawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC pp. 616-18 & 620, paras 12, 14, 16 & 18)

"12. This Court has repeatedly held that consent with respect to Section 375IPC 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.

14. ... 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. ...

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

² (2022) SCC OnLine SC 1032

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. ...

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."*

(emphasis supplied)

...

...

...

11. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

12. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which

cannot be considered in an application under Section 482CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under Section 376IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482CrPC on a completely misconceived basis."

(Emphasis supplied)

12.3. In **XXXX v. STATE OF MADHYA PRADESH**³ the Apex Court holds as follows:

"....

9. While getting her statement recorded under Section 164CrPC, she admitted that she knew the appellant since 2017. On account of dispute with her husband, she was living with her parents. As she got acquainted with the appellant, they fell in love. In 2018, the appellant went to Maharashtra for job. However, he used to visit her home and take care of the complainant as well as her daughter. In 2019, the appellant assured the complainant that he will marry her in case she takes divorce from her husband who used to harass and beat her. For this reason, she divorced her husband and solemnised marriage with the appellant in a temple in January 2019. Thereafter, they started living together with her daughter born from the previous marriage. Despite assurance, the appellant did not solemnise court marriage. After marriage was solemnised in temple, treating the appellant as her husband, they both started leading a married life having physical relations from January 2019 till June 2020. The appellant treated the complainant as his wife. Thereafter, the appellant refused to respond to her calls and even marry her.

....

11. Further, in the FIR the complainant stated that she got divorce from her earlier husband on 10-12-2018. In the statement under Section 164CrPC, she stated that marriage between the appellant and the complainant was solemnised in a

³ (2024) 3 SCC 496

temple in January 2019. However, the date of divorce as claimed by the complainant is belied from the copy of the decree annexed with the appeal as Annexure P-9, where divorce by mutual consent was granted to the complainant and her husband vide judgment dated 13-1-2021. The aforesaid fact could not be disputed. Meaning thereby, the complainant besides the facts in the FIR and also in the statement under Section 164CrPC regarding her divorce from the earlier marriage, sought to claim that she had remarried with the appellant during subsistence of her earlier marriage.

12. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10-12-2018. However, the fact remains that decree of divorce was passed only on 13-1-2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of Rs 1,00,000 to the prosecutrix through banking channel which was not returned back."

(Emphasis supplied)

12.4. In **JASPAL SINGH KAURAL v. STATE OF NCT OF DELHI**⁴ the Apex Court has held as follows:

"....

13. At the outset, we refer to the ratio in *Naim Ahamed v. State (NCT of Delhi)* [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385] whereby this Hon'ble Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the appellant-accused, upon an assurance to marry. The prosecutrix, who was herself a married woman having three children, had continued to have such relationship with the appellant-accused, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, this Court had observed as under : (SCC pp. 398-99, paras 21-22)

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note 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 false promise and to prosecute a person for the offence under Section 376. As stated

⁴ (2025) 5 SCC 756

earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. *The prosecutrix being a married woman and the mother of three children was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to.* Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. *She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint.* The accused in his further statement recorded under Section 313CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay

her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375IPC."

(emphasis supplied)

14. The decision in *Naim Ahamed [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385]* is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon'ble Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [*Mahesh DamuKhare v. State of Maharashtra, (2024) 11 SCC 398 : 2024 SCC OnLine SC 3471*]

15. Upon a bare perusal of the FIR and the charge-sheet, the following facts are clearly established:

15.1. The physical relationship between the appellant and Respondent 2 was consensual from the very beginning and cannot be said to be against the will or without the consent of the prosecutrix. Even if the case of the prosecutrix is accepted, there is no material on record to show that there was any dishonest inducement, or incitement on part of the appellant."

15.2. There is also no material on record, to establish an offence of criminal intimidation under Section 506IPC against the appellant. In fact, it is apparent from the conduct of the

appellant, that he was acting in furtherance of the promise to marry. It is the own observation of the High Court, that the appellant had made a promise to marry Respondent 2 and was acting accordingly. The *mangalsutra* being prepared with the initials of the name of Respondent 2 complainant does reflect his intention and promise to marry. However, in the eventuality of a fall out or split between the parties, it cannot be said that the promise to marry was false, and the corresponding conduct dishonest.

15.3. There is also no element of criminality that can be accrued to the appellant, insofar as it is the own case of the prosecutrix, that she was in a relationship with the appellant, while being in a subsisting marriage. It is also hard to believe that the prosecutrix could have sustained a physical relationship for a prolonged period of five years [Prashant v. State (NCT of Delhi), (2025) 5 SCC 764] , while being in a subsisting marriage, and even subsequently obtaining divorce to sustain the relationship. The prolonged period of the relationship, during which the sexual relations continued between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship. [Mahesh Damu Khare v. State of Maharashtra, (2024) 11 SCC 398 : 2024 SCC OnLine SC 3471] The prosecutrix was thus, conscious and cognizant of the consequences of her actions, and had given her consent after an active and reasoned deliberation. [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903]”

(Emphasis supplied)

12.5. In **SAMADHAN v. STATE OF MAHARASHTRA⁵** the Apex Court has held as follows:

“....

⁵ 2025 SCC OnLine SC 2528

28. We find that the present case is not a case where the appellant lured respondent No. 2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

30. In *Prashant v. State of NCT of Delhi*, (2025) 5 SCC 764, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The relevant portion is extracted as under:

“20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it

cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

(underlining by us)

31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

...

....

...

33. The appellant has unequivocally asserted that, during the subsistence of the relationship, no grievance or allegation was ever raised by respondent No. 2 regarding the absence of

consent in their physical relations. It was only upon the appellant's refusal to fulfil her demand for payment of the sum of Rs. 1,50,000/- that the present criminal proceedings came to be instituted. Furthermore, the alleged incidents are stated to have occurred between 12.03.2022 and 20.05.2024; however, the FIR was lodged only on 31.08.2024, i.e. nearly three months after the last alleged act of sexual intimacy.

34. The FIR is conspicuously silent as to any specific allegation that the appellant had either forcibly taken or compelled respondent No. 2 to accompany him to the hotel, nor does it disclose any circumstance suggesting deceit or inducement on the part of the appellant to procure her presence there. Therefore, the only logical inference that emerges is that respondent No. 2, of her own volition, visited and met the appellant on each occasion. It is also borne out from the record that whenever the appellant brought up the subject of marriage, respondent No. 2 herself opposed the proposal. In such circumstances, the contention of respondent No. 2 that the physical relationship between the parties was premised upon any assurance of marriage by the appellant is devoid of merit and stands unsustainable.

35. We deem it appropriate to refer to the decision of this Court in *Rajnish Singh v. State of Uttar Pradesh*, (2025) 4 SCC 197, whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the

wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

xxx

39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

(underlining by us)

36. By the impugned order dated 06.03.2025, the High Court observed that although it was contended on behalf of the appellant that the relationship between him and respondent No. 2 was consensual in nature, no such categorical statement was made by him in the memo of application and that the plea of consent was merely inferred. In this regard, reliance was placed by the High Court on the case of *Ganga Singh v. State of Madhya Pradesh*, (2013) 7 SCC 278 : (2013) 3 SCC (Civ) 505 : (2013) 3 SCC (Cri) 314, wherein this Court had stated

that unless there was a specific defence of a consensual relationship, such a defence cannot be inferred.

37. The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No. 2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition. It is also pertinent to note that, at the relevant time, the marriage of respondent No. 2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.

38. At this stage it is material to refer to the decision of this Court in *Mahesh Damu*, wherein the following observations were made:

"29. 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 90IPC, 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. In this regard we may refer to *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], in which it was held as follows : (SCC pp. 682-84, paras 21 & 24)

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction

between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

xxx

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 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."

(underlining by us)"

(Emphasis supplied)

12.6. In **BATLANKI KESHAV (KESAVA) KUMAR ANURAG**

v. STATE OF TELANGANA⁶ the Apex Court has held as follows:

“....

25. In the chats which have been placed on record along with the additional documents, the *de-facto* complainant, who is referred to by the name 'Muffin', has admitted that she was manipulative and was trying to "get a green card holder". At one point of time, she also stated that it would not be difficult for her to trap the next one. In the very same breath, she mentions that she would not waste time with the accused appellant and needs to "invest on the next victim". She also mentions that she would irritate her victims to the extent that they dump her, and she could happily start with the next one. She also stated that she was using the accused appellant.

26. These chats depict the stark reality about the behavioral pattern of the *de-facto* complainant who appears to be having manipulative and vindictive tendency.

27. Thus, in our opinion, the accused appellant was absolutely justified in panicking and backing out from the proposed marriage upon coming to know of the aggressive sexual behaviour and the obsessive nature of the *de-facto* complainant.

28. Hence, even assuming that the accused appellant retracted from his promise to marry the complainant, it cannot be said that he indulged in sexual intercourse with the *de-facto* complainant under a false promise of marriage or that the offence was committed by him with the *de-facto* complainant on the ground that she belonged to the Scheduled Castes/Scheduled Tribes community.

29. It is also relevant to mention here that in FIR No. 751 of 2021, the *de-facto* complainant has not even made a whisper

about the accused appellant dumping her on the ground of her caste. Thus, apparently this allegation which has been set out in the subsequent FIR No. 103 of 2022 lodged almost after seven months is nothing but a sheer exaggeration which must be discarded.

30. Having considered the entirety of facts and circumstances as available on record, we are of the firm opinion that allowing prosecution of the accused appellant to continue in the impugned FIR No. 103 of 2022 would be nothing short of a travesty of justice in addition to being a gross abuse of the process of Court. The impugned FIR No. 103 of 2022 is nothing but a bundle of lies full of fabricated and malicious unsubstantiated allegations levelled by the complainant. The facts on record clearly establish the vindictive and manipulative tendencies of the complainant and these aspects have a great bearing on the controversy.”

(Emphasis supplied)

12.7. Again, in the case of **AMOL BHAGWAN NEHUL v. STATE OF MAHARASHTRA**⁷ the Apex Court has held as follows:

“....

8. Having heard both sides in this case and after carefully considering the material on record, the following attributes come to the fore:

- (a) Even if the allegations in the FIR are taken as a true and correct depiction of circumstances, it does not appear from the record that the consent of the Complainant/Respondent no. 2 was obtained against her will and merely on an assurance to marry. The Appellant and the Complainant/Respondent no. 2 were acquainted since 08.06.2022, and she herself admits that they interacted frequently and fell in love. The

⁷ 2025 SCC OnLine SC 1230

Complainant/Respondent no. 2 engaged in a physical relationship alleging that the Appellant had done so without her consent, however she not only sustained her relationship for over 12 months, but continued to visit him in lodges on two separate occasions. The narrative of the Complainant/Respondent no. 2 does not corroborate with her conduct.

(b) **The consent of the Complainant/Respondent no. 2 as defined under section 90 IPC also cannot be said to have been obtained under a misconception of fact. There is no material to substantiate "inducement or misrepresentation" on the part of the Appellant to secure consent for sexual relations without having any intention of fulfilling said promise. Investigation has also revealed that the *Khulanama*, was executed on 29.12.2022 which the Complainant/Respondent no. 2 had obtained from her ex-husband. During this time, the parties were already in a relationship and the alleged incident had already taken place. It is inconceivable that the Complainant had engaged in a physical relationship with the Appellant, on the assurance of marriage, while she was already married to someone else. Even otherwise, such promise to begin with was illegal and unenforceable *qua* the Appellant.**

(c) **There is no evidence of coercion or threat of injury to the Complainant/Respondent no. 2, to attract an offence under section 506 IPC. It is improbable that there was any threat caused to the Complainant/Respondent no. 2 by the Appellant when all along the relationship was cordial, and it was only when the Appellant graduated and left for his hometown to Ahmednagar, the Complainant/Respondent no. 2 became agitated. We also cannot ignore the conduct of the Complainant/Respondent no. 2 in visiting the native village of the Appellant without any intimation, which is also unacceptable and reflects the agitated and unnerved state of mind of the Complainant/Respondent no. 2. For the same**

reason, the criminal prosecution against the Appellant herein is probably with an underlying motive and disgruntled state of mind.

(d) There is also no reasonable possibility that the Complainant/Respondent no. 2 or any woman being married before and having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly³ to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC."

(Emphasis supplied)

13.1. The Apex Court, in the case of **Dr. DHRUVARAM MURLIDHAR SONAR** *supra*, draws with unmistakable clarity, **the doctrinal line that separates rape from consensual intimacy, where two adults of their own volition, engage in consensual sexual relation over a sustained period, the subsequent refusal of the man to marry the woman, howsoever regrettable, does not, ipso facto, transmute such intimacy**

into the offence of rape as punishable under Section 376 of the IPC.

13.2. The principle is reaffirmed in **SHAMBHU KHARWAR** *supra* where the Apex Court interdicted the **criminal process at the threshold holding that the relationship between the parties was purely consensual and accordingly quashed the crime as well as the charge sheet.**

13.3. Likewise, in **NAIM AHAMED v. STATE (NCT OF DELHI) [(2023) 15 SCC 385]**, the Apex Court addressed **an identical factual complexion, where the complainant had even become pregnant on account of the relationship, and yet held that such circumstance, by itself cannot clothe the relationship with criminality, for pregnancy arising out of consensual intimacy.**

13.4. In **SAMADHAN** *supra* the Apex Court **sounded a note of stern caution against the disquieting tendency of coloring failed relationships, with the hue of heinous crimes.** The

Apex Court holds that mere breakdown of a relationship between the consenting adults, cannot constitute rape nor can the criminal law be set into motion as a retaliatory instrument, merely because the relationship did not ultimately culminate in marriage.

13.5. Further, in **AMOL BHAGWAN NEHUL**, the Apex Court observes that **where the complainant is already married, the allegation of physical intimacy induced by promise of marriage stands on infirm grounds, for a promise which is ex-facie unenforceable, cannot in those circumstances, be elevated into a foundation of imputing criminality.**

13.6. In **BATLANKI KESHAV (KESAVA) KUMAR ANURAG** *supra* the **Apex Court goes even further, on a perusal of contemporaneous chats, it found that the complainant had exhibited manipulative and vindictive tendencies and held that man backing out of marriage, even assuming such promise existed, cannot automatically attract the offence of rape.** Holding the prosecution to be malicious and

fabricated, the Apex Court obliterates the proceedings against the accused.

13.7. In the light of the overwhelming majority of such decisions, the Apex Court has exercised its Constitutional and **inherent jurisdiction to arrest the criminal process, even at the stage of registration of the crime, where the allegation taken to their highest, disclose nothing beyond a consensual relationship subsequently turning sore.**

APPLICABILITY OF THE LAW TO THE FACTS OF THE CASE:

14. **In the case at hand, the relationship between the complainant and the petitioner, at its inception, was plainly that of a client and a counsel. Yet to determine whether the complaint is a bonafide invocation of criminal law or an endeavour covered by manipulation and vendetta, it becomes necessary to notice certain antecedent facts, which emerge not from conjecture, but from documents placed on record.**

Manipulation and Malafides of the complainant:

A brief chronology bears mention:

14.2. The complainant is said to have married one Yathish Kumar T. R. in the year 2014. The said marriage, by an order dated 22-10-2016, was annulled. However in the year 2020, it appears that a child was born to the complainant, the date of birth being 21-08-2020. The birth certificate is placed on record. The birth certificate depicts the date of birth of the child born to Yathish Kumar T. R. and the complainant is as follows:

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	GOVERNMENT OF INDIA ಕರ್ನಾಟಕ ಸರ್ಕಾರ GOVERNMENT OF KARNATAKA ಜನಸ ಪತ್ರ ಮರಣದ ಮೂಲಕ ಪ್ರಾಣಾಂತರ Chief Registrar of Births and Deaths ಜನಸ ಪತ್ರ ಪತ್ರ	ನಮ್ಮನೇ - 5 Form - 5			
<p>(ಅ.ಎ.ಸ್.ಆರ್ ಆಧಿಕ್ಯಾಯ, 1969ರ 12/17ರಿಂದ ಪ್ರಾಣಾಂತರ ಜನಸ ಪತ್ರ ಮರಣದ ಮೂಲಕ ನಿಯಮಗಳ ವಿಧಾನ 1999ರ ನಿಯಮ 8/13ರ ಮೇರೆಗೆ ಸೂಚಿತವಾಗಿ)</p> <p>BIRTH CERTIFICATE</p> <p>(Issued Under Section 12/17 of the RBD Act, 1969 and Rule 8/13 of the KRBD Rules, 1999)</p> <p>ಈ ಪತ್ರಂ ವಿರಾಜಿತವಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯದ ಜನಸ ಪತ್ರ ಪತ್ರ ಅಭಿವೃದ್ಧಿ ವಿಭಾಗದ ಪ್ರಾಣಾಂತರ ನಿಯಮಗಳಿಗೆ ಸೂಚಿತವಾಗಿ</p> <p>This is to certify that the following information has been taken from the original record of birth which is the register for BBMP (village/town) of Bengaluru district of Karnataka State</p>					
<p>೧) ಹೆಸರು</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: left; vertical-align: top;"> Name ೨) ಜನಸರ್ವಾರ್ಥ ಕಾರ್ಯಾಲಯ Date of Birth 21/08/2020 </td> <td style="width: 33%; text-align: center; vertical-align: top;"> ಸ್ಥಾನ Sex Male </td> <td style="width: 33%; text-align: right; vertical-align: top;"> ಗೋಡು Place of Birth SURABHI HEALTH CARE and RESEARCH PVT LTD, BBMP, Bengaluru, Karnataka </td> </tr> </table> <p>೨) ಜನಸರ್ವಾರ್ಥ ಕಾರ್ಯಾಲಯ Name of Mother NAGARATHNA</p> <p>೩) ತಾಯಿಯ ಹೆಸರು Name of Father YATHISH KUMAR.T R</p> <p>೪) ಮಾನುಷರ ಜನಸರ್ವಾರ್ಥ ಕಾರ್ಯಾಲಯದಲ್ಲಿ ಉಂಟಾಗಿರುವ ವಿಳಾಸ ವಿ.ಎ.ಹೆ. ಚೌರ್ಕಿಲ್ಯ, ಕನಾಟಕ 560091</p> <p>Address of parents at the time of birth of the child: Anjananagar, Magadi Main Road Bangalore, BBMP, Bengaluru, Karnataka 560091</p> <p>೫) ನಿರ್ಧಾರಿತ ನಿಯಮ: Registration No.: 803162/B/B/2020/103992</p> <p>೬) ನಿರ್ಧಾರಿತ ತಾರೀಖ: Date of Registration: 31/08/2020</p> <p>೭) ನಿರ್ಧಾರಿತ ತಾರೀಖ: Date of Approval: 27/10/2020</p> <p>೮) ಮುಖ್ಯ ಪತ್ರ ಮರಣದ ವಾರ್ತಾರಾಯ ನಾಮ Signature of Issuing Authority</p> <p>೯) ಮುಖ್ಯ ಪತ್ರ ಮರಣದ ವಾರ್ತಾರಾಯ ನಾಮ Address of the issuing authority Medical Officer GOVINDARAJANAGAR, Bengaluru District</p>			Name ೨) ಜನಸರ್ವಾರ್ಥ ಕಾರ್ಯಾಲಯ Date of Birth 21/08/2020	ಸ್ಥಾನ Sex Male	ಗೋಡು Place of Birth SURABHI HEALTH CARE and RESEARCH PVT LTD, BBMP, Bengaluru, Karnataka
Name ೨) ಜನಸರ್ವಾರ್ಥ ಕಾರ್ಯಾಲಯ Date of Birth 21/08/2020	ಸ್ಥಾನ Sex Male	ಗೋಡು Place of Birth SURABHI HEALTH CARE and RESEARCH PVT LTD, BBMP, Bengaluru, Karnataka			
 <p>Date of Issue 03/04/2025</p> <p>“ಪ್ರತಿಯೊಂದು ಜನಸ ಪತ್ರ ಮರಣದ ಮೂಲಕ ನಿಯಮಗಳಾಗಿ” “Ensure registration of every birth and death”</p>					

The birth certificate placed on record is not without significance. It indicates two distinct and telling circumstances; first, that notwithstanding the annulment decree dated 22-10-2016 in M.C.No.3017 of 2015, a child is born on 21-08-2020 to the complainant and the very same Yathish Kumar T. R. and second, that the complainant appears to have continued association with the said Yathish Kumar T. R. even long after the severance of the marital tie.

Photographs are also produced to demonstrate that the child now about 4 years of age, has been living with the complainant and Yathish Kumar T. R., as a family.

The matter does not rest there:

14.3. The petitioner has also produced another birth certificate evidencing the birth of a child on 15-12-2008 where the father's name is shown as Nagaraju and the mother, the complainant. The said birth certificate is as follows:

 GOVERNMENT OF INDIA ಸರ್ಕಾರಿ ಸರ್ಕಾರ GOVERNMENT OF KARNATAKA ಜಾರಿಸಿ ಮಾಡಿದ ಮಾನ್ಯ ಪಾಠ್ಯತಾತ್ಮಕ Chief Registrar of Births and Deaths ಜಾರಿಸಿ ಮಾಡಿದ ಮಾನ್ಯ ಪಾಠ್ಯತಾತ್ಮಕ (ಇ.ಎ.ಸೆ.ಆರ್ ಅಧಿಕಾರಿಯ, 1969ರ 12/17ನೇಯ ಕ್ರಾತ್ರಿ ಮಾನ್ಯ ಪಾಠ್ಯತಾತ್ಮಕ (Issued Under Section 12/17 of the RBD Act, 1969 and Rule 8/13 of the KRBD Rules, 1999)	ಸಮಾಜ - 5 Form - 5
 BIRTH CERTIFICATE (Issued Under Section 12/17 of the RBD Act, 1969 and Rule 8/13 of the KRBD Rules, 1999)	
<p>ಈ ಲಖಣದಲ್ಲಿರುವ ಕರ್ತವ್ಯ ರಾಜ್ಯದ ಬಂಗಾರದಲ್ಲಿ ಜೀವಯ ರಾಜ್ಯಕ್ಕಿರುತ್ತದೆ. ಈ ಲಖಣದಲ್ಲಿರುವ ಕರ್ತವ್ಯ ರಾಜ್ಯಕ್ಕಿರುತ್ತದೆ. ಈ ಲಖಣದಲ್ಲಿರುವ ಕರ್ತವ್ಯ ರಾಜ್ಯಕ್ಕಿರುತ್ತದೆ. ಈ ಲಖಣದಲ್ಲಿರುವ ಕರ್ತವ್ಯ ರಾಜ್ಯಕ್ಕಿರುತ್ತದೆ.</p> <p>This is to certify that the following information has been taken from the original record of birth which is the register for BBMP (village/town) of Bengaluru Urban district of Karnataka State</p> <p>1) ಹೆಸರು Name NIL 2) ರಾಜ್ಯ Sex Male 3) ಜನ್ಮದಿನ ತಾರೀಖ Date of Birth 15/12/2008 4) ಜನ್ಮದಿನ ತಾರೀಖ Place of Birth VANI VILAS HOSPITAL BBMP Bengaluru South Bengaluru Urban Karnataka 5) ಅಂತಿಮ ಹೆಸರು Name of Mother NAGARATHNA 6) ಅಂತಿಮ ಹೆಸರು Name of Father NAGARAJU 7) ಮುಂದಿನ ಕಾನಕದ ಸಮಯದಲ್ಲಿ ಅಂತಿಮ ಹೆಸರು ಇಂಜನೀಯರ್, ಬಂಗಾರದಲ್ಲಿ, ಕರ್ನಾಟಕ Address of parents at the time of birth of the child: Not Stated Bengaluru South Bengaluru Urban Karnataka 8) ನಿರ್ದಿಷ್ಟ ಸಂಖ್ಯೆ Registration No.: 803162/T/B/2009/014296 9) ಮಾರ್ಗದರ್ಶಕ ಸಂಖ್ಯೆ Remarks(if any) 300000 10) ನಿರ್ದಿಷ್ಟ ತಾರೀಖ Date of Registration: 06/01/2009 11) ಮಾರ್ಗದರ್ಶಕ ಸಂಖ್ಯೆ Date of Approval: 28/03/2025 12) ಮಾರ್ಗದರ್ಶಕ ಸಂಖ್ಯೆ Address of the issuing authority Medical Officer JD OFFICE, Bengaluru Urban District   Date of Issue 28/03/2025 </p>	
"ಪ್ರತಿಯೊಂದು ಜನಕ ಮತ್ತು ಮರಿಯ ಮೌಂಡಿಯಲ್ಲಿ ಒಳಗೊಂಡಿಕೊಳ್ಳಿ" "Ensure registration of every birth and death"	

The inevitable inference is that the complainant has two children, the first born on 15-12-2008 from Nagaraju and the second born on 21-08-2020 from Yathish Kumar T. R., long after the annulment of marriage dated 22-10-2016. **These circumstances do not float in isolation. They connect with yet another material episode.**

14.4. A crime comes to be registered on 28-11-2022 and on the basis of the said complainant a crime in Crime No.602 of 2022

for offence punishable under Section 363 of the IPC is alleged. The gravamen of the complaint is that the child born from their earlier relationship, went missing on 25-11-2022. The child was about 13 years at that point in time. In the complaint, the complainant narrates that she is married and settled with another person. The gist of the complaint is as follows:

“ಹಿಯಾರ್ಡಿಯ್ ತಾಂಗೆ ಹಾಜರಾಗಿ ನೀಡಿದ ದೂರಿನ ಸಾರಾಂಶವೇನೆಂದರೆ ಹಿಯಾರ್ಡಿಯ್ ಸುಮಾರು 4 ವರ್ಷಗಳಿಂದ ಬಾಗಿಗೆ ಮನೆಯಲ್ಲಿ ಶುಬಂಬ ಸಮೇತ ವಾಸವಾಗಿದ್ದಕೊಂಡು ಗೃಹಿಣಿಯಾಗಿರುತ್ತಾರೆ, ಹಿಯಾರ್ಡಿಯ್ ಮಗ ಹೆಚ್‌ರೆ ರಾಜ್-13ವರ್ಷ ಈತನು ಅಂಜನಾನಗರದಲ್ಲಿರುವ ಶ್ರೀವಿನಾಯಕ ಸ್ವಾಲ್ಪಲ್ಲಿ 9ನೇ ತರಗತಿಯಲ್ಲಿ ವ್ಯಾಸಾಂಗ ಮಾಡುತ್ತಿರುತ್ತಾನೆ. ಹಿಯಾರ್ಡಿಯ್ ಮಗ ಈ ಹಿಂದೆ ಸುಮಾರು 2 ವರ್ಷಗಳಿಂದ 4-5 ಬಾರಿ ಮನೆ ಬಿಟ್ಟು ಹೋಗಿ ಬೇರೆಯವರ ಮುಖಾಂತರ ವೋನ್ ಮಾಡಿಸಿ ವಾಪನ್ಸ್ ಮನೆಗೆ ಬಂದಿರುತ್ತಾನೆ. ದಿನಾಂಕ:25/11/2022 ರಂದು ರಾತ್ರಿ: 08-00 ಗಂಟೆಗೆ ಮನೆಯಿಂದ ಹೊರಗಡೆ ಹೋದವನು ವಾಪನ್ಸ್ ಮನೆಗೆ ಬಂದಿರುವುದಿಲ್ಲ, ಹಿಯಾರ್ಡಿಯ್ ಸ್ನೇಹಿತೆ ಪೂರ್ಣಿಮೆ ರವರು ಮಂಡ್ಯದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಇವರ ಜೊತೆ ಹಿಯಾರ್ಡಿಯ್ ಮಗ ಹೆಚ್ಚು ಒಡನಾಟವಿಟ್ಟುಕೊಂಡಿದ್ದು, ಪೂರ್ಣಿಮೆ ರವರನ್ನು ತರೆಸಿ ವಿಚಾರಣೆ ಮಾಡಬೇಕೆಂದು ಹೋರುತ್ತೇನೆ. ನಂತರ ಹಿಯಾರ್ಡಿಯ್ ಸಂಬಂಧಿತರು ಮತ್ತು ಸ್ನೇಹಿತರ ಬಳಿ ವಿಚಾರ ಮಾಡಲಾಗಿ ಯಾವುದೇ ಉಪಯುಕ್ತ ಮಾಹಿತಿ ದೊರೆತಿರುವುದಿಲ್ಲ, ಆದ್ದರಿಂದ ಕಾಣ್ಯಾಗಿರುವ ಹೆಚ್‌ರೆ ರಾಜ್-13ವರ್ಷ ರವರನ್ನು ಹತ್ತೆ ಮಾಡಿಕೊಡಬೇಕೆಂದು ಹೊಣ್ಣು ದೂರು ಇತ್ತಾದಿ..”

14.5. Yet another record is placed before this Court; the complainant filed Crl.Misc.No.1467 of 2023 invoking Section 13(3) of the Karnataka Registration of Births and Deaths Act, 1969 and in the cause title therein, in the year 2023, the complainant describes herself to be the wife of Yathish Kumar. The cause title reads as follows:

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE.
BENGALURU RURAL DISTRICT, BENGALURU

Present:- Sri. SUNIL.R., B.COM., LL.B.,
CJM., Bengaluru Rural District,
Bengaluru.

Dated this the 20th day of January, 2024.

Crl. Misc. No. 1467/2023

PETITIONER: Smt. Nagarathna,
W/o. Sri. Yathish Kumar,
31 years, R/at No.458,
Muddinapalya Main Road,
Anjananahara, Bengaluru North,
Bengaluru-560 061.

(By Sri.B.L.Jayarama, Adv)

- V/S -

RESPONDENT: The Chief Registrar,
Births and Deaths,
Office of the Tahsildar,
Bengaluru South Taluk,
Bengaluru.

(Respondent placed ex parte)

The prayer sought therein is follows:

"The petitioner has filed the petition under Section 13(3) of the Registration of Births and Deaths Act, 1969 seeking direction of this Court to direct the respondent to enter the date of death of Renukamma, W/o Late Nagaraja, as 19.07.2011 in the death register."

When all these facts, borne out from official records, are considered cumulatively, it becomes difficult to comprehend, far less accept, how the complainant could credibly assert that she consented to sexual relationship on a "promise of marriage", when she appears to have been in a subsisting marital relationship or at the very least, in a continuing domestic association, and is also mother of 2 children, one about 13 years old and the other about 4 years.

14.6. What is more disturbing is the disquieting fashion in which the complainant has sought to implicate other members of the family of the petitioner. They are arraigned on a tenuous allegation that they did not cooperate or support the petitioner's marriage with the complainant, **thereby attempting to create a narrative of cheating. Criminal law cannot be permitted to be expanded by such facile insinuation.**

15. The offences alleged included Section 69 of the BNS. Section 69 of BNS reads as follows:

"69. Sexual intercourse by employing deceitful means, etc.—Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.”

Section 69 criminalizes sexual intercourse by employing deceitful means including a promise of marriage, without intention of fulfilment. The provision though newly introduced, cannot be interpreted, in a manner that allows it to become an instrument of retroactive criminalization of consensual relationships upon the mere recital of “promise”. ***The statute punishes deceit, not disappointment; fraud, not failed affection; and exploitation, not the collapse of relationship.*** On the facts presented, it is difficult to discern where from the offence under Section 69 could even spring. ***The complainant on her own showing and on admitted records, appears to have been married/associated in other relationships, and to have children. In such circumstances, the allegation of sexual intercourse, induced solely on promise of marriage is inherently implausible and***

legally unsustainable, consequently, neither Section 96 BNS nor Section 64 BNS (Section 376 of the earlier regime, the IPC) can be attracted.

16. The offence under Section 89 of the BNS (Section 313 of the earlier regime) is also not made out. In view of the principle enunciated by the Apex Court in **NAIM AHAMED** *supra*, consensual sexual acts, do not by themselves, invite such provision, in the absence of essential legal ingredients.

17. What then remains is, Section 318(2) of the BNS (Section 420 of the earlier regime, the IPC), **even that cannot be invoked merely because a relationship did not culminate in marriage. The settle position of law is that, breach of a marriage to marry, howsoever morally questionable, is not *per se* cheating in the criminal sense, unless dishonest intention at the inception is established, which is conspicuously absent in the case at hand.**

18. The petitions are at the stage of registration of crime. The question whether this Court should interfere at the stage of registration of crime is no longer *res integra*. The Apex Court in **MAHMOOD ALI v. STATE OF UTTAR PRADESH**⁸ has held as follows:

"....

10. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604]. The parameters are : (SCC pp. 378-79, para 102)

"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.

(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

⁸ 2023 SCC OnLine SC 950

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 Act concerned (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 Act concerned, 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.”

We are of the view that the case of the present appellants falls within Parameters 1, 5 and 7, respectively, of *Bhajan Lal* [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426: AIR 1992 SC 604].

11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they

disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. State of A.P. v. Golconda Linga Swamy [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522: 2004 SCC (Cri) 1805], a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held : (Golconda Linga Swamy case [State of A.P. v. Golconda Linga Swamy, (2004) 6 SCC 522 : 2004 SCC (Cri) 1805] , SCC p. 527, paras 5-7)

"5. ... Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of

court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. *When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*

6. In *R.P. Kapur v. State of Punjab* [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] , this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (SCC OnLine SC para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any

person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death."

(emphasis supplied)"

(Emphasis supplied)

The Apex Court reiterates with crystalline clarity that where the proceedings are manifestly frivolous, vexatious, inherently improbable or maliciously instituted to wreak vengeance, the High Court should not hold itself looking into artful drafting of the complaint, but should travel to consider the antecedent circumstances that led to registration of the crime, and obliterate the same if it finds any of the aforesaid factors.

19. Applying the aforesaid principles to the case at hand, the documents and events noticed hereinabove unmistakably disclose, that the complaint is not a genuine criminal grievance, but bears a strong imprint of **manipulation** and of an attempt to convert **private discord into public prosecution**. This, **therefore, is a fit case where even proceedings for malicious prosecution may be warranted.** However, this Court for reasons best left unstated, restrains itself and holds its hands from issuing such direction. Wherfore, this Court cannot permit the criminal process

to be employed as an engine of harassment or a weapon of retaliation and become an abuse of the process of the law, eventually resulting in miscarriage of justice.

20. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petitions are allowed.

- (ii) FIR in Crime No.789 of 2024 registered at Byadarahalli Police Station and pending before the Chief Judicial Magistrate, Bengaluru Rural District, Bengaluru stands quashed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:MJ