

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3303 of 2022

Arising Out of PS. Case No.-121 Year-2019 Thana- JAGDISHPUR District- Bhagalpur

MD. SAIF ALI ANSARI Son of Shakil Ansari Resident of Village - Momin Tola,
Uttari Puraini, P.S.- Jagdishpur, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. RAVINA TABASSUM D/o Md. Sohail Resident of Village - Ahmad Khani,
Puraini, P.S.- Jagdishpur, Distt.- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Syed Masleh Uddin Ashraf, Sr. Advocate Mr. Shehan Ashraf, Advocate
For the State	:	Mr. Bhanu Pratap Singh, APP

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 12-01-2026

Heard Mr. S.M. Ashraf, learned Senior counsel for the petitioner assisted by Mr. Shehan Ashraf, learned Advocate and Mr. Bhanu Pratap Singh, learned APP for the State.

2. Despite valid service of notice, none appears on behalf of opposite party no.2.

3. The present application has been filed for quashing of the order dated 17.11.2021 passed by the learned Additional Sessions Judge-I, Bhagalpur in S.Tr. No. 161 of 2021 (arising out of Jagdispur P.S. Case No.121 of 2019) whereby and whereunder the petition dated 26.10.2021 filed by the petitioner under Section 227 Cr.P.C. to discharge the petitioner under Section 376 of the Indian Penal Code (hereinafter referred to as IPC) has been rejected.

4. The brief facts leading to the impugned order



emanates from an F.I.R bearing Jagdishpur P.S. Case No. 121 of 2019 dated 26.04.2019, registered under Section 341, 376, 379/34 of the IPC on the written statement of the informant Rabina Tabassum aged about 25 years, alleging *inter alia* that on the allurement and pretext of marriage, the informant was subjected to sexual exploitation by the petitioner for the last one year. The F.I.R further discloses that on 22.04.2019, on being asked by the petitioner to come along with him for getting married, she left her home along with cash and jewellery and went along with the petitioner to his maternal uncle's house where they stayed in a room where the father of the petitioner had arrived and upon his assurance for marriage, she, along with the petitioner, came back to her village whereafter the mother of the petitioner also assured the informant's parents about marriage which never happened. Hence, the present case was instituted stating in the F.I.R that other members of the family are also preventing the marriage to happen.

5. After investigation, charge-sheet was submitted against the petitioner and others and cognizance was taken thereupon under Section 376, 341 read with Section 34 of the IPC and after commitment of the case to the Court of Sessions, the petitioner filed the discharge application under Section 227



of Cr.P.C. which stood rejected vide the impugned order dated 17.11.2021.

6. A report with regard to the stage of the case has been called for which reveals that charges have not been framed as yet.

7. Mr. S.M. Ashraf, learned Senior counsel appearing on behalf of petitioner has assailed the impugned order primarily on the ground that no offence is made out against the petitioner, much less an offence under Section 376 of the IPC. He has substantiated his submission on account of the fact that a bare perusal of the allegations made in the F.I.R itself would disclose that the petitioner and the informant/victim were having a relationship which was continuing for the past one year and the informant being a 25 years old adult, as she herself claims in the F.I.R, had entered into physical relationship with the petitioner with open eyes and there is no allegation of any threat perception or any force or coercion exercised upon her. He has thus submitted that a relationship between two consenting adults would not bring the case within the ambit of Section 376 of IPC. Learned Senior Counsel has further submitted that even in the statement of the informant/victim recorded under Section 164 Cr.P.C., she has not whispered a



single word with regard to any sexual assault by the petitioner and has rather narrated the story in a different manner making reference to assurance given by the petitioner's parents, specifically her mother about getting her married to the petitioner which is a definite pointer to the fact that there was a *bona fide* intention of marriage with the opposite party no.2 and there was no misconception of fact. The medical examination of the informant/victim has also been referred to by the learned Senior counsel to submit that the informant was an adult and upon vaginal swab examination, no spermatozoa was found, which is further indicative of the fact that medical evidence also did not corroborate the allegations made in the F.I.R by the informant. To buttress his submissions with respect to the offence under Section 376 of IPC not being made out, the learned Senior counsel has relied upon some recent judgments of the Hon'ble Apex Court which are as follows:-

(a) ***Jaspal Singh Kaural Vs. The State (NCT of Delhi) & Anr.*** reported in ***(2025) 5 SCC 756***.

(b) ***Surendra Khawse Vs. State of Madhya Pradesh & Anr.*** ***(2025 INSC 1143)***

(c) ***Prashant Vs. State (NCT of Delhi)*** reported in ***(2025) 5 SCC 764***



8. Per contra, the learned APP for the State has opposed the present application on the ground that the allegations made in the F.I.R along with the materials collected during course of investigation constitute an offence under the aforementioned provisions of Section 376 of IPC as the informant was sexually exploited upon a false promise to marry which is indicative of the fact that she had entered into a physical relationship upon a misconception of fact and as such the consent given by the informant would be no consent in the eyes of law. The learned APP has thus defended the impugned order by stating that there are sufficient grounds to proceed against the petitioner and the order impugned requires no interference.

9. After having heard the rival contentions of the parties and having considered the impugned order as also the material on record, the moot question which falls for consideration before this Court is as to whether there is sufficient material on record and grounds for proceeding against the petitioner, prosecuting him under Section 376 of the IPC.

10. Upon examining the contents of the F.I.R and the other materials on record, it is clear that the prosecutrix is a 25 years old adult and had entered into a relationship with the



petitioner, which was continuing for the past one year leading to the inference that there was a consensual relationship between two adults. However, there is an allegation that sexual exploitation of the informant was done on the pretext of marriage. At this stage, it needs to be considered that there can be several reasons for developing physical intimacy between two consenting partners and the question of entering into a relationship under a misconception of fact needs to be established by way of specific assertion and material to show that the informant was made to enter into such relationship upon a false promise to marry and that she would not have done so in absence of such promise and assurance, coupled with the fact that the petitioner, in fact, never had any intention to marry the informant right from the inception.

11. The facts and materials disclosed in the present case, in no way, point towards any such intention of the petitioner to have sexually exploited her without intending to marry her. The prosecutrix has rather herself stated that it was due to the interference by the family members, including the parents of the petitioner, that impediments were caused in the marriage which could not fructify as a consequence of the same. It has to be kept in mind that there is a clear cut distinction



between a 'false promise' to marry, which would come under the purview of misconception of fact as envisaged under Section 90 of the IPC and a 'breach of promise' which is a result of some supervening circumstances on account of which a promise earlier made has not been honored. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Supreme Court in the case of *Naim Ahmed Vs. State (NCT of Delhi)* reported in **(2023) 15 SCC 385** wherein the distinction between a false promise to marry and a breach of promise has been clarified in paragraph 21 of the said judgment which is being quoted hereunder:-

“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 375 IPC. 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 earlier, each case would depend upon its proved facts before the court.”

12. The aforesaid issue of a woman engaging in sexual relations on the basis of misconception of fact amounting to rape and a breach of promise being distinct from a false promise has also been dealt with in several other judicial pronouncements rendered by this Court as also the Hon’ble Apex Court and such grounds have led to quashing of the entire prosecution.

13. In the case of ***Pramod Suryabhan Pawar Vs.***



State of Maharashtra reported in **(2019) 9 SCC 608**, the Hon'ble Supreme Court summarized the legal position with regard to "consent" of a woman vis-a-vis "mis-conception of fact" arising out of a false promise to marry. Paragraph 18 of the said judgment is being quoted hereunder:-

*"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.**"*

14. Upon analysis of the facts of the present case, it can be safely concluded that there is nothing on record to indicate that it is only on account of a false promise to marry that the prosecutrix had engaged herself in a physical relationship with the petitioner and thus, existence of any such



assurance or promise to marry cannot be said to bear a direct nexus with the decision of the informant to engage in any sexual act.

15. This Court cannot also loose sight of the fact that the informant, who by virtue of her age and maturity, was capable enough to take her independent decisions and engaging in a sexual relationship with the petitioner was a conscious and informed choice made by the informant, being in a position to assess the morality or immorality attached to the act in which she indulged with the petitioner without there being any force or coercion upon her. Such a willful conduct would lead to only an inevitable conclusion of her willingness in carrying a relationship, including physical intimacy with the petitioner, as such, her consent was totally voluntary. A criminal prosecution under Section 376 of IPC cannot be permitted to be initiated and to continue merely on account of the reason that a cordial and consensual relationship between a consenting couple does not materialize and fructify into a marital relationship. This proposition has been clearly laid down in the recent judgment rendered by the Hon'ble Supreme Court in the case of ***Prashant Vs. State (NCT of Delhi)*** reported in ***(2025) 5 SCC 764*** and paragraph 19 of the said judgment is being quoted hereunder:-



*“19. 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.....**
.....].”*

16. It has also been held by the Hon'ble Supreme Court in the case of *Samadhan Vs. State of Maharashtra & Anr.* reported in *2025 SCC Online SC 2528* that the



continuation of prosecution in case of a voluntary and consensual relationship devoid of any coercion, fraud or misrepresentation, would amount to an abuse of the Court machinery. Paragraph 40 of the said judgment is being quoted hereunder:-

“40. In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No. 2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.”

17. The impugned order rejecting the application for discharge suffers from illegality as it was well within its jurisdiction to sift and weigh the evidence available on record to



assess as to whether there was sufficient grounds to proceed or not against the petitioner. The Hon'ble Supreme Court in the case of ***Kanchan Kumar Vs. State of Bihar*** reported in (2022) **9 SCC 577**, has clearly enunciated the legal position with regard to discharge that at the stage of framing of charge, the Court concerned is not to act as a mere post office. It is true that there can be no meticulous sifting of evidence at this stage but the satisfaction of the Court with the materials available to see whether the case is made out for trial, has to be reached. A roving inquiry is not to be undertaken but a simple and necessary inquiry for proper adjudication of an application for discharge is required to be undertaken by the concerned Court. In any view of the matter, there is a duty cast on the Court to provide protection against vexatious and unwanted prosecution and in the process of granting such protection, this Court would choose to exercise the inherent jurisdiction provided under Section 482 Cr.P.C. on the ground of abuse of process of law and the parameters and guidelines of such power under Section 482 Cr.P.C. has been clearly formulated in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors., [1992 Supp (1) SCC335]*** and the relevant parameters for quashing are being quoted hereunder:-



“102.....

.....
(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

.....
.....
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

18. Taking into consideration both the factual conspectus of the case as also the settled legal position as discussed hereinabove, this Court is of the considered view that



the present prosecution against the petitioner is not only frivolous and vexatious, but the necessary ingredients of the offence under Section 375 of the IPC in order to prosecute the petitioner particularly for an offence under Section 376 of IPC is clearly and visibly not made out. In such view of the matter continuance of prosecution would amount to abuse of process of the Court, hence, the impugned order dated 17.11.2021 passed by the learned Additional Sessions Judge-I, Bhagalpur in S.Tr. No. 161 of 2021 (arising out of Jagdispur P.S. Case No.121 of 2019) is hereby quashed.

19. Accordingly, the present application filed by the petitioner is allowed.

(Soni Shrivastava, J)

Harsh/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

