



Neutral Citation No. -
2026:AHC:204780

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 482 CR.P.C. NO.- 15551 of 2020

Amit Kumar

.....Applicant (s)

Versus

State of U.P. & Another

.....Opposite
party/Respondents(s)

Counsel for Applicant(s) : Anshul Tiwari, Renu Singh, Vinod
Prakash Srivastava (Senior Adv.)

Counsel for : G.A., Jai Prakash Singh
Respondent/Opposite party(s)

Reserved on 21st September, 2026
Delivered on 30th September, 2026

A.F.R.
Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. I.K. Chaturvedi, learned Senior Advocate assisted by Mr. Ayush Kaushik, learned counsel for the applicant, Mr. Jai Prakash Singh, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present application under Section 528 B.N.S.S. has been filed by the applicant for quashing of the impugned charge-sheet dated 18th July, 2020 as well as the entire proceedings of Criminal Case No. 11358 of 2020 (State Vs. Amit Kumar) arising out of Case Crime No. 02 of 2020, under Sections 376, 323, 504 and 506 Indian Penal Code and also under Section 67 (A) of I.T. Act, Police Station-Mahila Thana, District-Varanasi, pending in the Court of 3rd Additional Chief Judicial Magistrate, Varanasi.

3. Brief facts of the case are that the First Information Report (FIR) has been instituted on 8th January, 2020 lodged by the prosecutrix/complainant/opposite party no.2 against the applicant, based on a comprehensive written complaint addressed to the Senior Superintendent of Police, Varanasi, by the victim, Kumari Mamata Sinsinwar alias Jiya. The prosecutrix/complainant, a native resident of Kosi Kalan, District Mathura, was temporarily residing in Faridabad, Haryana, to pursue coaching for competitive examinations. The accused-applicant explicitly named in the complaint is Amit Kumar, an Inspector in the Uttar Pradesh Police (P.N. No. 012290521), who was at the material time deployed within the Crime Branch at Varanasi. The genesis of the interaction dates back to the year 2013, when the accused-applicant was posted as the Station House Officer (SHO) at Kosi Kalan, Mathura, and established a connection with the victim's family under the pretext of investigating a local dispute. The factual matrix reveals a case of deliberate matrimonial fraud and systemic deception. In August 2019, following a casual matrimonial inquiry initiated by the victim's mother, the accused proposed marriage to the victim. The accused-applicant intentionally concealed his pre-existing marriage, falsely projected himself as an eligible bachelor, and induced the family's consent by boasting of vast properties in Meerut alongside immense wealth accumulated through corrupt means during his police service. In September 2019, the accused-applicant enticed the victim to travel to Varanasi under the pretext of mutual introductions, securing accommodation in Room No. 3002 at Hotel City Inn. It is alleged that the accused-applicant spiked the victim's beverage with an intoxicant, inducing a state of deep sedation, during which he subjected her to non-consensual sexual intercourse and covertly recorded compromising photographs and videos. The accused-applicant subsequently weaponised this digital media, subjecting the victim to continuous extortion and blackmail, thereby compelling her into repeated physical violation under the threat of public exposure. Arising out of the forced relationship, the victim conceived a pregnancy. On 22nd September, 2019, the accused-applicant escorted

her to a diagnostic centre in Lahurabir, where he falsely recorded her identity in the register as his wife, "Mamata wife of Amit Kumar," for the purpose of an ultrasound examination. Upon medical confirmation of the pregnancy, the accused subjected the victim to severe physical violence, held her captive inside the hotel room for multiple days, and forcibly administered medication to cause an unauthorized, non-consensual termination of the pregnancy.

4, The criminal enterprise unraveled when the victim visited the accused's family residence in Meerut and discovered through family photographs and relatives that he was already lawfully married. Upon being confronted with the truth, the accused actively abused his official status as a Police Inspector. He unauthorizedly extracted the call detail records (CDR) of the victim and her mother, placed their phone numbers under illegal electronic surveillance, contacted their relatives to defame the victim, and issued lethal threats to her prospective fiancé. The complaint culminates in assertions of an ongoing, severe threat to life, with the accused repeatedly transmitting vulgar abuses, death threats, and extortionate messages via unrecorded WhatsApp calls.

5. After lodging of the aforesaid first information report, the investigation proceeded and upon completion of the same, the Investigating Officer has submitted the charge-sheet against the applicant on which the cognizance has been taken and the applicant has been summoned, hence the present application has been filed.

Brief Statement of the Prosecutrix Recorded Under Section 161 Cr.P.C.

6. The prosecutrix/victim, Ms. Mamata Sinsinwar alias Jiya, aged about 27 years, daughter of Late Shri Kheda Singh, resident of Mathura, has stated on oath that she became acquainted with the accused, Amit Kumar (who was then posted as a Police Inspector), in the year 2013 at Kosi Kalan through her brother.

7. Subsequently, upon a matrimonial inquiry initiated by the victim's mother, the accused extended a direct marriage proposal, which was accepted by her family. In August 2019, while the accused was posted in Varanasi, he induced the victim to travel from Faridabad to Varanasi under the pretext of formalizing their relationship, where he lodged her in Room No. 3002 at Hotel City Inn. Therein, the accused deceitfully administered a spiked chocolate milkshake to the victim, rendering her unconscious, and thereafter subjected her to non-consensual sexual intercourse. Upon regaining consciousness, when the victim protested, the accused intimidated her by showcasing her highly objectionable and nude photographs captured surreptitiously during her state of insensibility, threatening to circulate them publicly while simultaneously extending a false promise of marriage. Under this continuous coercion and blackmail, the accused sexually exploited the victim during three to four subsequent visits, as a result of which she conceived in September 2019, an event medically confirmed via an ultrasound at Varanasi. Upon being apprised of her pregnancy, the accused forcefully administered abortifacient drugs to her at the hotel, which resulted in a forced miscarriage. When the victim's marriage was later finalized with another person for January 2020, the accused extended criminal intimidation, threatened to kill her and her prospective groom, and attempted to defame her by sending her photographs to her family members. The victim eventually discovered through the accused's family that he was already a married man with children, having actively suppressed this material fact to perpetrate physical exploitation, and that he continues to blackmail and threaten her under duress.

Statement of the Prosecutrix recorded under Section 164 Cr.P.C.

8. In her statement recorded under Section 164 Cr.P.C. the prosecutrix has reiterated the same version as stated in her earlier statement recorded under Section 161 Cr.P.C.

9. Learned counsel for the appellants submits that as per the prosecution, the accused-applicant visited the house of the prosecutrix

on any occasion whatsoever from year 2013 and the alleged incident started from month September, 2019, but the first information report was lodged by the prosecutrix on 8th January, 2020 at 2354 hours i.e. after four months, for which no plausible explanation has been given and the same appears that the said first information report is an afterthought. He then submits that admittedly the prosecutrix came in the contact of accused-applicant and she herself joined the company of accused-applicant on her own sweet and free will. In the month of September, 2019, the prosecutrix has stated herself in the first information report as well as in her statements recorded under Sections 161 and 164 Cr.P.C. that upon the applicant's request; asking her to come to Varanasi to know about his job and status and also while insisting upon her not to disclose the said visit to anyone, she voluntarily traveled to Varanasi and stayed in a room of a hotel with the applicant and she did not disclose the said visit of Varanasi to anyone including her parents. It is not common in Indian society for an educated young major girl/woman to travel alone to Varanasi, without informing her parents or anyone else, at the behest of a stranger who is not a relative, and to stay in a room with that stranger. She has also stated herself that the applicant gave her a milkshake to drink, causing her to lose consciousness, after which he established sexual relations with her. Upon regaining consciousness, when the prosecutrix opposed, the applicant promised to marry her and subsequently established sexual relations with her twice that same night with her consent. Later, after returning home, she discovered, she was pregnant; the applicant then called her to Varanasi and, following an ultrasound, had the pregnancy terminated. The prosecutrix remained in the company of applicant for more than four months without any protest or raising any alarm or making any complaint against the applicant. The aforesaid statements reveal that she stayed in the company of the applicant and on her own free will. From the photographs of applicant and prosecutrix, which is at page 165 to 178 of the paper book and the same are also made part of the case diary,

this fact that the prosecutrix was in company of the applicant on her own free will, is also established.

10. Learned counsel for the applicant further submits that the allegation made by the prosecutrix that on the false promise to marry her, the applicant has established physical relationship with her as well as the allegation that he has concealed his first marriage with Meenakshi, who is also head constable in U.P. Police and that two sons were born from the aforesaid wedlock, have no legs to stand. The promise made by the applicant to the prosecutrix regarding marriage was not false; when his relationship with his first wife, Meenakshi, deteriorated and they began living separately, he came into contact with the prosecutrix, developed feelings for her, and genuinely wished to marry her. However, he was unable to do so because he had not yet obtained a divorce from his first wife. Nevertheless, after meeting the prosecutrix, he filed a divorce petition against his first wife, which resulted in a decree of divorce on December 14, 2023 passed by the Additional Principal Judge, Family Court No.1, Meerut, but the prosecutrix had already initiated this criminal case prior to that. The applicant discovered that it was his first wife who, in collusion with the prosecutrix, instigated her to file this case against him; this fact is substantiated by some photographs of the applicant's first wife and the prosecutrix, as well as WhatsApp chats exchanged between them, which have been annexed starting from page nos. 20 of the rejoinder affidavit.

11. It is further submitted that as for the complainant's allegation that the applicant did not disclose his prior marital status to the prosecutrix before engaging in a relationship with her, this allegation is entirely false; the WhatsApp chats exchanged between themselves reveal that the prosecutrix acknowledged that they could not marry until the applicant's divorce was finalized and stated that she was willing to wait until then. The copies of the aforesaid whatsapp chats exchanged between the applicant and the prosecutrix have been

brought on record at page nos. 143 onwards of the paper book, the relevant page is page no.143 of the paper book. The said chats have also been made part of the case diary.

12. It is then submitted that though the prosecution alleged that the applicant used to blackmail the prosecutrix by taking her obscene photographs and making videos, thereby compelling her to engage in sexual relations; however, during the investigation, the Investigating Officer was unable to collect any such photograph or video that could be made part of the case diary.

13. It is then submitted that the applicant is innocent, as the allegations made in the first information report implicating the applicant is false and fabricated. The first information report lodged by opposite party no.2 is nothing but a bundle of lie and the same has been lodged only for exploiting the applicant by indulging his name in a fake, false and frivolous case. The entire prosecution story as unfolded in the first information report is absolutely a self-made story projected by opposite party no.2. The relation between the applicant and the informant is consensual in nature. There is no independent witness, who came forward to support the prosecution version. No incriminating evidence was produced before the Investigating Officer to substantiate the claim that the victim was exploited by the appellant on a false promise of marriage. Notably, neither the FIR nor the victim's statements under Section 161 Cr.P.C. and 164 Cr.P.C. disclose the duration of the relationship between the applicant and the victim.

14. Learned counsel for the applicant further submits that in her statements recorded under Sections 161 and 164 Cr.P.C., the victim/prosecutrix/opposite party no.2 herself has admitted that she is 27 years old and was taking coaching classes for competitive examination a major capable of understanding the consequences of her actions. The contents of the FIR, read with the victim's statements under Sections 161 and 164 Cr.P.C., clearly indicate that even assuming the prosecution's allegations to be true, the relationship was

consensual. The omission to specify particulars of any promise of marriage by the appellant gives rise to a presumption that no such promise was made. Mere allegation of rape based on a pretext of marriage is insufficient unless the prosecution proves that the victim consented to the sexual relationship relying on such a promise. Absent substantiation of this material fact, the allegation of rape cannot stand. Not only case under Section 376 I.P.C. but also offence under Sections 323, 504 and 506 Indian Penal Code and also under Section 67 (A) of I.T. Act are not made out against the applicant. Thus, the entire proceedings against the applicant are liable to be quashed.

15. Learned A.G.A. for the State and the learned counsel for opposite party no.2 have opposed the submissions made by the learned counsel for the appellants by contending that the victim's statement clearly shows that she was deceived by the applicant, who promised marriage to satisfy his lust. She also stated that the applicant has concealed his first marriage with Meenkshi from the prosecutrix and established physical relation with her. The applicant established physical relations with her repeatedly on the pretext of marriage and by concealing his first marriage. The victim's statement is cogent, clear, and consistent, establishing the guilt of the accused-applicant. From the allegations made in the First Information Report cognizable offence is made out against the applicants. The defence of the applicant cannot be taken into consideration, at this stage. Therefore, the applicant does not deserve any indulgence

16. Apart from the above, learned counsel for opposite party no.2 has stated that the applicant is a notorious offender having more than 24 criminal history including offences under Section 302 and 307 I.P.C. as per the report of the D.C.R.B. district Meerut. Because of the criminal mind set, as he was repeatedly beating and harassing her first wife Meenakshi, who is head constable in U.P. Police. The applicant is a philanderer as he has many sexual relationships with many girls and women without intending to be emotionally involved, as is evident from the photographs of the applicant and certain other girls/women in objectionable condition, which are at page nos. 16 to 20 of the counter

affidavit. It is further contended that due to his criminal conduct, the applicant could neither become a good husband and father to two children nor a good human being or a good police officer. When the first wife of the applicant, namely, Meenkshi demanded money for maintenance of her two children born out from the wedlock of the applicant and herself as she is living separately from the applicant along with her children, he refused to do so and as on date, he has not given any single penny to his two children due to which Meenakshi filed a maintenance case against the applicant at behest of two children. It is then submitted that due to bad conduct of the applicant his services as Inspector of U.P. Police has been terminated. The applicant filed a divorce petition against his first wife, which was registered as Case No. 1686 of 2018 and decreed on December 14, 2023, precisely because he was having a good time and engaging in dalliances with other women.

On the above premise, learned counsel for opposite party no.2 urges that such a criminal and a person of bad conduct like the applicant is not entitled to get any relief by this Court in exercise of powers under Section 428 Cr.P.C.

17. In rejoinder, learned counsel for the applicant submits that the above arguments advanced by the learned counsel for opposite party no.2 is focused solely on the applicant's character. Regarding the merits of the case like the issue as to whether the allegations of blackmail, a false promise of marriage, and the concealment of his marriage from which two children were born are established against the applicant or not or rather, that the matter involves consensual relations.

18. I have considered the facts and circumstances of the case, the submissions advanced by the learned counsel for the applicant and learned A.G.A. for the State and also perused the material available on the record.

19. The issue before this Court which needs to be examined and decided by this Court is as to whether the allegations of blackmail, a

false promise of marriage, and the concealment of his marriage from which two children were born are established against the applicant or not or whether this is a case of consensual relationship between the applicant and prosecutrix or not.

20. There is a clear distinction between rape and consensual sex and in a case where there is promise of marriage, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or had mal fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls in the ambit of cheating or deception. This principle has been reiterated in the latest judgment of the Apex Court in the case of **Pradeep Kumar Kesharwani Vs. State of U.P. & Another** reported in *2025 SCC OnLine SC 1947*.

21. Before entering into the facts of this case, it would be proper to examine the difference between false promise of marriage to induce a woman to obtain her consent for physical relationship and breach of promise to marry. Sexual relationship amounts to rape if it is obtained without consent of women. What amounts to "consent" as mentioned in Section 375 IPC is defined in Section 90 IPC.

22. Section 90 of I.P.C. defines consent known to be given under fear or misconception:-

"90. Consent known to be given under fear or misconception.- A consent is not such a consent as intended by any section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.- if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature of the consequence of that to which he gives his consent; or

Consent of child.- unless the contrary appears from the context, if the consent is given by a person who is under 12 years of age."

23. Reading the definition of "consent" (Section 90 IPC) with the definition of "rape" (Section 375), it becomes manifest consent of

women is vitiated if she is convinced to engage in sexual relationship with accused who induces her with false promise to marry.

24. The Supreme Court in **Pramod Suryabhan Pawar vs The State Of Maharashtra**, reported in *AIR 2019 S C 4010*, while dealing with a similar situation, enunciated principles of law by following observations:-

"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 maker of the promise should have had no intention of upholding his word at the time of giving it..."

The Supreme Court further observed:

"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."

25. Hence, it becomes evident that a man can be held criminally liable for having a sexual relationship on the basis of a false promise of marriage only if the sexual relationship happened solely because of that false promise. If the relationship occurred due to other reasons, the offence is not made out. A woman may choose to enter into a physical relationship for reasons other than a promise of marriage, such as mutual affection or personal choice, even without insisting on marriage.

26. Now, the next significant question arises as to when and how an accused can be held guilty for inducing a woman to engage in sexual relationships by making false promise of marriage?

27. It is trite that in criminal cases, where accused is alleged to have committed rape, testimony of victim becomes significant and if her

statement is of sterling quality, it does not even require corroboration. However, converse is also true because law regarding appreciation of evidence does not distinguish between different categories of witnesses and no privilege has been extended to victim of rape. There is no universal law to treat statement of victim as gospel truth. The Supreme Court in **Abbas Ahmed Choudhury v. State of Assam** reported in (2010) 12 SCC 115 held that a case of sexual assault has to be proved beyond reasonable doubt as any other case and that there is no presumption that a prosecutrix would always tell the entire story truthfully.

28. The proposition as discussed in preceding paragraph applies equally in cases where the allegation against accused is of inducing the victim to engage in sexual relationship by making false promise to marry. In order to fasten an accused of such criminal liability, it is necessary for prosecution to come up with adequate evidence to show that at relevant time, i.e, at the initial stage itself, the accused had no intention of keeping his promise to marry the victim. The Supreme Court in **Deepak Gulati v. State of Haryana**", reported in *AIR 2013 SC 2071*, held as follows:

"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."

29. Hence, it evident that before an accused can be held liable, it is necessary that (a) the accused never intended to marry the victim from the beginning. A mere failure to marry, due to later circumstances, does not amount to deception. Section 90 IPC applies

only when dishonest intention existed at the outset and, (b) same has to be proved by adequate evidence.

30. From the foregoing discussions, it is apparent that establishing physical relationships with a woman by making false promise of marriage is an offence which vitiates her consent and it attracts offence under Section 376 IPC. Breach of promise is generally defined as the failure of one party to fulfill a mutual agreement or commitment to marry another and it is viewed as a civil wrong. In order to hold an accused criminally liable for committing rape on pretext of false promise of marriage, it is necessary that prosecution must establish that accused right from the beginning cheated victim without any intention to marry with an intent to satisfy his lust. Hence, the essential ingredients of the offence are:

- (a) the accused made a promise to marry the victim;
- (b) the promise was false and not intended to be fulfilled;
- (c) the promise was made with the intention of deceiving the victim and inducing her to consent to a sexual relationship;
- (d) the dishonest intention to deceive and cheat existed from the very inception of the promise; and
- (e) the victim's consent for the sexual relationship was obtained solely on the basis of such false promise;
- (f) for consent to be vitiated by a false promise, the promise must have immediate relevance to the woman's decision to engage in intercourse;
- (g) there must be adequate evidence to show that promise made by accused from its inception was made without any intention to fulfill.

31. The absence of proof that the essential ingredient of a "promise to marry" is specifically that the promise was made without any intention of fulfilling it from the beginning, does not invalidate consent of victim for sexual relations under Section 90 read with Section 375 of the Indian Penal Code, 1860. A consensual sexual relationship followed

by a subsequent refusal to marry does not render the accused liable for rape. This position finds consistent support in the jurisprudence of the Supreme Court, as laid down in **Deepak Gulati (Supra)** and **Pramod Suryabhan Pawar (Supra)**, wherein it has been emphatically held that mere breach of promise to marry, in absence of initial dishonest intent, cannot convert consensual physical relations into rape. Treating every such refusal to marriage as vitiated consent would dilute the sanctity of Section 375 IPC and overburden the criminal justice system with cases arising from soured relationships rather than genuine sexual offences.

32. These materials, even if assumed true, fail to establish the essential ingredients: (a) no adequate evidence shows the promise, if any, was false from inception with dishonest intent to deceive solely for lust; (b) the relationship appears driven by mutual affection over four months rather than immediate reliance on a false promise; and (c) subsequent refusal. Mere failure to marry due to later circumstances does not vitiate consent under Section 90 IPC, as held in **Pramod Suryabhan Pawar (supra)** and **Deepak Gulati (supra)**.

33. The Hon'ble Supreme Court of India In the case of **Mahesh Damu Khare Vs. The State of Maharashtra & Others** reported in *2024 SCC OnLine SC 347* has opined that the **fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.**

(Emphasis supplied)

34. Further the Hon'ble Supreme Court of India has opined that **the longer duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.** Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent

evidence has been brought on record before us to that effect, the fact that the relationship continued for more than 7 years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurrer or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

(Emphasis supplied)

35. Then the Hon'ble Supreme Court of India has expressed its opinion that it will be very difficult to assume that the complainant who is otherwise a mature person with too grown up child, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.

36. On the basis of aforesaid opinion, the Hon'ble Supreme Court of India has viewed that **if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of**

stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.

(Emphasis added)

37. Relying the judgment of **Pramod Suryabhan Pawar (Supra)** and **Mahesh Damu Khare (Supra)**, Hon'ble Supreme Court of India in the case of **Nitin B. Nikhare Vs. The State of Maharashtra & Another in Criminal Appeal No(S).....of 2025** arising out of SLP (Crl.) No. 1889 of 2024 decided on *21st January, 2025, in paragraph no. 6* has held that mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

38. Referring and relying upon the another judgment of the Apex Court in the case of **Deepak Gulati Vs. State of Haryana** reported in 2013 Cri LJ 2990, the Apex Court in the case of **Pradeep Kumar Kesharwani (Supra)** has made following observations:

"18. 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 11 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 a 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 accuse; 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 mis-representation 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.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at 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, 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."

(Emphasis supplied)

39. In light of the aforesaid legal principles, a careful scrutiny of the FIR and the victim's statements under Sections 161 and 164 Cr.P.C. reveals only bald allegations of exploitation on the pretext of marriage without disclosing the duration of the relationship or any contemporaneous promise. In the first information report as well as in the statements recorded under Sections 161 and 164 Cr.P.C., the victim/prosecutrix has through out stated that in 2013, the applicant visited the home of prosecutrix in connection with a case and subsequently kept visiting on, one pretext or another; after the prosecutrix's mother once used the prosecutrix's phone to call the applicant, he began communicating with the prosecutrix and gave her false assurances that he would marry her. In September, he invited the prosecutrix to come to Varanasi, where he was posted as an Inspector in Police Department, asking her to come and witness his status and standing, while strictly instructing her not to disclose the said visit to her family or anyone else. Trusting the applicant's word, the complainant/prosecutrix went to Varanasi in September 2019, where the applicant took her to the hotel room where he was staying and persuaded her to stay there as well; relying on him, she stayed in the said room. Later that night, the applicant gave her a milkshake, and upon consuming it, she fell asleep; taking advantage of this, the

applicant engaged in sexual relations with her and recorded obscene videos and photographs. When she woke up, he made a false promise of marriage and engaged in sexual relations with her twice more that night. Subsequently, he forced her into sexual relations multiple times by threatening to make the videos and photographs viral, and when she became pregnant, he had a sonography performed and caused the termination of her pregnancy. The prosecutrix also alleges that the applicant concealed from her the fact of his first marriage, as well as the existence of his first wife namely, Meenkashi, who is a Head Constable in the Police department and their two children.

40. It emerges from the foregoing facts that the prosecutrix, who is aged about 27 years, is an educated woman, had known the applicant since 2013 and held a liking for him; consequently, when the applicant proposed marriage and invited her to Varanasi, specifically asking her not to disclose her visit to anyone, she traveled to Varanasi in September 2019 without informing anyone and stayed in the same room of hotel with him, though without engaging in any intimate relationship. Subsequently, on that night, they engaged in sexual relations three times and continued to do so thereafter, resulting in a pregnancy; later, at the applicant's behest, she even underwent an abortion in Varanasi. Under these circumstances, the sexual relations between the prosecutrix and the applicant can be termed consensual as is also evident from the photographs of applicant and prosecutrix, which is at page 165 to 178 of the paper book as well as from the Whatsapp chats exchanged between them, which are page nos. 148 to 163 of the paper book and the same are also made part of the case diary inasmuch as in the said photographs she was very happy with the applicant. Moreover, in several photographs, the prosecutrix is seen embracing and showing affection towards the applicant; an Indian woman would not embrace a stranger or a man other than her partner in such a manner. As such the fact that the prosecutrix was in company of the applicant on her own free will, is also established. Furthermore, none of the prosecution's evidence indicates that the applicant ever refused to marry the complainant and also the

prosecutrix being major and educated girl, has never resisted, objected or made any complaint before any court of law during these period Therefore, the allegation of prosecutrix that the applicant has established physical relations with her on the pretext of false promise to marry her, has no legs to stand.

41. From the facts as referred to above, it is also cropped up that the marriage relationship of the applicant with her first wife Meenkshi was strained and incompatible, due to which he filed divorce petition against her before the competent court of law, which has subsequently, been decreed in 2023 and because of the said reason he always wanted to marry the prosecutrix. In the FIR and her statements recorded under Sections 161 and 164, the prosecutrix has stated the applicant took her to his native place at Meerut where mother of the applicant assured her that the applicant would marry her. However, on the instigation of his first wife, namely, Meenkashi, the prosecutrix has filed the instant first information report against him. This fact is substantiated by some photographs of the applicant's first wife and the prosecutrix, as well as WhatsApp chats exchanged between them, which have been annexed starting from page nos. 20 of the rejoinder affidavit.

42. So far as the allegation of blackmailing by the applicant to the prosecutrix on the basis of obscene videos and photographs of her is concerned, neither such obscene videos and photographs have been produced on behalf of the prosecutrix before this Court nor the Investigating Officer during course of investigation has collected the same so that they may made part of the case diary.

43. Qua the allegation made by the prosecutrix against the applicant that he has concealed his first marital status about his first wife and two children, this Court finds substance in the submission made by the learned counsel for the applicant that the prosecutrix was well within her knowledge that the applicant has already married with Meenkshi who is head constable in U.P. Police and that he has proceeded to

divorce her. The aforesaid fact is also established from the two Whatsapp chats exchanged between the applicant and the prosecutrix, which are at page no. 147 of the paper book and the same is also made part of the case diary. For ready reference, the said two chats are extracted hereunder:

“Bhawnao m bah kar koi galati nhi krni h.....M intjaar kr lungi divorce hone tak ka.....Ab m bhi yahi chahati hu divorce ke baad hi shaadi ho.....Or tabhi hum mile plzzz”

“Vo sach m bahut ghayiya aurat jo jel bhijva sakti h Ritu didi ko likhva sakti h...Vo kishi bhi had tak gir skti h use moka dena hamari bebakufi hogi.....Divorce tk wait kart h oki.”

44. A new fact has also been cropped up from the perusal of the supplementary affidavit filed on behalf of the applicant on 7th July, 2022 that the prosecutrix has already married with one Nitaram son of Shyam Singh, resident of Village Kotwan, Police Station-Koshikala, District-Mathura. Some photographs of wedding ceremony of prosecutrix with Nitaram are also annexed as Annexure No. S.A.-2 to the said supplementary affidavit. This fact has not been disclosed before this Court during the course of hearing of the present criminal application.

45. As this Court reaches the conclusion of this judgment, this Court must determine whether the sexual relations established between the applicant and the prosecutrix, which have not been denied by any of them, were consensual or the result of factors such as force, coercion, or compulsion; to this end, this Court sets out the following facts below:

(I). It is admitted by the prosecutrix that she was in contact with the applicant from 2013 to 2020; during this period, she regularly communicated with him over the phone and in person, and also engaged in continuous WhatsApp chats with him.

(ii). In September 2019, at the applicant's invitation, the prosecutrix traveled alone by flight to Varanasi, without informing anyone, including her parents and stayed for two to three days in the same hotel room where the applicant was already residing; even after the

alleged rape, she lodged no complaint against the applicant, neither in Varanasi nor after returning her home and after that also she was in regular touch with the applicant.

(iii). After coming from Varanasi to her house where the prosecutrix is alleged to have been raped by the applicant, after some days, she went to the applicant's native place at Meerut where she met with his mother, nephew, niece, Bhabhi and where also she did not make any complaint against the applicant from his family members or any authority.

(iv). The prosecutrix was well aware that the applicant was already married, that his relationship with his first wife was strained, and that he wished to divorce her; consequently, in the WhatsApp chat quoted above and the same is at page no. 147 of the paper book, she stated that she would wait to marry the applicant until he had obtained a divorce from his first wife.

(v). From the Photographs of the applicant and the prosecutrix, which have been brought on record at page nos. 165 to 178 of the paper book as well as from the Whatsapp chats exchanged between them, which are page nos. 148 to 163 of the paper book, it is crystal clear that the prosecutrix was very happy with the applicant. Moreover, in several photographs, the prosecutrix is seen embracing and showing affection towards the applicant; an Indian woman would not embrace a stranger or a man other than her partner in such a manner.

(vi) Perusal of the entire record reflects that the applicant had never refused or denied to marry the prosecutrix after his divorce with his first wife. It is the prosecutrix, who in connivance of the first wife of the applicant, namely, Meenakshi, has lodged the first information report against the applicant in 2020 before the decree of divorce has passed by the competent court of law in favour of applicant i.e. in 2023.

From the aforesaid facts this Court has no room to doubt in order to express its final opinion that the prosecutrix was in company of the applicant on her own free will and the relationship established between them was fully consensual in nature and nothing otherwise.

45. In view of the aforesaid discussions and deliberations, this Court finds that neither any case under Sections 376, 323 and 504 I.P.C. nor any case under Section 67 (A) of the Information Technology (Amendment) Act are made out against the applicant.

46. Hence, this Court is of view that allowing the criminal proceeding against the appellant in the facts and circumstances to continue, where no criminal liability can be attached, would amount to abuse of the process of court. Therefore, applicant is entitled to the relief as claimed by him for quashing the complaint/ FIR.

47. In view of the aforesaid, charge-sheet dated 18th July, 2020 as well as the entire proceedings of Criminal Case No. 11358 of 2020 (State Vs. Amit Kumar) arising out of Case Crime No. 02 of 2020, under Sections 376, 323, 504 and 506 Indian Penal Code and also under Section 67 (A) of I.T. Act, Police Station-Mahila Thana, District-Varanasi, pending in the Court of 3rd Additional Chief Judicial Magistrate, Varanasi are quashed.

48. This criminal application under Section 482 Cr.P.C. is, accordingly, **allowed.**

(Madan Pal Singh, J.)

Order Date:-30/09/2026
Sushil/-