

2026:PHHC:044912



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM M-1885 of 2021 (O&M)

Date of Decision: 20.03.2026

[REDACTED]

...Petitioner (s)

Vs.

State of U.T., Chandigarh and others

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. R. S. Bains, Sr. Advocate assisted by
Mr. Sumeet Singh, Advocate
Mr. Utsav Singh Bains, Advocate
for the petitioner.

Ms. Sharmila Sharma, A.P.P for
U.T., Chandigarh.

Mr. Charanpreet Singh, Advocate
for respondents No. 2 and 3.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Criminal Procedure Code with a prayer to quash FIR No. 48 dated 02.03.2020 under Section 376(2) of the IPC registered at Police Station Sector 36, Chandigarh and all consequential proceedings emanating therefrom.

2. The FIR in the present case was registered on the basis of the complaint moved by [REDACTED] (respondent No.2), who is the husband of [REDACTED] (victim/prosecutrix, respondent No.3).

The FIR has been reproduced below:-

*“To SSP Chandigarh Police Head Quarter, Sector 9,
Chandigarh.*

Incident: Physical and Mental Cruelty, Blackmailing and grievous hurt by a man named [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

*Respected Maam, Myself [REDACTED]
[REDACTED]h, working as Senior Manager in renowned company. On dated 24.2.2011, I got married with [REDACTED]
[REDACTED]. Since our marriage we are residing at Chandigarh and was living very much happy married life. In year 2017, My sons showed their intrest to join Skating classes. We started sending our sons for skating classes in evening. The classes were being taken by the coach [REDACTED] resident of R/o 74/8, Khuda Ali Sher, Chandigarh. My wife [REDACTED] used to drop my sons at coaching class and used to stay there till the class ends. The coach [REDACTED] developed friendly relation with my wife. The coach younger son is also classmate of my elder son. [REDACTED] started visiting my house on pretext of exchanging books and discussion of skating as carrier of my son. As the time passed we became family friends and relation between me and [REDACTED] were normal. On 23.12.2019, wife of [REDACTED] messaged me that there is something doubt in her mind with respect to relation between [REDACTED] and [REDACTED]. It effected me a lot. At this very moment, I realized from past some time, there is drastic change in behavior of my wife. As most of the time, she was staying over stressed and depressed. After realizing this very fact, I checked mobile phone details of my wife and was surprised to see that my wife had undergone abortion procedure also when I was not in the city and which was not even in my knowledge. After knowing this fact, I confronted my wife [REDACTED] and at the first instance she refused and tried to hide things, but then I warned her*

that if she will not tell me everything then I will go for a divorce. On this my wife broke down and started crying badly. Then I came to know the facts [REDACTED] first developed friendly relation with us and then forcibly made physical relations with my wife and the started blackmailing and threatened her and many time he made physical relations with her. Because of this blackmailing to my wife she was staying so much stressed from last many months. On the next day I called [REDACTED] and asked him that why you have done wrong with my wife and has physically and mentally harassed her a lot. He disconnected the phone and immediately switch of his all phone and ran away from Chandigarh. On the same day as I found a lock at his residence. I tried to contact [REDACTED] many times but was unable to make any contact. I went to his coaching classes, his assistant coach told me that he has gone to his native place in Himachal Pradesh. I had contact of one of the [REDACTED] Cousin from this contact. I took his father number, I called on that number [REDACTED] picked the call and after hearing my voice he immediately disconnected the call again. On 6th Jan 2020 I was able to contact his other number which was picked by his wife and I requested her that I want to have talk to [REDACTED] She instantly started abusing about me, my wife and my family and even tried to threaten us too. Then I came to know that [REDACTED] is back to Chandigarh. I went to his work place i.e. School. I met him and confronted him that have you made any false promised to my wife. When he denied then I asked why he has harassed and blackmailed my wife so much. Due to his unacceptable act my wife is under high depression and living hell life. As he was blackmailing my wife so long and now I have put a legal complaint against him he or his any family member may try to harm me or my family. If anything wrong happen then [REDACTED] will be held totally responsible for it. My

wife is staying totally silent and going through high depression because of him. It is therefore respectfully prayed with folded hands that proper legal action should be taken against [REDACTED] for spoiling my wives life, forcibly making physical relations, for blackmailing her, too many false talks and for making her life living hell. Thanking You.

[REDACTED]

[REDACTED]

3. Learned senior counsel appearing on behalf of the petitioner has vehemently argued that the FIR was lodged by respondent No.2 by alleging illicit relations between the petitioner and respondent No.3, [REDACTED] Respondent No.3/prosecutrix, is a major and highly educated woman aged about 36 years and is having two children also. In fact, the FIR has been got registered by her husband only on the basis of suspicion. In fact, the original complaint was moved by her husband/respondent No.2, on 22.01.2020. However, the FIR was registered on 02.03.2020. He further contends that admittedly, respondent No.2/complainant entertained some doubt in his mind with regard to the relations between the petitioner and [REDACTED] prosecutrix. Respondent No.2 found from her mobile phone that she had undergone an abortion procedure without his knowledge. When he confronted her, she initially refused and tried to hide the facts, however, when he threatened that he would seek divorce, she admitted having physical relations with the petitioner. Learned senior counsel further submits that even in the medical record, nothing incriminating was found and respondent No.3/prosecutrix had herself refused to undergo internal medical examination.

4. Learned senior counsel further refers to the guest arrival register pertaining to Room No.113 of GK International Hotel, Chandigarh of 05.07.2019, which was part of the *challan*, to show that the room was booked by the petitioner and [REDACTED] prosecutrix, and the same was signed by [REDACTED] herself. The entries were also in the handwriting of [REDACTED] prosecutrix, herself. He further submits that after the complaint was initially filed on 22nd January 2020, the petitioner was advised to compromise the matter with the prosecutrix and resolve their dispute. It was even stated in the said application that the relationship had ended in December 2019, and the application was prepared by the police at the police station itself. Learned senior counsel further submits that the petitioner had surrendered his mobile phone and all other email details, however, nothing incriminating was found therein. Even, the digital and electronic records did not suggest any form of blackmailing was done, and there was no admissible evidence in support of the bald allegations of the complainant and his wife. He further submits that although it has been alleged that respondent No.3/prosecutrix was taken to Morni Hills under the false pretext of introducing her to a friend and, thereafter, she was allegedly forcibly raped. However, it again shows that she was neither threatened nor forced. Rather, the relationship between the petitioner and the prosecutrix was consensual. Even, she did not mention the address of any friend of the petitioner with whom she was allegedly to be introduced. Apart from that, respondent No.3/prosecutrix is a well-qualified dentist and know the consequences of her act and the

relationship between the petitioner and alleged prosecutrix were voluntary. Still further, it is alleged that the prosecutrix was taken to Morni on 23.06.2019, and at that time the petitioner allegedly committed rape on her for the first time. However, it is surprising that she remained silent till 02.03.2020. Further, it has been alleged that the petitioner had threatened the prosecutrix that he will throw out the children of the prosecutrix from the school. However, the petitioner is neither the principal nor holding any position where he could exercise his powers to throw out the children of the prosecutrix. Rather, she was an educated lady aged about 34 years and knew the consequences of her act and understood each and every thing. Even the petitioner as well as respondent No. 3/prosecutrix are both married. The petitioner is having a daughter and a son, whereas the alleged prosecutrix was also having two sons. Both the families knew each other very well and used to visit their houses. Even both the families were on visiting terms with each other. Even the father-in-law of the respondent No. 3 suffered a heart attack in August 2019 at Dalhousie, and respondents No. 2 and 3 left their children with the present petitioner to take care of them, which clearly shows that the petitioner had never threatened respondent No. 3 or her husband, respondent No. 2, in June 2019. Still further, respondent No. 3 used to call the petitioner at least 10–12 times a day, and she along with her husband, wanted to cheat the petitioner. Even, the allegations regarding abortion at Shodi Hospital, Mohali, were totally false and vague. In fact, respondent No. 3 had gone through the abortion, and

there was no proof that she was pregnant or had gone through the abortion.

5. On the other hand, learned State counsel, assisted by learned counsel for respondents No. 2 and 3, have vehemently opposed the submissions made by the learned counsel for the petitioner. It has been argued that the petitioner had been blackmailing respondent No. 3 and committed rape on her. However, she disclosed the sequence of events and the matter was reported to the police. Learned State counsel has, however, admitted that no audio, video, or digital record has been found during the course of investigation which could suggest that respondent No. 3 was blackmailed by using such evidence.

6. I have heard learned counsel for the parties and perused the record carefully.

7. No doubt, this Court should be conscious in interfering with the criminal proceedings at the stage of investigation or trial; however, there are certain cases where the Court, in order to prevent the abuse of process of any Court or otherwise to secure the ends of justice, can quash the criminal proceedings. In the present case, the petitioner has been charged with the offence punishable under Section 376(2) of IPC. Section 375 IPC deals with various aspects of rape. It has been alleged by complainant/respondent No. 3 that the petitioner had forced himself on her without her consent and engaged in sexual intercourse. Section 375 IPC has been reproduced below:-

"375. Rape.-A man is said to commit "rape" if he-
(a) penetrates his penis, to any extent, into the vagina,
mouth, urethra or anus of a woman or makes her to do so

with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under eighteen years of age. Seventhly.-When she is unable to communicate consent."

8. At this stage, Section 90 of IPC can also be referred to, which deals with consent given either under fear or misbelief. Section 90 of IPC reads as follows:

"90. Consent known to be given under fear or misconception.-

A consent is not such a consent as it 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..."

9. Section 375 of IPC clearly lays down that a person is said to have committed rape if he performs any of the sexual acts mentioned in sub-clauses (a), (b), (c), and (d), without the consent of a woman. Further, in terms of Section 90 of IPC, if a consent is given under misconception of fact, such consent is not a consent in the eyes of law and cannot be considered lawful and voluntary. While discussing the ingredients of Section 375 of IPC and Section 90 of IPC, the Hon'ble Supreme Court has held in the matter of ***Mahesh Damu Khare versus The State of Maharashtra & Anr.***, 2025 CriLR (SC) 332 : 2024(4) Crimes 509 : 2024(11) SCR 886 as under:-

*"20. Keeping this aspect in mind as to what amounts to consent with reference to Section 375 of the IPC, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in the case of ***Shambhu Kharwar v. State of Uttar Pradesh and Anr.*** 2022 SCC OnLine SC 1032 as follows:*

*"11. In ***Pramod Suryabhan Pawar v. State of Maharashtra*** (2019) 9 SCC 608, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in*

Sonu @ Subhash Kumar v. State of Uttar Pradesh (2021) 18 SCC 517, observed that:

"12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action .

[...]

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 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)

*21. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in **Niam Ahmed v. State (NCT of Delhi) 2023 SCC OnLine SC 89**,*

"20. 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 law and the case fell under the 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 fulfill 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."

22. *In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.*

23. *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 90 of IPC, 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 the case of "**Deepak Gulati v. State of Haryana (2013) 7 SCC 675**", in which it was held as follows:*

"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."

"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."

(emphasis supplied)"

10. In the present case, before proceeding any further, it would be appropriate to refer to certain following admitted allegations as levelled by respondent No. 2 in the FIR in the present case:-

(i) In the present case, the complainant, [REDACTED] husband of respondent No. 3, is working as Senior Manager in a renowned company, whereas respondent No. 3/prosecutrix, is a qualified dentist, a major lady aged about 34 years, and is having two sons.

(ii) Marriage between the complainant and respondent No. 3 was performed on 24.02.2011, i.e., nine years prior to the registration of the FIR, and respondent No. 3 was leading a married life with respondent No. 2.

(iii) It is admitted by the complainant that the petitioner, who was the coach of the son of respondent No. 3, had developed friendly relations with respondent No. 3, and the petitioner was on visiting terms with respondent No. 3 and her husband/complainant.

(iv) It is also admitted by respondent No. 2/complainant, that there was a drastic change in the behaviour of his wife/respondent No. 3, and he had checked her mobile phone and was surprised to see that she had undergone an

abortion procedure while he was not in the city, and it was not even to his knowledge.

(v) After coming to know about the fact, he confronted respondent No. 3/his wife, and she tried to hide the things, however, when he threatened her that he would go for a divorce, she agreed to disclose the physical relations between her and the petitioner.

(vi) Even the last act of sexual intercourse between the petitioner and respondent No. 3 was in the year 2019, whereas the FIR in the present case was registered on 02.03.2020.

From the above-referred allegations, it can be easily inferred that the prosecutrix, who was otherwise a major person and a qualified doctor with two grown-up children, was unable to discover the deceitful/forceful behaviour of the petitioner, who continued to have sexual relations with her for such a long period. The only reasonable inference which can be drawn in the peculiar facts and circumstances of the present case is that respondent No. 3 and the petitioner had developed a friendship, and later on, they also developed a physical relationship. It is also apparent that she had undergone some abortion procedure while her husband was away from the city, and she did not bring it to the notice of her husband, respondent No. 2. Still further, when the husband threatened that he would go for a divorce, she agreed to disclose the facts to him, and later on it has been alleged that she was blackmailed by the petitioner. However, during the course of arguments, learned State counsel has admitted that there is no video or audio evidence with the help of which she could be blackmailed by the petitioner. Consequently, it is apparent that the ingredients of the offence

under Section 375 IPC in the present case were not established. In fact, if a fully grown-up lady consents to the act of sexual intercourse and continues to indulge in such activity, it is an act of promiscuity on her part and not an act induced by misconception of fact.

11. In view of the aforesaid discussion, this Court is of the considered opinion that the present petition must succeed and is accordingly ordered to be allowed. The FIR No. 48 dated 02.03.2020 under Section 376(2) IPC, registered at Police Station Sector 36, Chandigarh (Annexure P-1/T) and all consequential proceedings arising therefrom are ordered to be quashed qua the petitioner.

12. All pending applications, if any, are disposed off, accordingly.

20.03.2026
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No