



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION [APL] NO.45 OF 2023

Applicant : Gaurav s/o Ravi Wankhede,
Aged about 31 years, Occu : Service,
R/o. 6/7, Shri Ganesh Residency,
Narendra Nagar Extension, Manish Nagar,
Nagpur.

– Versus –

Non-Applicants : 1. State of Maharashtra,
Through Police Station Officer,
Police Station, Beltarodi, Nagpur.

2. XYZ,
in Crime No.213/2019,
Registered with P.S. Beltalrodi, Nagpur.

Mr. J.M. Gandhi, Advocate for the Applicant.
Mr. S.A. Ashirgade, A.P.P for Non-Applicant No.1.
Ms. A.P Murrey, Advocate (Appointed) for Non-Applicant No.2.

CORAM : **M.W. CHANDWANI, J.**
RESERVED ON : **19th DECEMBER, 2023.**
PRONOUNCED ON : **30th JANUARY, 2024.**

JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.

02] The application seeks quashing of Sessions Case No.569/2019 arising out of First Information Report (F.I.R.) No.213/2019 registered with

Police Station Beltarodi, District Nagpur for the offence punishable under Sections 376(2)(n) and 417 of the Indian Penal Code (I.P.C. for short).

03] The facts, which give rise to the present application, can be culled out as under :

On 26/07/2019, the victim lodged F.I.R. alleging that she got acquainted with the applicant through her sister Devita and was working as an Insurance Consultant with him. They used to meet and also used to go together for the purpose of work. The applicant proposed for marriage to the victim, to which she agreed. In the month of March 2016, the applicant took the victim on his bike for the purpose of work and thereafter to his house at Manish Nagar, Nagpur. In his house, the applicant established physical relations with the victim on the promise of marriage. Thereafter, the said physical relations continued at the rented room of the sister of the victim. The applicant also established physical relations with the victim at Hotel Green on the pretext of promise of marriage. Suddenly, the victim came to know that the applicant's marriage is fixed with another girl and the engagement ceremony was also performed. Initially, on 16/07/2019, the victim lodged a complaint with Police Station Beltarodi, Nagpur, wherein the applicant was called. He informed to the Police that he is ready to perform the marriage with the victim, but his parents were not agreeing. The victim went to meet

the father of the applicant, however, his father refused to agree for the marriage of the applicant with the victim. Therefore, on 26/07/2019, the victim lodged F.I.R. against the applicant, on which the aforesaid offences came to be registered. Thus, in the complaint, the victim alleged that by giving false promise of marriage, the applicant kept physical relations with her.

04] After completion of investigation, charge-sheet came to be filed and the case was committed to the Court of Sessions vide Sessions Case No.569/2019. The applicant applied under Section 227 of Cr.P.C. for discharge from the case. By the impugned order, the application for discharge (Exh.11) came to be rejected by the learned Additional Sessions Judge. The applicant approached this Court for quashing of the said sessions case.

05] Heard Mr. J.M. Gandhi, learned Counsel for the applicant as well as Mr. S.A. Ashirgade, learned Additional Public Prosecutor for the State assisted by Ms. A.P. Murrey, learned Counsel for non-applicant No.1.

06] The learned Counsel appearing on behalf of the applicant, by relying on the averments in the F.I.R., submits that the victim is a 33 year old girl. The physical relations between the applicant and the victim were consensual and were out of love affair. From 2016, according to him, the applicant was rather ready to marry the victim, but the victim was not

interested at all, and thereafter all of a sudden, when the applicant got an attractive job and engagement of the applicant with another girl was performed, she took a U-turn and lodged false complaint against the applicant. According to him, the WhatsApp chats would reveal that it is the victim, who initially denied to get married. Even, the allegations in the F.I.R. and the material collected by the prosecution in the charge-sheet are accepted as it is, they show that physical relations between the applicant and the victim were consensual and no offence under Section 376(2)(n) of I.P.C. is made out against the applicant. Subsequently, the victim got married to one Aman Chandrakant Sharma on 17/08/2021.

07] *Per contra*, the learned A.P.P. strenuously urged that the contents of the F.I.R. clearly make out a case that the consent of the victim was obtained under false promise of marriage and since inception, the applicant had no intention to marry the victim. According to him, the Police initially registered offence under Section 417 of I.P.C. The said offence being a non-cognizable one, permission of the learned Magistrate was taken under Section 155(2) of Cr.P.C. and thereafter investigation was carried out. On the complaint of the victim, the aforesaid offence came to be registered against the applicant. According to him, consent has been obtained under misconception and, therefore, is no consent. In absence of consent, the

offence under Section 375 of I.P.C. against the applicant will attract. He supports the impugned order of the learned Additional Sessions Judge rejecting the discharge application of the applicant.

08] Perusal of the charge-sheet reveals that the victim was 33 years old. She was well acquainted with the applicant and had friendly relations with him prior to 2016 and the relations converted into love affair. From 2016, on several occasions, they indulged with each others physically and the version of victim is, it was under the pretext of marriage. Even by reading the complaint, it can be seen that the applicant's promise to marry the prosecutrix, was not the only reason for permitting the applicant to have the sexual indulgence. She was fully conscious about the effect of sexual indulgence and pursued relationship continuously for a considerable length of time. This does not give rise to a conclusion that on every occasion, only on the promise of marriage sexual relations were established. There is distinction between breach of a promise and not fulfilling a false promise

09] The Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra & Anr.**¹, while dealing with an Appeal seeking quashing of First Information Report under Section 482 of the Cr.P.C. drew a distinction between a false promise to marry and not fulfilling a promise to marry. By relying upon the earlier decision in the case of **Deepak Gulati vs.**

1 (2019) 9 SCC 608

*State of Haryana*², the relevant portion was gainfully reproduced as under :

“21. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; 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.

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."

10] In another decision of the Supreme Court in the case of Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra and others³, it has been held in paragraph 20, as under :

“20. 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 later 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 of the IPC.”

11] Coming back to the facts of the present case, the history narrated by the victim in the F.I.R. reveals that there was a love affair between the applicant and the victim from 2016. Rather, as per her own case, the applicant was ready to marry the victim, but that was not acceptable to the family members of the applicant.

3 2019 AIR (SC) 327

12] It also appears from the WhatsApp chats between the applicant and the victim that, initially the applicant was ready to marry the victim, but it is the victim, who denied and informed the applicant that she will marry another boy. It is only when the applicant got engaged with another girl, the victim lodged the complaint. Even the allegations in the F.I.R. do not on their face value indicate that the promise by the applicant was false. At the most, it is a case of non-fulfillment or a breach of promise on account of circumstances, which the applicant could not have foreseen or which were beyond his control as he was unable to marry the victim, despite having every intention to do so, as explained in the cases of *Pramod Pawar* and *Dr. Dhruvaram Sonar*. Thus, the ratios laid down in *Pramod Pawar* and *Dr. Dhruvaram Sonar* (supra) are squarely applicable to the facts of the present case.

13] There is no material on record to show that since the beginning, the applicant had no intention to marry the victim and that he had made a false promise only to satisfy his lust. It is clear from the allegations in the F.I.R. that it is the applicant, who was ready to marry. Merely because he resiled from his promise to marry, since his parents were not agreeable to their marriage, it cannot be said that the applicant committed the offence punishable under Section 375 of I.P.C. In the fact of the present case, no

offence is made out against the applicant.

14] This takes me to the decision in the case of **State of Haryana and Ors. vs. Ch. Bhajan Lal⁴**, wherein the Supreme Court issued some guidelines for quashing the proceedings, which are reproduced here:

“(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 F.I.R. 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 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 concerned Act (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 concerned Act, 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. ;”

15] The case of the applicant is covered under guidelines No.1 and 3 issued in the decision of ***Ch. Bhajan Lal*** (*supra*). Continuation of proceedings against the applicant, will be an abuse of the process of law.

16] In the wake of aforesaid discussions, the order of the learned Additional Sessions Judge rejecting the application for discharge does not stand and requires to be set aside. Resultantly, I proceed to pass the following order :

ORDER

- I. The impugned order (Exh.11) dated 29/09/2022 passed by the learned Additional Sessions Judge, Nagpur is quashed and set aside.
- II. The applicant is discharged in Sessions Case No.569/2019 pending on the file of the learned Additional Sessions Judge-12, Nagpur for the offences punishable under Sections 376(2)(n) and 417 of I.P.C.
- III. The Secretary to the High Court Legal Services Sub-Committee, Nagpur to quantify and release professional fees for the

appointed learned Counsel appearing on behalf of non-applicant No.2, as per rules.

IV. In the aforesaid terms, rule is made absolute.

(M.W. CHANDWANI, J.)

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