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MCRC-35779-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 11th OF MARCH, 2026MISC. CRIMINAL CASE No. 35779 of 2025*Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Kailash Chandra Ghildiyal - Senior Advocate with

Shri Awadhesh Kumar Ahirwar - Advocate for the petitioner .

Ms. Nalini Gurung - Panel Lawyer for the respondent No.1/State.

Shri Dinesh Tripathi - Advocate for the respondent No.2.

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ORDER

1. The petitioner has approached this court by filing the present application under section 528 of BNSS, 2023 seeking quashment of first information report dated 27.03.2025 (FIR No.95/2025) lodged by respondent No. 2/complainant at Police Station Mahila Thana, Bhopal, District Bhopal which is registered under Section 351(2) and 69 of BNS, 2023. The trial is pending before the competent court.

2. As per the allegation levelled in the First Information Report, the petitioner met to the complainant on 23.12.2012 in Army Canteen, Shahjahanabad, Bhopal and thereafter the petitioner and the complainant started calling each other on mobile and the petitioner made a false promise of marriage to the complainant by representing the he is bachelor and



developed physical relation with the complainant on the pretext of marriage. First time the physical relations were made on 25.12.2012 and thereafter several times the petitioner and complainant made the physical relations.

3. As per the FIR in the year 2013, the complainant came to know that the petitioner is already married but when she enquired the petitioner, the petitioner told to the complainant that the character of his wife is bad and they are not living together nor they want to live together in future and in near future he will obtain a decree of divorce. He assured that thereafter the petitioner will marry to the complainant. The complainant and the petitioner continued relationships till 2025, when on 24.02.2025 the complainant came to know that the petitioner is in contact with other ladies also and assured them in similar manner. It is also alleged in the FIR that thereafter the petitioner threatened to the complainant and complainant lodged the report against the petitioner.

4. The instant petition has been preferred for quahment of the FIR and with the consent of parties the arguments heard for the purpose of final disposal of the petition.

5. Learned senior counsel appearing on behalf of the petitioner submits that the physical relations between the petitioner and the complainant were developed due to mutual consent and understanding and the relationship was consensual. The complainant is also a matured lady and working as Police Constable in Special Police Establishment, Lokayukt Organization, Bhopal. She was fully aware since beginning that the petitioner is already married and the petitioner never promised her to marry and therefore no



misrepresentation on the part of the petitioner. He further submits that the complainant continued in relationship with the petitioner on her own volition and the relationship was voluntary on the part of two major persons. He further submits that as per the FIR itself the complainant came to know regarding the marital status of the petitioner in the year 2013 but even thereafter she continued the relationship with the petitioner till 2025 without any complaint. He further submits that as the relationship was consensual no offence under Section 69 of BNS 2023 is made out. He further submits that the petitioner has not obtained the consent of the complainant by deceitful manner or by making promise to marry. He further submits that sexual relationship between both of them was consensual and therefore no case of rape is made out.

6. Learned senior counsel relied upon the judgment delivered by Supreme Court in *Prashant V. vs. State of NCT of Delhi (2025) 5 SCC 764*. Relevant para of which reads as under;

"20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages



cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

7. He further relied on the judgment delivered by Supreme Court in *Bishwajyoti Chatterjee vs. State of West Bengal and Anr. (2025) 5 SCC 749* and relied on the following paras which read as under;

14. A bare perusal of the FIR dated 14-12-2015, and the statement of the complainant under Section 164CrPC, clearly establish that the appellant and the complainant had come in contact in the year 2014, during the pendency of matrimonial disputes arising out of the complainant's marriage. It is the own case of Respondent 2 complainant that during the relevant time, the appellant had duly informed her that he was separated from his wife. The complainant who was well aware of the personal as well as the professional background of the appellant, who had been receiving financial help from the appellant for herself and her son, must have carefully weighed her decision before entering into a relationship with the appellant.

15. Even if we take the case of the complainant at the face value or consider that the relationship was based on an offer of marriage, the complainant cannot plead "misconception of fact" or "rape on the false pretext to marry". It is from day one that she had knowledge and was conscious of the fact, that the appellant was in a subsisting marriage, though separated. It is upon having an active understanding of the circumstances, actions and the consequences of the acts, that the complainant made a reasoned choice to sustain a relationship with the appellant.

16. The conduct of Respondent 2 complainant ex



facie represents a reasoned deliberation, as summarised by this Hon'ble Court in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] as under : (SCC p. 620, para 18)

“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.”

17. In our considered view, even if the allegations in the FIR and the charge-sheet are taken at their face value, it is improbable that Respondent 2 complainant had engaged in a physical relationship with the appellant, only on account of an assurance of marriage. As rightly observed by this Hon'ble Court in Prashant v. State (NCT of Delhi) [Prashant v. State (NCT of Delhi), (2025) 5 SCC 764] , that it is inconceivable, that the complainant or any woman would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part.

18. In Uday v. State of Karnataka [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] , the Court had acquitted the accused on the basis that she was a mature college student who had consented to sexual intercourse with the accused of her own free will. It is unlikely that her consent was not based on any misconception of fact. In Uday [Uday v. State of



*Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] ,
the Court noted that : (SCC pp. 56-57, para 21)*

21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.
”

19. A careful reading of the evidence on record also clearly shows that there is no evidence against the appellant, to conclude that there was any fraudulent or dishonest inducement of the complainant to constitute an offence under Section 415IPC. One may argue that the appellant was in a position of power to exert influence, however, there is nothing on record to establish “inducement” or “enticement”. There is also no material on record, that there was any threat of injury



or reputation to the complainant. A bare allegation that the appellant had threatened the complainant or her son cannot pass the muster of an offence of criminal intimidation under Section 506IPC."

8. Learned senior counsel submits that from bare perusal of the FIR it is apparent that the present case is a case of consensual relationship from the beginning and even if the case of prosecutrix is accepted it does not appear that the relationship was developed on the basis of promise to marry and the relationship continued for 13 years. He further submits that as the relationship turn sour the FIR has been lodged by the complainant after a period of 13 years and in view of the material on record no case for prosecuting the present petitioner is made out. He prays for allowing the petition and quashment of criminal case registered against the present petitioner.

9. Learned counsel appearing on behalf of the respondent/State opposed the petition and submits that initially when relationship was developed, the petitioner falsely represented before the complainant that he is unmarried and he promised to the complainant that he will marry her and on the aforesaid deceitful promise the complainant developed the physical relations against her will with the petitioner. Therefore, *prima facie* offence is made out against the present petitioner. She further submits that the intention of petitioner was deceitful since beginning and by making false promise to marry the petitioner developed the physical relations with the complainant and even later on when the complainant came to know that the petitioner is already married he assured her that he will obtain divorce from his wife and will marry her. She further submits that petitioner is working in



Army and therefore, the complainant believed upon the petitioner and developed physical relations with the petitioner on a false promise of marriage. She submits that sufficient material is available in the matter and no case for quashment is made out. She also submits that the complainant has levelled allegation of rape against the petitioner in the statement record under Section 183 of BNSS 2023 also, she prays for dismissal of the petition.

10. Learned counsel appearing for the respondent No.2 complainant vehemently opposed the petition on the ground that the petitioner is fraudulently and dishonestly abused the complainant and obtained her consent for developing the physical relationship and as the physical relationship was developed on the basis of the false pretext to marry, the case of rape is made out. He further submits that the petitioner time to time not only made false promises to marry to the complainant but also assured to the parents of the complainant that he will marry the complainant. He submits that no case for quashment of FIR is made out. Charge sheet has already been filed and trial has already been started. He prays for dismissal of the petition.

11. After consideration the arguments advanced by the learned counsel for the parties and perusal of record as well as the contents of FIR and the statement of prosecutrix recorded under Section 183 of BNSS 2023, it is apparent that the petitioner and the complainant were known to each other since 2012 and they developed the physical relations which continued for 12 to 13 years. They both are well educated. The complainant is working as lady Constable in Special Police Establishment, Lokayukta Organization,



Bhopal, whereas the petitioner is working in Indian Army. 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.

12. It is not convincible that the complainant or any woman who is working in a Police Department would continue to meet the petitioner or maintained a prolonged physical relationship with him in the absence of voluntary consent on her part. The petitioner and the complainant both are highly educated and working in uniformed services therefore and it cannot be believed that on the pretext of false marriage the complainant developed the physical relationship with the petitioner and continued the same without any demur or objection even after knowing the fact that the petitioner is already married.

13. Reference may be had to the Judgment of Supreme Court in the matter of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another** reported as (2019) 9 SCC 608 and the relevant para reads as under;

12. This Court has repeatedly held that consent with respect to Section 375 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. In Dhruvaram Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)

“15. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”

This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12)

“12. ... “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above). Section 3(1)(w) of the SC/ST Act also incorporates this concept of consent:

“3. (1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

Explanation.—For the purposes of sub-clause (i), the



expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

14. In the present case, the “misconception of fact” alleged by the complainant is the appellant's promise to marry her. 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. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”



Similar observations were made by this Court in Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (Deepak Gulati) : (SCC p. 682, para 21)

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;”

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. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)*

“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.

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. Reference may also be had to the judgment of Supreme Court **Uday vs. State of Karnataka (2003) 4 SCC 46** wherein considering the issue Supreme Court has held as under;

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence



keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.

25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste



considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were



more reasons than one for her to consent."

15. Supreme Court in the matter of *Maheshwar Tigga vs. State of Jharkhand* (2020) 10 SCC 108 has observed as under;

"20. We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love. The observations in this regard in Uday [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] are considered relevant: (SCC p. 58, para 25)

"25. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind



of the prosecutrix when she consented, because there were more reasons than one for her to consent.

16. Reference may also be had to the judgment passed by Supreme Court in the matter of *Deepak Gulatee vs. State of Haryana (2013) 7 SCC 675*, relevant para reads as under;

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.

17. In the matter of ***Mahesh Damu khare vs. State of Maharastra and Ors.*** 2024 11 SCC 398 Supreme Court observed as under,

27. 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.



28. 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.

*29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)*

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could



not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

** * * * **

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 90IPC 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 in original and supplied)

30. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375IPC, punishable under Section 376IPC."

18. After considering the law laid down by the Supreme Court and the circumstances as stated hereinabove, I have no hesitation to exercise the inherent power vested under Section 528 of BNSS 2023, it appears that due



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to failure of relationship between the petitioner and the complainant, the complainant has lodged the instant FIR to pressurize the petitioner to continue the relationship.

19. Considering the long relationship between the petitioner and complainant it is difficult to believe that the petitioner has developed the physical relations on the basis of a false pretext of marriage and committed the rape.

20. In view of the same, this court is of the view that the petitioner is able to make out a case that it is not a case of rape but a case of consensual relationship. The registration of FIR appears to be the abuse the process of law and the Supreme Court in the case *State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335* observed that where the allegations made in the FIR or complaint are not sufficient to make out a case against the accused the FIR deserves to be quashed.

21. Consequently, this Court does not find any material and any ingredient in the FIR that any offence under Section 69 of BNS or 351(2) of BNS, 2023 is made out against the petitioner and as such FIR and the prosecution initiated against the petitioner are liable to be quashed by exercising the powers provided under Section 528 of BNSS, 2023, Consequently, the petition succeeds and FIR registered vide Crime No. 95/2025 at PS Mahila Thana, Bhopal for the offence punishable under Section 351(2) and 69 of BNS, 2023 is hereby quashed and consequently the charge sheet filed against the petitioner and all further proceedings based upon the said FIR are also quashed.



22

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22. Petition is *allowed*.

23. No order as to costs.

(VINAY SARAF)
JUDGE

Akm