



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 15th OF APRIL, 2025

MISC. CRIMINAL CASE No. 52152 of 2024

MAYUR KADAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri M.P.S. Raghuwanshi, Senior Advocate with Shri Ashwini Johri and Shri Vijay Kumar Jha, Advocates for applicant.

Dr. Anjali Gyanani, Public Prosecutor for respondent/State.

ORDER

This application, under section 528 of BNSS, has been filed for quashment of FIR in Crime No.241/2024 registered at Police Station Indarganj, District Gwalior for offences under sections 64(1) and 64(9) of BNS.

2. In the present case, prosecutrix lodged an FIR on 20/7/2024 alleging that for the last four years, she is residing in Gwalior. In the year 2021, she was working in Mannu Showroom in DD Mall, whereas applicant was working on the post of Manager in Mc Donalds. Accordingly, both of them became known to each other. Applicant assured that he would arrange for a good job for her in his Company



and, accordingly, they exchanged their mobile numbers and with passage of time, they started liking each other. Therafter, applicant offered that he would like to marry the complainant. After sometime, applicant was transferred to Jaipur. After about eight months, he came back and on 13/10/2023, at about 11.30, on the pretext that he would marry her, took her to hotel Royal Inn, where he once again assured that he would marry her and after consuming liquor, he forcibly had physical relationship with her. The applicant never informed the complainant that he was already married, but one day when she saw a photograph in his mobile, then she came to know that he is already married. When prosecutrix enquired, then it was disclosed by applicant that he is a married person but very soon he would get a divorce as the case is going on in the Court and his wife is residing separately from 2020. He also stated that he is in love with the prosecutrix and he would marry her. Then, again on 11/7/2024, he took her to Hotel Royal Inn and committed rape on her after consuming liquor. For last 2-3 months, applicant has stopped talking with her. When she enquired about his conduct, then initially he made an excuse that he is busy in his job, but when she insisted for marriage, then applicant has refused to marry her and stated that his case for divorce may continue for next four years and, therefore, she should not wait for him. He also stated that his mother is looking for some other girl and since caste of complainant is different, therefore, marriage is not possible. It was alleged that for the last time, on 18/7/2024, applicant had committed rape on her. Thus, it was alleged that applicant has raped her atleast on three occasions.

3. Challenging the FIR, it is submitted by counsel for applicant that when applicant had physical relationship with her for the the first time i.e. on 13/10/2023, then there is no allegation that he had ever assured to marry her. Furthermore, once the prosecutrix was aware of the fact that applicant is already



married and her marriage with applicant is not possible, then it cannot be said that consent of prosecutrix was obtained by misconception of fact as provided under section 90 of IPC or under section 28 of BNS. Counsel for applicant has also relied upon judgment passed by Supreme Court in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra (AIR 2019 SC 4010)**.

4. *Per contra*, application is vehemently opposed by counsel for State.
5. Considered the submissions made by counsel for parties.

The basic question for consideration is as to whether consent of prosecutrix was obtained by applicant by misconception of fact or not ?

6. Applicant was already married and he knew that during the subsistence of his first marriage, he cannot marry the prosecutrix. In fact he made a false promise to the prosecutrix that he would marry her. When prosecutrix came to know about the fact that applicant is already married, then it is alleged that he informed the prosecutrix that his divorce case with his first wife is going on and, thereafter, he would marry her and, later, he resiled from his stand.

The next question for consideration is as to whether any divorce case of applicant is going on with his first wife or not ?

7. Applicant has not filed any document to show that any such case is pending with his first wife. Therefore, it is clear that on every occasion, applicant gave wrong excuses to prosecutrix and assured her that he would marry her and later on he refused to marry her on the ground that caste of prosecutrix is different. Applicant was already aware of caste of prosecutrix. Thus, it is clear that right from day one, applicant was aware of the fact that during subsistence of his first marriage and even if decree of divorce is granted, marriage of applicant with



prosecutrix would not be possible on account of different castes, still he obtained her consent on false promise.

8. The Supreme Court in the case of **Deepak Gulati Vs. State of Haryana** reported in **(2013)7 SCC 675**, has held that there is distinction between breach of promise and not fulfilling a false promise. Therefore, 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.

9. As already pointed out, applicant has not filed copy of any proceeding to show that divorce proceedings with his first wife are going on. On three occasions, applicant had physical relationship with the prosecutrix on the ground that he would marry her. On first occasion, he suppressed the fact that he is married, on second occasion he made a false statement that his divorce proceedings with his first wife are going on. Under these circumstances, this Court is of considered opinion that it is not a mere breach of promise, but it is a case where false promise was made by applicant. Accordingly, consent, if any, which was given by prosecutrix, cannot be said to be a free consent in the light of S.90 of IPC/S.28 of BNS.

10. Accordingly, no case is made out for quashment of FIR. Application fails and is, hereby, dismissed.

(G. S. AHLUWALIA)
JUDGE

(and)