

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE PUSHPENDRA YADAV

ON THE 9th OF SEPTEMBER, 2025

WRIT APPEAL No. 1749 of 2025

VICTIM/PROSECUTRIX IN CRIME NO 8/2024

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

APPEARANCE:

Shri Prashant Verma, learned counsel for the appellant.

***Shri Vivek Khedkar, learned Additional Advocate General for
respondents No.1 to 3.***

Shri Yash Sharma– learned counsel for the respondent No.4.

ORDER

Per. Justice Pushpendra Yadav

The present appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred against order dated 10.02.2025 passed in W.P.No.33661/2024, whereby petition preferred by petitioner (respondent No.4 herein) has been allowed by quashing the FIR.

2. Although, the writ petition filed under Article 226 of the Constitution of India challenging the FIR bearing Crime No.0008/2024

registered at Police Station Mahila Thana, Morena for offence punishable under Sections 376 (2)(n), 323 and 506 of IPC along with the charge-sheet. The learned writ Court entered into the merits of the case by quashing the FIR and consequential proceedings therefore, we deem it imperative to deal with the merits of the case in the present appeal.

3. It was the case of respondent No.4 before the learned writ Court that the prosecutrix made a complaint that her marriage was solemnized on 25.04.2012 with Dharmveer S/o Natthilal Jatav and out of the said wedlock, she was blessed with two children. Thereafter, husband of the prosecutrix had started to harass her, then her brother-in-law (writ petitioner/respondent No.4 herein) had taken her favour and said that he will keep her and marry her. One night, her brother-in-law i.e. respondent No.4 had came inside the room and raped her. Said complaint resulted into the FIR registered at Police Station Mahila Thana, Morena for offence under Section 376 (2)(n), 323 and 506 of IPC. On bare reading of the FIR itself, no offence under Section 376 (2) (n) of IPC is made out because the ingredients for attracting the offence under Section 376 (2) (n) of IPC as prescribed in Section 375 of IPC is completely missing. The FIR is nothing but only an abuse of process of law.

4. Appellant tendered her appearance before the learned writ Court and stated that respondent No.4 had developed physical relationship with her by making false representation that he would marry her. Thus, it is clear that the offence of rape was committed by respondent No.4. It was further submitted that DNA test was conducted and it was found that biological mother of the girl is the complainant and biological father of the girl is respondent No.4. Thus, physical relationship of appellant and respondent No.4 is scientifically established.

5. Respondents No.1 to 3 have supported the FIR by contending that on the basis of written complaint made by prosecutrix on 21.09.2023 sent to the Inspector General of Police, Indore, through registered post which was then forwarded to Superintendent of Police, District Morena, an inquiry was conducted wherein statement of prosecutrix as well as her husband were recorded and on the basis of the same, FIR was registered. During the course of investigation, statements of prosecutrix as well as her husband were recorded in which they stated that respondent No.4/writ petitioner maintained physical relationship with the prosecutrix on false pretext of marriage since last five to six years and due to the said relationship, one girl was born on 28.06.2022. The statement under Section 164 of Cr.P.C. were also recorded as well as DNA test was conducted whereby the fact was established that respondent No.4 and prosecutrix are the parents of the baby girl born on 28.06.2022.

6. Learned writ Court after considering the contents of the FIR in the light of the provisions contained in Section 375 of IPC and Section 90 of IPC, recorded the findings that the appellant herein was aware that her second marriage during subsistence of first marriage is not possible and she continued her physical relationship with respondent No.4 without any resistance, then it cannot be said that her consent was obtained by misconception of facts. Accordingly, learned writ Court quashed the FIR registered at Police Station Mahila Thana, Morena bearing Crime No.0008/2024 and as a consequence thereof, quashed the charge-sheet filed against respondent No.4 with other criminal proceedings pending in furtherance thereto.

7. Appellant/prosecutrix has challenged the said order passed by the learned writ Court on the ground that the FIR was registered for offence

under Sections 376 (2) (n), 323 and 506 of IPC by her against respondent No.4 who was her younger brother-in-law. As per the allegations levelled in the FIR, during marital stress, respondent No.4 took undue advantage of her vulnerability, falsely promised of marriage and committed repeated sexual acts. As a result of this relationship, appellant became pregnant and delivered a girl child on 28.06.2022 and when she pressed him for marriage, he started assaulting physically and threatened her for life. In retaliation thereof, she filed a complaint which led to the FIR. The DNA test confirmed that respondent No.4 is the biological father of the girl child which shows physical /sexual relationship of appellant and respondent No.4. Despite these clear factual and forensic allegations, learned writ Court by the impugned order allowed the writ petition by quashing the FIR by holding that the relationship was consensual and not rape under Section 375 of IPC, which is not correct.

8. Respondent No.4 has supported the order passed by the learned writ Court by submitting that he has been falsely implicated into the crime. Even if the entire allegations are accepted on their face value, still it would not appear that prosecutrix was not a consenting party. Even assuming that consent of prosecutrix was obtained by misrepresenting that he would marry the appellant, still the provisions of Section 90 of IPC would not apply because it is not the case of appellant that she had obtained divorce from her first husband. It is submitted that during subsistence of the first marriage, second marriage is not possible. The appellant was well aware of the fact that her marriage with respondent No.4 is not possible; and even then she continued with her relationship, therefore it cannot be said that her consent was obtained by misconception of facts. It was also stated that the statement of prosecutrix

was recorded under Section 164 of Cr.P.C. and in that statement she has specifically stated that she had signed the application against the writ petitioner at the instance of her husband and the said application was sent by her husband through post to Indore.

9. Heard the learned counsel for the parties.

10. As per the contents of FIR, the prosecution story was that the prosecutrix lodged a report with the allegations that she got married to Dharmveer S/o Natthilal Jatav on 25.04.2012 and out of said wedlock, she was blessed with two children. Since she was being harassed by her husband, therefore, her younger brother-in-law (brother of husband of prosecutrix) took her side and persuaded that she is being harassed by her husband and he would keep her with him. When prosecutrix refused to do so, he persuaded that she would believe him and he would keep her properly and would also perform marriage. One day, respondent No.4 came to her house and committed rape by gagging her mouth and thereafter, he started having physical relations with her continuously. As a result of which, she became pregnant and gave birth to a girl child on 28.06.2022. Thereafter, when she pressurized respondent No.4 to marry her then, he refused to do so and started assaulting her and also extended threat to her life. Thus, it was claimed that respondent No.4 has made her life miserable and also expressed that she has threat to her life because respondent No.4 has got job in police department. It was also mentioned in the FIR that appellant is also ready to undergo DNA test. Subsequent to the FIR, DNA test was conducted and as per the DNA report dated 15.07.2024 (Annexure R-4) it was established that respondent No.4 and prosecutrix are biological parents of the baby girl born on 28.06.2022.

11. The duty of Court in cases where an accused seeks quashing of FIR

or proceedings on the ground that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance was delineated by Hon'ble Supreme Court in **Mohammad Wajid v. State of U.P.**, reported as **2023 SCC OnLine SC 951**. We may refer to the following observations:

“34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

12. The Hon'ble Supreme Court in the case of **Deepak Gulati Vs. State of Haryana** reported in **2013 Criminal Law Journal 2990** made the 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 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.”

13. After considering the aforesaid judgments Hon'ble Supreme Court in its recent judgment passed in the case of **Pradeep Kumar Kesarwani Vs. The State of U.P. & Anr.** (Special Leave Petition (CRL.) No.11642/2019) dated 02.09.2025 laid down the steps for quashing of the FIR:-

20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to

quash such criminal – proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar & Ors. v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013))]

14. In the present case, after perusal of the FIR and duly examining the record in the light of the submissions made by the learned counsel for the parties, following facts have emerged:-

- A. Marriage of the prosecutrix was solemnized with one Dharmveer S/o Natthilal Jatav on 25.04.2012.
- B. Accused /respondent No.4 is real brother-in-law (brother of her husband of prosecutrix)
- C. The prosecutrix was a married woman aged about 29 years old having three children; two from her husband and one from writ petitioner/respondent No.4.
- D. On account of physical relationship between appellant and respondent No.4, appellant became pregnant and gave birth to a girl child on 28.06.2022.
- E. One written complaint was sent to the I.G. Police, Indore on 21.09.2023 and thereafter, the same was forwarded to S.P. Morena. After recording the statement of prosecutrix and her husband, FIR for the offence punishable under Sections 376(2)(n), 323 and 506 of IPC was registered.
- F. As per the statement recorded under Section 164 of

Cr.P.C., the prosecutrix stated therein that she has lodged the FIR only at the instance of her husband and also that she gave statement under Section 161 of Cr.P.C. implicating the writ petitioner/respondent No.4 upon being threatened that she does not want any action in the matter.

15. The Hon'ble Supreme Court in the case of **Mahesh Damu Khare Vs. State of Maharashtra and others** reported in **2024 SCC Online 3471** although considered the case of 376 IPC on a false promise of marriage but taking note of the fact and observation made by the Supreme Court it is clear that if relationship is continued for long then it cannot be presumed that the said relationship is developed due to false promise of marriage. The observation made by the Supreme Court is as under :-

"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.

27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. 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. In our opinion, the longer the 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".

16. It is not the case of the prosecutrix that any threat to her life was ever extended by respondent No.4. Her allegation was only that when she insisted to respondent No.4 to marry her then he refused but also extended threat to her life. The physical relationship developed between prosecutrix and respondent No.4 cannot be said as has been developed on account of any threat. As per allegations made in the FIR, the prosecutrix and respondent No.4 were in physical relationship which developed on account of promise made by the accused that he will keep her well and would marry her. Prosecutrix has not taken divorce from her husband and she was well aware of the fact that during subsistence of her first marriage, her second marriage is not possible and in-spite of that she continued in physical relationship with respondent No.4, then it cannot be said that such physical relationship was on account of false promise of

marriage. Not only the physical relationship was continued but it also resulted into birth of a baby girl child. The baby girl was born on 28.06.2022 and the written complaint to the I.G. Police was given on 21.09.2023, first time after 1 year 3 months of birth of girl child.

17. From the aforesaid discussion on facts, it is established that the FIR is nothing but only abuse of process of law. The prosecutrix and respondent No.4 were in physical relationship since last 4-5 years. On account of the said relationship, prosecutrix became pregnant and gave birth to a girl child and 1 year 3 months thereafter, she first time made the complaint. All these facts show that physical relationship developed between respondent No.4 and appellant was consensual in nature.

18. Considering the rival submission and the discussion surfaced in the impugned order, it appears that no case for interference is made out. Accordingly, the order passed by learned Writ Court is hereby affirmed and the writ appeal preferred by the prosecutrix is hereby dismissed.

19. Appeal stands **dismissed** accordingly.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE