

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
JUSTICE SUJOY PAUL
ON THE 28TH OF APRIL, 2023**

MISC. CRIMINAL CASE No. 41113 of 2020

Between :-

**YOGENDRA SINGH RAJPUT S/O
LAXMAN SINGH, AGED ABOUT 21
YEARS, OCCUPATION: PRIVATE
JOB R/O VILLAGE BHANPUR;
BABI, DISTRICT HOSHANGABAD
(M.P.) (MADHYA PRADESH)**

....APPLICANT

(BY SHRI DEEPAK KUMAR SINGH - ADVOCATE)

AND

- 1. THE STATE OF M.P. THR. P.S.
KOTWALI KOTWALI (MADHYA
PRADESH)**
- 2. ANITA YADUWANSHI D/O
LAKAHANLAL YADUWANSHI,
AGED ABOUT 26 YEARS, R/O
NEAR MANGALWARA GHAT,
JUMERATI, PS KOTWALI;
DISTRICT HOSHANGABAD
(M,P.) (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI AKHILENDRA SINGH – GOVERNMENT ADVOCATE)
(SHRI R.S. MEHNDIRATTA – ADVOCATE FOR RESPONDENTS NO. 2)**

.....
*This petition coming on for admission this day, the court passed
the following:*

ORDER

This application filed under Section 482 of Cr.P.C. assails the F.I.R. dated 19.5.2020 in Crime No.298/2020.

2. In short, the case of applicant is that on 19.5.2020 complainant lodged the F.I.R alleging that applicant developed physical relation with her from 09.11.2018. As per the complaint, the complainant was in contact with applicant for more than two years. They had friendship which converted into a love affair. The applicant gave a promise to marry the complainant and on that pretext, developed physical relation with her at Narmada Mall, Hoshangabad.

3. Grievance of complainant is that when she made a request to actually solemnize marriage, the applicant declined to do so.

4. Shri Deepak Kumar Singh, learned counsel for the applicant placed reliance on the statement of complainant recorded under Section 161 and 164 of Cr.P.C. In addition, statement of her father recorded under Section 161 Cr.P.C. was also relied upon. On the basis of these statements, it is submitted that it is a case of mutual consent of two adult persons. The offence as alleged against the applicant is not made out. If story of prosecution is read as such, offence under Section 375/376 of IPC is not made out. He placed reliance on the judgment of Supreme Court reported in **AIR 2019 SC 4010 (Prمود Suryabhan Pawar vs. State of Maharashtra and another)** and prayed for interference in the F.I.R.

5. *Per contra*, learned Government Advocate supported the F.I.R. and submits that at this stage, question of interference does not arise.

6. Shri R.S. Mehndiratta, learned counsel for the complainant supported the F.I.R. and submits that it is a question of trial whether complainant would be able to make out a case or not. At this stage, in this proceeding, no interference may be made. He placed reliance on the judgment of Supreme Court in **Cr.A. No.629 of 2019 (Anurag Soni vs. State of Chhattisgarh)**. In addition, he placed reliance on Karnataka High Court judgment passed in **Criminal Appeal No.3587/2013 (Shravan vs. State of Karnataka)** and a judgment of this Court in **M.Cr.C. No.16161/2019 (Deepesh Bain vs. State of Madhya Pradesh and another)** decided on 25.9.2019.

7. Parties confined their arguments to the extent indicated hereinabove.

8. I have heard the parties at length and perused the record.

9. In the recent judgment of Apex Court in **Pramod Suryabhan Pawar (supra)** the Apex Court has considered its previous judgments including the judgment in the case of **Anurag Soni (supra)** on which reliance is placed by learned counsel for the private respondent. It is apposite to quote certain portions of the judgment of **Pramod Suryabhan Pawar (supra)** because Supreme Court considered the impact of Section 375 and 90 of IPC. Relevant portion of this judgment reads as under :-

“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 (2019) 13 SCC 1**, this Court held :

“**37.** 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 (2013) 7 SCC 675 (Deepak Gulati)** :

“**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.....”

(Emphasis Supplied)

10. In the same judgment, the Apex Court considered the previous judgment in **Yedla Srinivasa Rao Vs. State of Andhra Pradesh, (2006) 11 SCC 615**. In another previous judgment, **Deepak Gulati (supra)** was considered and it was recorded 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.”

(Emphasis Supplied)

11. After considering the previous judgments, the principles were culled out and summed-up in para-18 which reads thus :-

“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)

12. In para-20 of the same judgment , the Apex Court opined that as per the FIR in the said case, on the face of it, it is not clear that promise by appellant therein was false in its inception or the complainant engaged in sexual relation on the basis of this promise. In absence of any such allegation in the FIR coupled with the fact that thereafter also on several occasions the complainant therein developed sexual

relations and even visited and stayed in the house of appellant therein, the Apex court interfered with the F.I.R. in exercise of powers under Section 482 of Cr.P.C.

13. In the instant case relevant part of FIR reads as under :-

“मैं उक्त पते पर रहती हूँ, एनएमव्ही कालेज होशंगाबाद मे बीएससी फाईनल ईयर की छात्रा हूँ। करीब दो साल पहले मेरी जान पहचान मेरे मामा के गाँव भानपुर (बाबई) के रहने वाले योगेन्द्र सिंह राजपूत से हुई जो यह जान पहचान आगे चलकर प्यार मे बदल गई, योगेन्द्र ने मुझसे शादी का वादा कर दिनांक 9/11/2018 को होशंगाबाद के नर्मदा मॉल के एक कमरे में ले जाकर एक बार मेरे साथ शारीरिक संबंध बनाये उसके बाद मैंने उसे कई बार शादी करने के लिये कहा तो योगेन्द्र मुझे पिछले डेढ साल से गुमराह कर रहा है और मुझे समाज में बदनाम कर मुझसे शादी का झांसा देकर मेरे साथ बुरा काम किया और अब मुझे समाज में बदनाम करने और जान से खतम करने की बात कहकर डरा धमका कर मेरी आवाज दबाना चाह रहा है मैंने यह बात अपनी मम्मी सीता बाई और पापा लखन लाल यदुवंशी को बताई है आज रिपोर्ट करने आई हूँ। रिपोर्ट करती हूँ कार्यवाही की जावे।”

(Emphasis Supplied)

14. Apart from this, the statement of complainant recorded under Section 161 and 164 of Cr.P.C. are also relevant. The FIR shows that there is clear allegation in the FIR itself that since inception the appellant gave a false promise to the complainant that he will solemnize marriage. On that pretext, the complainant developed sexual relation with the appellant. The same *prima facie* finds support on the basis of combined reading of both the statements of complainant aforesaid. Thus, present case is a case where 'consent' of a woman appears to have been taken on the basis of a false promise itself. In that event, the present case does not fall within the ambit of such cases

where promise initially given was bonafide but because of subsequent events could not be translated into reality. In this backdrop, this Court is unable to hold that it is a fit case for interference on the FIR in exercise of powers under Section 482 Cr.P.C.

15. Resultantly, the application fails and is hereby **dismissed**. It is made clear that this Court has not made any conclusive opinion on the merits of this case.

(SUJOY PAUL)
JUDGE

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