

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 16th OF JUNE, 2025

M.Cr.C. No.54176 of 2023

YOGESH PRATAP SINGH

Versus

STATE OF MADHYA PRADESH

.....
Appearance :

***Shri Manish Datt - Senior Advocate with Shri Eshaan Datt - Advocate
for the petitioner.***

Shri Amit Bhurak - Panel Lawyer for respondent No.1/State.

***Shri Rahul Deshmukh – Advocate for respondent
No.2/complainant/objector.***

.....
Reserved on : 25.03.2025

Pronounced on : 16.06.2025

ORDER

With the consent of learned counsel for the parties, the matter is finally heard.

2. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure seeking quashing of the charge-sheet filed against the petitioner by respondent in Crime No.59/2023 registered at Police Station Ratibad, District Bhopal, for the offence punishable under Sections 376, 376(2)(n) and 376(1) of the Indian Penal Code.

3. The counsel for the petitioner is seeking quashing of the charge-sheet and further proceedings initiated against the petitioner in pursuance of registration of FIR mainly on the ground that offence of 376 of IPC is not made out. He has contended that considering the overall conduct of the prosecutrix and the facts relating to the case, it is clear that the petitioner and the prosecutrix were in affair and the prosecutrix was pressurizing the petitioner to get married to her but it was not possible for some reasons, therefore, the petitioner has refused to marry her. He has further contended that though the allegation of sexual exploitation is made against the petitioner that he developed physical relations with the prosecutrix giving false assurance of marriage but looking to the existing circumstances of the case as has been narrated in the FIR, it is clear that no case of 376 of IPC is made out against the petitioner, ergo, he is seeking quashing of further proceedings also.

4. Although, the counsel for the State and Objector have opposed the submissions made by the counsel for the petitioner and submitted that merely because the FIR has been lodged after some time, the delay in lodging the FIR cannot be made a ground for quashing the proceedings. They have submitted that once the allegation of false promise of marriage and developing physical relations are made that will be considered only at the time of trial but not at this stage, therefore, they submitted that the petition deserves to be dismissed.

THE FACTUAL PRISM

5. Considering the rival contentions of the counsel for the parties and

perusal of record, especially the case diary, to answer the questions that emerge to be adjudicated, it is apt to mention the necessary facts of the case, which are as under:-

- (5.1) On 13.02.2023, a written complaint was made by the prosecutrix at Police Station Ratibad, District Bhopal, alleging against the petitioner that he repeatedly developed physical relations with her giving false promise of marriage.
- (5.2) The prosecutrix is aged about 29 years, residing at Bhopal and is an Architect by profession. She met the petitioner on 20.01.2021 along with other relatives in D.B. Mall and as per the report, it is the Aunt of the prosecutrix who introduced her to the petitioner for the marriage proposal in D.B. Mall itself and thereafter the petitioner and the prosecutrix exchanged their mobile numbers and were in regular contact. They used to meet in restaurants and the petitioner was doing fellowship in National Judicial Academy and residing in a government quarter.
- (5.3) On 23.03.2022, the petitioner took the prosecutrix to his house and then on a false pretext of marriage, he developed physical relation with her. Although the prosecutrix had refused to do so but on a great persuasion, she agreed and that relationship continued for years together as the prosecutrix used to visit the house of the petitioner.
- (5.4) Although due to physical relationship developed between

them, the prosecutrix conceived but the petitioner gave her medicine to terminate the pregnancy. It is mentioned in the FIR that prior to that also, in the month of October, 2022, the prosecutrix became pregnant at the instant of the petitioner. The attitude of the petitioner towards the prosecutrix became incordial and lastly on 8th January, 2023, despite resistance by the prosecutrix, the petitioner had developed physical relation with her.

- (5.5) On 13.02.2023, the petitioner refused to get married with the prosecutrix over a mobile call.
- (5.6) As per the petitioner, he was getting married to some other girl and so told the prosecutrix that she was also free to get married to anyone else and this is the cause when the prosecutrix made a complaint to the police alleging that on a false promise of marriage, the petitioner has developed physical relations with her and twice she became pregnant, but the petitioner got it terminated. The prosecutrix has also stated that only to save her image in the society, she did not report the matter to the police in time but now she is making complaint and thereafter the offence got registered.
- (5.7) Although in the petition it is averred that in the year 2021, marriage proposal was given by the parents of the prosecutrix to the petitioner and as such, their relatives met in D.B. Mall Bhopal but even after due deliberation and discussions

between them, it could end up with a positive result. There were some reasons for which the petitioner could not be married to the prosecutrix.

- (5.8) The brother of the prosecutrix had committed suicide, therefore, the prosecutrix used to go to the petitioner for taking his advise in the matter pending against her brother's wife.
- (5.9) As per the petitioner, the prosecutrix was carrying misimpression that he would marry her but when he informed the prosecutrix that his marriage is already settled with some other girl, she was pressurizing him to pay Rs.10 lakhs and as such a complaint dated 18.01.2023 was made by the petitioner to the Superintendent of Police, Bhopal, alleging therein that the prosecutrix is pressurizing and blackmailing him for giving Rs.10 lakhs and also apprehending registration of a false case by the prosecutrix about his implication in the matter.
- (5.10) It is also averred in the petition that the petitioner's marriage was settled with some other girl and after coming to know, the prosecutrix along with her family members came to the house of the petitioner on 12.02.2023 at about 06:00 P.M. with lethal weapons, misbehaved with the petitioner and his parents, used filthy language, abused them and also did *marpeet* with them. A report in that regard was also made to the police on 13.02.2023.
- (5.11) The petitioner has also made a complaint under Section 200

r/w 156(3) of CrPC against the prosecutrix and other persons for registration of offence under Sections 384, 506-II, 294 and 325 of IPC and that is still pending before the Judicial Magistrate First Class, Bhopal and in retaliation, the prosecutrix with ill-intention made a written complaint on 13.02.2023 to the police and as such, offence got registered against the petitioner vide Crime No.59/2023. Hence, this petition.

SUBMISSION BY PETITIONER

6. As per the contentions of learned counsel for the petitioner, the relationship between the petitioner and the prosecutrix is nothing but an affair and it was continued for years together but that relationship for some reason could not culminate into marriage. As a rebut, the prosecutrix got annoyed and got the FIR registered on the ground that the physical relation developed between them only on false assurance of marriage made by the petitioner. However, Shri Datt has submitted that the Supreme Court and this High Court in number of occasions has observed that such relationship cannot be said to be a rape committed with the prosecutrix but it is a consensual relationship and in such circumstances, offence of 376 of IPC is not made out.

CASES RELIED BY THE PETITIONER

1. **(2003) 4 SCC 46 (Uday v. State of Karnataka)**
2. **(2019) 9 SCC 608 (Pramod Suryabhan Pawar v. State of Maharashtra)**

3. **(2020) 10 SCC 108 (Maheshwar Tigga v. State of Jharkhand)**
4. **(2019) 18 SCC 204 (Shivshankar @ Shiva v. State of Karnataka & Anr.,)**
5. **AIR 2019 SC 327 (Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and another)**
6. **(2013) 7 SCC 675 (Deepak Gulati v. State of Haryana)**
7. **2024 INSC 481 (Shiv Pratap Singh Rana v. State of Madhya Pradesh & Anr.)**
8. **2024 INSC 897 (Mahesh Damu v. The State of Maharashtra & Anr.)**
9. **Sonu @ Subhash Kumar v. State of Uttar Pradesh and Anr. [Criminal Appeal No.233 of 2021 (Arising out of SLP (Cri) No. 11218 of 2019)]**
10. **Delhi 2024 INSC 879 [Prashant v. State (NCT of Delhi)]**
11. **2025 LiveLaw (SC) 279 (Rajnish Singh @ Soni v. State of U.P. and another) and t**
12. **M.Cr.C. No.5754 of 2022 (Nageshwar Prasad Jaisal v. State of Madhya Pradesh & Anr.) decided vide order dated 02.07.2024.**

SUBMISSION BY THE OBJECTOR

7. *Per contra*, the counsel for the objector has opposed the submissions made by the counsel for the petitioner and submitted that merely because the FIR lodged belatedly does not mean that no case of rape is made out and on this ground alone, the FIR and the proceedings initiated in pursuance thereto cannot be quashed. To bolster his submissions, Shri Deshkumh has placed reliance upon an order passed

by this High Court in **M.Cr.C. No.26587 of 2022 (Naresh Rajoriya v. The State of Madhya Pradesh and another)** on **12.04.2024** and submitted that in the said case, the Court has observed that lodging an FIR belatedly that too with regard to rape cannot be made a ground for quashing the FIR and the proceedings based thereon.

8. The counsel for the State has supported the submissions made by the counsel for the objector and submitted that considering the overall circumstances of the case, the offence has rightly been registered against the petitioner because developing physical relation on a false pretext of marriage in any manner cannot be said to be a consensual relationship, ergo, the petition deserves to be dismissed.

ANALYSIS, REASONING AND CONCLUSION

9. I have heard the arguments advanced by learned counsel for the parties and perused the record.

10. From the contents of FIR and the statement of the prosecutrix recorded under Section 164 of Cr.P.C. it is palpably clear that the petitioner and the prosecutrix were very much familiar to each other. There was a love affair between them and they also developed physical relation, which continued for years together and they are also well-educated. However, before reaching to a concrete decision in the matter on the basis of material available before this Court and also on the basis of arguments advanced by the learned counsel for the parties, it is appropriate to first take note of the law laid down by the Supreme Court and also by the High Court on the issue.

The Supreme Court in case of **Prashant** (supra), dealing with similar circumstances has observed as under:-

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant 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. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.”

In case of **Shiv Pratap Singh Rana** (supra), the Supreme Court considering the long relationship between the parties has observed as

under:-

“25. From the factual matrix of the case, the following relevant features can be culled out:

- (i) the relationship between the appellant and the prosecutrix was of a consensual nature;
- (ii) the parties were in a relationship for a period of almost two years; and
- (iii) though there were talks between the parties and their family members regarding marriage, the same did not fructify leading to lodging of FIR.

26. That being the position and having regard to the facts and circumstances of the case, we are of the view that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, impugned order of the High Court dated 03.10.2019 and the order of the Sessions Judge dated 24.04.2019 are hereby set aside and quashed.”

Further, in case of **Mahesh Damu** (supra), 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.

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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.”

Further in case of **Dr. Dhruvaram Murlidhar Sona (supra)**, considering the existing facts and circumstances of the case, which are almost similar to the case in hand, has observed as under:-

“**20.** With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus : (Deelip Singh [Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253] , SCC p. 106, para 35)

“**35.** The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to

marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that “later on”, the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] at para 24 come to the aid of the appellant.”

Likewise in a case of **Deepak Gulati** (supra), the Supreme Court has observed 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.

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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.*”

The Supreme Court in case of **Sonu @ Subhash Kumar** (supra), has observed as under:-

“10. Bearing in mind the tests which have been enunciated in the above decision [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry

the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

In case of **Maheshwar Tigga** (supra), the observation made by the Supreme Court is as follows:-

“13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under Section 375 IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the eye of the law. In the facts of the present case, we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury.”

Further, in case of **Pramod Suryabhan Pawar** (supra), the Supreme Court has considered the similar circumstances and observed 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.”

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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;”

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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.

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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, [Ed. : The matter between two asterisks has been emphasised in original.] *unless the court is assured of the fact that from the very beginning, the accused had never really*

intended to marry her [Ed.: The matter between two asterisks has been emphasised in original.] .”

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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.”

The Supreme Court in case of **Uday** (supra), dealing with the factual circumstances existing in the said case has observed 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.

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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.

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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.”

11. The Supreme Court in case of **State of Haryana and others v. Bhajan Lal and others** reported in of **1992 Supp (1) SCC 335**, has laid down the criteria/categories as to under what circumstances the Court should exercise the power provided under Section 482 of CrPC or extraordinary jurisdiction provided under Article 226 of the Constitution of India so as to quash the proceedings. The categories of the cases in which interference is permissible quoted by the Supreme Court, are as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (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.

(emphasis supplied)

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(emphasis supplied)

- (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.

(emphasis supplied)

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will

not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

Accordingly, as per the submissions made by the counsel for the petitioner, the present case falls within category Nos.1, 3 and 5 as laid down by the Supreme Court in the said case.

12. This Court also in case of **Nageshwar Prasad Jaisal** (supra), relying upon several judgments of the Supreme Court and also of this Court, has quashed the proceedings observing as under:-

8. Thus, based on an overview of record available before this Court, it is evidently clear that in 2010 when incident occurred for the first time, the prosecutrix got cause of action to register an FIR as, according to her, physical relation was developed by the petitioner despite her resistance on the pretext of marriage and that relationship continued till 2020. However no FIR was lodged by the prosecutrix and when petitioner refused to enter into the marriage then only report was lodged by the prosecutrix in the year 2021. In the present case in view of the observation made by the Supreme Court on the issue, the consent cannot be considered to be a consent obtained under misconception of fact reason being the relationship between the parties was existing for a long period of 10 years but prosecutrix never realized that the petitioner was exploiting her by developing physical relation with her continuously. Therefore, in the facts and circumstances of the present case, it is difficult to sustain the charge levelled against the petitioner that he developed physical relation with the prosecutrix on a false promise of marriage. It is also difficult to hold sexual intercourse in the course of a relationship, which continued for over 10 years, as ‘rape’ especially in the facts of the complainant’s own allegation.

9. In one of the case laws cited hereinabove, the Supreme Court has very specifically observed 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.

10. It is also apt to mention here that considering the facts and circumstances of the case parties were called in the Court and they were advised to get married but even in the Court the parents of the parties because of some differences could not reach to consensus and as such the attempt made by the Court to resolve the dispute failed. Thus, in my opinion, the present case does not come within the definition of rape as defined in Section 375 of IPC because consensual relationship and affair between the parties are apparent on the face of the record and admitted by the prosecutrix herself and therefore if ultimately their relationship could not culminate into marriage and the promise made by the petitioner was not fulfilled by him, it cannot be said that consent given by the prosecutrix for developing physical relation was obtained by the petitioner on the false pretext of marriage.

11. Needless to say, in the young age when a boy and a girl attracts towards each other and they flow in emotions and believe that they love each other, normally they carry impression that their relationship will naturally be led to marriage. However, sometimes it fails, and the girl, considering herself to be betrayed

and deceived, cannot lodge the FIR saying that rape has been committed with her.

12. In the case at Bar, the prosecutrix and the petitioner both are major, well-educated, having affair and developed physical relation regularly out of their own free will which continued for more than 10 years and ultimately they got separated from each other because petitioner refused to enter into the marriage, however it does not mean that a case of rape could be registered against the petitioner. The Supreme Court and also the High Court time and again consistently observing that such type of relationship and developing physical relation during that period cannot be given shape of rape and prosecution under Section 376 of IPC cannot be initiated. In my opinion, as per the factual circumstances, as have been narrated by the prosecutrix in her complaint and also in her statement of 164 Cr.P.C., this case cannot be considered to be a case of rape as defined under Section 375 of IPC and the prosecution is nothing but appears to be an abuse of process of law. Under such circumstances, this Court exercising inherent power provided under Section 482 of Cr.P.C. can quash the FIR and subsequent proceedings based upon the said FIR/final report/charge sheet.

13. In view of the foregoing, I do not find any material and any ingredient available on record to indicate that any offence under Section 366 of IPC is made out against the petitioner. Therefore, the offence under Section 366 of IPC registered against the petitioner at the later point of time is also liable to be quashed.”

13. Although Shri Deshmukh has relied upon the order passed by the High Court in case of **Naresh Rajoriya** (supra), but that case and the legal position as has been laid down therein, is not applicable in the present case because this Court is not deciding the petition on the ground of delay in lodging the FIR but the Court is considering the fact

whether in the existing facts and circumstances of the case, offence of 376 of IPC is made out or not and looking to the existing and undisputed facts of the case that the petitioner and the prosecutrix came in relationship in the month of March, 2021 and continuously they developed physical relation till 8th January, 2023. As such, it is clear that it is not a case in which physical relation was developed once or twice as the petitioner assured the prosecutrix for getting married to her.

The prosecutrix should have stopped the petitioner from developing physical relationship till their marriage got culminated but she did not do so and even after getting the pregnancy terminated, the prosecutrix continued with that relationship and, therefore, in my opinion, when the prosecutrix was educated lady and fully aware about her future and also her well-being and did not stop the petitioner, then she can be considered to be a consenting party and relationship between them can be said to be a consensual relationship.

14. Thus, in view of the above enunciation of law, I do not find any material and any ingredient available on record to indicate that any offence under Section 376 of IPC is made out against the petitioner and as such, the prosecution initiated against him can be quashed in view of the law laid down by the Supreme Court in case of **Bhajan Lal** (supra) exercising the power provided under Section 482 of CrPC.

15. *Ex consequentia*, the petition succeeds and stands allowed. The FIR registered against the petitioner vide Crime No.59/2023 at Police Station Ratibad, District Bhopal, for the offence punishable under

Sections 376, 376(2)(n) and 376(1) of IPC is hereby quashed and consequently the charge-sheet filed against the petitioner so also the further proceedings based upon the said FIR are also quashed.

16. Accordingly, the petition stands **allowed** and **disposed of**. No order as to costs.

(SANJAY DWIVEDI)
JUDGE

ac/-