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

**BEFORE**

**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

**ON THE 02ND OF APRIL, 2025**
**M.Cr.C. No.34387/2024**

***HITENDRA @ CHHOTU PANDRAM***
*Versus*
***STATE OF MADHYA PRADESH AND ANR.***

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**Appearance:**

*Shri Surendra Patel- Advocate for the petitioner.*

*Miss Papiya Das Ghosh- P.L. appearing on behalf of respondent No.1/State.*

*Shri Shivshankar Rathour, learned counsel for the respondent No.2.*

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**O R D E R**

This M.Cr.C. has been filed by the petitioner under Section 482 of Cr.P.C. for quashing FIR No.120/2024 registered at P.S.-Karjiya, District- Dindori under Sections 376, 376(2) (n) & 376 (2)(f) of IPC and for quashing all the consequential proceedings arising thereto.

**2.** Briefly, prosecution story is that petitioner repeatedly established physical relations with the prosecutrix on the false pretext of marriage.

3. Learned counsel for the petitioner submits that prosecutrix is aged 33 years and petitioner is aged about 36 years. Petitioner is a government servant and he is permanent resident of Guna and he is posted in Guna since from the very beginning. On the contrary, prosecutrix is posted in Dindori as ANM worker and she is permanent resident of Dindori. It is urged that as per prosecution itself, incident is said to have occurred from 14.08.2012 to 31.12.2022 and in the instant case, FIR has been registered on 16.05.2024 on the basis of written report filed by the prosecutrix. This huge delay in lodging FIR has not been explained. It is also urged that first incident is said to have occurred on 14.08.2012 but immediately, thereafter, no FIR was lodged. It is also urged that petitioner did not make any promise to marry the prosecutrix. It is a case of consensual relationship. As the petitioner is a Government Servant, therefore, just to blackmail the petitioner, FIR has been lodged. In this connection, learned counsel for the petitioner has referred to statement of Indra Singh Pandram recorded under Section 161 of Cr.P.C.. Thus, in the instant case, even *prima facie*, no case under Sections 376, 376 (2) (n) and 376 (2) (f) of IPC is made out. With respect to above submissions, learned counsel for the petitioner has relied upon **Rajnish Singh @ Soni Vs. State of UP and Another passed in SLP (CrL.) Nos.8549/2023, Mahesh Damu Khare Vs. The State of Maharashtra and Anr. passed in SLP (CrL.) No.4326/2018, Prashant Vs. State of NCT of Delhi passed in SLP (Criminal) No.2793/2024, Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr passed in Criminal Appeal**

**No.1165/2019 {SLP (Crl.) No.2712/2019}, Maheshwar Tigga Vs. State of Jharkhand, passed in Cr.A.No.635 of 2020, Shivshankar @ Shiva Vs. State of Karnataka and Anr, passed in Cr.A.No.504 of 2018, Dr. Dhuvaram Murlidhar Sonar Vs. State of Maharashtra and Ors, passed in Cr.A.No.1443 of 2018, Deepak Gulati VS. State of Haryana passed in Cr.A.No.2322 of 2010, Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr passed in Cr.A.No.233 of 2021** and **Nageshwar Prasad Jaisal Vs. State of M.P. and Anr. passed in M.Cr.C.No.5754 of 2022 vide order dated 2.07.2024.** Therefore, on above grounds, it has been prayed that the petition filed by the petitioner be allowed and FIR No.120/2024 registered at P.S.- Karjiya, District- Dindori under Sections 376, 376(2) (n) and 376 (2) (f) of IPC and all the consequential proceedings arising thereto be quashed.

**4.** Learned counsel for the respondent No.2/objector submits that as per documents filed along with the charge-sheet, petitioner is resident of Dindori. Further, after referring to statements of Parsu Singh Paraste, owner of the tenanted premises, where prosecutrix used to reside, it is urged that petitioner used to come to the house of prosecutrix frequently/repeatedly. Further, after referring to documents filed along with the charge sheet, it is urged that petitioner has sexually exploited the prosecutrix. Therefore, no case for quashment of FIR and all consequential proceedings arising thereto is made out. Hence, petition filed by the petitioner be dismissed.

**5.** Learned counsel for the respondent No.1, after referring to documents annexed with the charge-sheet, submits that in the instant case, no ground for quashment is made out. Hence, petition filed by the petitioner be dismissed.

**6.** Heard. Perused record of the case.

**ANALYSIS AND FINDINGS:-**

**7**. Perusal of record of the case as well as submissions of learned counsel for the parties reveals that primary issue involved in the case is whether consent of prosecutrix was free or was obtained under misconception of fact i.e. on false pretext of marriage. Hence, before adverting to the issue involved in the case, it would be appropriate to refer principles of law with respect to aforesaid legal issue.

**Legal principles pertaining to as to whether consent given by prosecutrix is free or under misconception of fact i.e. on false pretext of marriage:-**

**8.** Above issue has been dealt by Hon'ble Apex Court in a number of pronouncements. Hon'ble Apex in **Pramod Suryabhan Pawar Vs. State of Maharashtra and Another, (2019) 9 SCC 608**, after discussing the issue, has held as under:-

> **"10.** Where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eye of the law.

**11.** The primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her "consent", being premised on a "misconception of fact" (the promise to marry), stands vitiated.

**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 Murlidhar Sonar* v. *State of Maharashtra*, (2019) 18 SCC 191,** 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*, (2013) 9 SCC 113** : (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."

**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** : (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*, (2013) 7 SCC 675** : (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;"

**15.** In ***Yedla Srinivasa Rao* v. *State of A.P.*, (2006) 11 SCC 615** : the accused forcibly established sexual relations with the complainant. When she asked the accused why he had spoiled her life, he promised to marry her. On this premise, the accused repeatedly had sexual intercourse with the complainant. When the complainant became pregnant, the accused refused to marry her. When the matter was brought to the panchayat, the accused admitted to having had sexual intercourse with the complainant but subsequently absconded. Given this factual background, the Court observed : (SCC pp. 620-21, para 10)

"*10.* It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuading the girl to believe that he

is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent."

**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* v. *State of Haryana*, (2013) 7 SCC 675,** 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.

*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.] ."

(Emphasis supplied)

**17.** In ***Uday* v. *State of Karnataka*, (2003) 4 SCC 46,** the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors : (SCC p. 58, para 25)

"*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."

(emphasis supplied)

**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."

**9**. Similarly Hon'ble Apex Court in **Dr.Dhruvarma Murlidhar Sonar Vs. State of Maharashtra and Others, (2019) 18 SCC 191**, has also discussed the issue and has held as under :

"**15.** Section 375 defines the offence of rape and enumerates six descriptions of the offence. The first clause operates where the woman is in possession of her senses and, therefore, capable of consenting but the act is done against her will and the second where it is done without her consent; the third, fourth and fifth when there is consent but it is not such a consent as excuses the offender, because it is obtained by putting her, or any person in whom she is interested, in fear of death or of hurt. The expression "against her 'will' " means that the act must have been done in spite of the opposition of the woman. 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.

**16.** Section 90 IPC defines "consent" known to be given under fear or misconception:

> "**90.** ***Consent known to be given under fear or misconception***.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception;"

**17.** Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.

**18.** In ***Uday* v. *State of Karnataka*, (2003) 4 SCC 46**, this Court was considering a case where the prosecutrix, aged about 19 years, had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus : (SCC pp. 56-57, paras 21 & 23)

> "*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."

**19.** In ***Deelip Singh* v. *State of Bihar*, (2005) 1 SCC 88**, the Court framed the following two questions relating to consent : (SCC p. 104, para 30)

(1) Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?

> (2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.**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*** **v.** ***State of Bihar*, (2005) 1 SCC 88** , 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* v. *State of Karnataka*, (2003) 4 SCC 46** at para 24 come to the aid of the appellant."

**21.** In ***Deepak Gulati* v. *State of Haryana*, (2013) 7 SCC 675** , the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

**22.** Recently, this Court, in ***Shivashankar* v. *State of Karnataka*, (2019) 18 SCC 204,** disposed of on 6-4-2018, has observed that it is difficult to hold that sexual intercourse in the course of a relationship which has continued for eight years is "rape", especially in the face of the complainant's own allegation that they lived

together as man and wife. It was held as under: [***Shivashankar* v. *State of Karnataka*, (2019) 18 SCC 204]**, SCC p. 205, para 4)

> "*4.* In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

**23.** Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

**10**. Recently, three Judges Bench of Hon'ble Apex court in **Maheshwar Tigga Vs. State of Jharkhand, (2020) 10 SCC 108**, after referring and relying upon earlier pronouncement, has held as under:-

"**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.

**14.** Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

**15.** In ***Uday* v. *State of Karnataka*, (2003) 4 SCC 46**, the appellant and the prosecutrix resided in the same neighbourhood. As they belonged to different castes, a matrimonial relationship could not fructify even while physical relations continued between them on the understanding and assurance of marriage. This Court observed as follows : (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."

**16.** The appellant, before the High Court, relied upon ***Kaini Rajan* v. *State of Kerala*, (2013) 9 SCC 113** in his defence. The facts were akin to the present case. The physical relationship between the parties was established on the foundation of a promise to marry. This Court set aside the conviction under Section 376 IPC also noticing ***K.P. Thimmappa Gowda* v. *State of Karnataka*, (2011) 14 SCC 475**. Unfortunately, the High Court did not even consider it necessary to deal with the same much less distinguish it, if it was possible. It is indeed unfortunate that despite a judicial precedent of a superior court having been cited, the High Court after mere recitation of the facts and the respective arguments, cryptically in one paragraph opined that in the nature of the evidence, the letters, the photograph of the appellant with the prosecutrix and the statement of the appellant under Section 313 CrPC, his conviction and sentence required no interference.

**17.** This Court recently in ***Dhruvaram Murlidhar Sonar* v. *State of Maharashtra*, (2019) 18 SCC 191** and in ***Pramod Suryabhan Pawar* v. *State of Maharashtra*, (2019) 9 SCC 608,** arising out of an application under Section 482 CrPC in similar circumstances where the relationship originated in a love affair, developed over a period of time accompanied by physical relations, consensual in nature, but the marriage could not fructify because the parties belonged to different castes and communities, quashed the proceedings.

**18.** We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the church or in a temple

and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her."

**11.** Likewise, in the case of **Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Another, (2021) 18 SCC 517**, the Hon'ble Apex Court 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**, 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 482 Cr.P.C., 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."

**12**. The Hon'ble Apex Court in the case of **Uday Vs. State of Karnataka, (2003) 4 SCC 46**, has dealt with the issue in detail considering the respective provisions of IPC i.e. Section 375 and Section 90 of IPC and has observed as under **:**

"**9.** We may at the threshold notice the relevant provisions of the Penal Code, 1860, namely, Section 375 and Section 90 which read as follows:

"375. *Rape*.—A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions—

*First*.—Against her will.

*Secondly*.—Without her consent.

*Thirdly*.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

*Fourthly*.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly*.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

*Sixthly*.—With or without her consent, when she is under sixteen years of age.

*Explanation*.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception*.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

"90. *Consent known to be given under fear or misconception*.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

[*Consent of insane person*] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

[*Consent of child*] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

**10.** Learned counsel for the appellant submitted that in the context of Section 375 of the Penal Code, 1860, which is a special provision, the general provision, namely, Section 90 of the Penal Code, 1860 was not of much assistance to the prosecution. According to him, Section 375 Thirdly, Fourthly and Fifthly exhaustively enumerate the circumstances in which the consent given by the prosecutrix is vitiated and does not amount to consent in law. According to him, one has to look to Section 375 alone for finding out whether the offence of rape had been committed. Secondly, he submitted that even under Section 90 of the Penal Code, 1860 the consent is vitiated only if it is given under a misconception of fact. A belief that the promise of marriage was meant to be fulfilled is not a misconception of fact. The question of misconception of fact will arise only if the act consented to, is believed by the person consenting to be something else, and on that pretext sexual intercourse is committed. In such cases it cannot be said that she consented to sexual intercourse. He sought to illustrate this point by reference to English cases where a medical man had sexual intercourse with a girl who suffered from a bona fide belief that she was being medically treated, or where under the pretence of performing surgery a surgeon had carnal intercourse with her. In ***Stroud's Judicial Dictionary*** (5th Edn.) p. 510 "consent" has been given the following meaning:

> "Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side."

It refers to the case of ***Holman* v. *R*. [1970 WAR 2]** wherein it was held that

> "there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is consent".
>
> Similar was the observation in ***R.* v. *Olugboja* [(1981) 3 WLR 585** : (1981) 3 All ER 443 : 1982 QB 320 (CA)] wherein it was observed that "consent in rape covers states of mind ranging widely from actual desire to reluctant acquiescence, and the issue of consent should not be left to the jury without some further direction". Stephen, J. in ***R.* v. *Clarence* [(1888) 22 QBD 23** : **(1886-90) All ER Rep 133 : 58 LJMC 10]** observed: (All ER p. 144 C-D)

"It seems to me that the proposition that fraud vitiates consent in criminal matters is not true if taken to apply in the fullest sense of the word, and without qualification. It is too short to be true, as a mathematical formula is true."

Wills, J. observed: (All ER p. 135 I)

"That consent obtained by fraud is no consent at all is not true as a general proposition either in fact or in law. If a man meets a woman in the street and knowingly gives her bad money in order to procure her consent to intercourse with him, he obtains her consent by fraud, but it would be childish to say that she did not consent."

11. Some of the decisions referred to in *Words and Phrases*, Permanent Edition, Vol. 8A at p. 205 have held

"that adult female's understanding of nature and consequences of sexual act must be intelligent understanding to constitute 'consent'. Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. Legal consent, which will be held sufficient in a prosecution for rape, assumes a capacity to the person consenting to understand and appreciate the nature of the act committed, its immoral character, and the probable or natural consequences which may attend it".

**(See *People* v. *Perry* [26 Cal App 143] .)**

**12.** The courts in India have by and large adopted these tests to discover whether the consent was voluntary or whether it was vitiated so as not to be legal consent. In ***Rao Harnarain Singh Sheoji Singh* v. *State* Punj 123 : 1958 Cri LJ 563** : 59 Punj LR 519] it was observed: (AIR p. 126, para 7)

"7. A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent, on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the

act, but after having freely exercised a choice between resistance and assent.

Submission of her body under the influence of fear or terror is no consent. There is a difference between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure."

**13.** The same view was expressed by the High Court of Kerala in ***Vijayan Pillai*** **v.** ***State of Kerala*** **[(1989) 2 Ker LJ 234]** . Balakrishnan, J., as he then was, observed: (Ker LJ pp. 238-39, para 10)

"*10*. The vital question to be decided is whether the above circumstances are sufficient to spell out consent on the part of PW 1. In order to prove that there was consent on the part of the prosecutrix it must be established that she freely submitted herself while in free and unconstrained possession of her physical and mental power to act in a manner she wanted. Consent is an act of reason accompanied by deliberation, a mere act of helpless resignation in the face of inevitable compulsion, non-resistance and passive giving in cannot be deemed to be 'consent'. Consent means active will in the mind of a person to permit the doing of the act of and knowledge of what is to be done, or of the nature of the act that is being done is essential to a consent to an act. Consent supposes a physical power to act, a moral power of acting and a serious and determined and free use of these powers. Every consent to act involves submission, but it by no means follows that a mere submission involves consent. In *Jowitt's Dictionary of English Law*, IInd Edn., Vol. 1 explains consent as follows:

'An act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things — a physical power, a mental power and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, mediated

imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind.' "

**14.** In *Anthony, In re* **[AIR 1960 Mad 308 : 1960 Cri LJ 927]** , Ramaswami, J. in his concurring opinion fully agreed with the principle laid down in ***Rao Harnarain Singh case*** **[AIR 1958 Punj 123** : 1958 Cri LJ 563 : 59 Punj LR 519] and went on to observe: (AIR pp. 311-12, para 21)

> "A woman is said to consent only when she agrees to submit herself while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former."

**16.** The High Court of Calcutta has also consistently taken the view that the failure to keep the promise on a future uncertain date does not always amount to misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. In ***Jayanti Rani Panda* v. *State of W.B.*** **[1984 Cri LJ 1535** : (1983) 2 CHN 290 (Cal)] the facts were somewhat similar. The accused was a teacher of the local village school and used to visit the residence of the prosecutrix. One day during the absence of the parents of the prosecutrix he expressed his love for her and his desire to marry her. The prosecutrix was also willing and the accused promised to marry her once he obtained the consent of his parents. Acting on such assurance the prosecutrix started cohabiting with the accused and this continued for several months during which period the accused spent several nights with her. Eventually when she conceived and insisted that the marriage should be performed as quickly as possible, the accused suggested an abortion and agreed to marry her later. Since the proposal was not acceptable to the prosecutrix, the accused disowned the promise and stopped visiting her house. A Division Bench of the Calcutta High Court noticed the provisions of Section 90 of the Penal Code, 1860 and concluded: (Cri LJ p. 1538, para 7)

> "The failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the

> meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry we do not know when. If a full-grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. Section 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her."

**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.

**22.** The approach to the subject of consent as indicated by the **Punjab High Court in *Rao Harnarain Singh* [AIR 1958 Punj 123 : 1958 Cri LJ 563 : 59 Punj LR 519]** and by the **Kerala High Court in *Vijayan Pillai* [(1989) 2 Ker LJ 234]** has found approval by this Court in ***State of H.P.* v. *Mango Ram* [(2000) 7 SCC 224 : 2000 SCC (Cri) 1331]**. Balakrishnan, J. speaking for the Court observed: (SCC pp. 230-31, para 13)

> "The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and 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."

**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.

**24.** There is another difficulty in the way of the prosecution. There is no evidence to prove conclusively that the appellant never intended to marry her. Perhaps he wanted to, but was not able to gather enough courage to disclose his intention to his family members for fear of strong opposition from them. Even the prosecutrix stated that she had full faith in him. It appears that the matter got complicated on account of the prosecutrix becoming pregnant. Therefore, on account of the resultant pressure of the prosecutrix and her brother the appellant distanced himself from her.

**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."

**Factual analysis of the case**:-

**13**. Now, in the light of principles of law enunciated in aforesaid pronouncements, facts of the case would be examined and considered. But for the same, it would be appropriate to reproduce written report filed by the prosecutrix, contents of the MLC, statements of prosecutrix recorded under Sections 164 and 161 of Cr.P.C., which are as follows:-

**Written report**

*प्रार्थिया का लिखित आवेदन*

*प्रति,*
*श्रीमान महिला थाना प्रभारी ,महोदय जी,*
*जिला –डिण्डौरी म.प्र.*

*विषय– हितेन्द्र पेन्ड्राम द्वारा शादी का झांसा प्रलोभन देकर 12 वर्ष तक शारीरिक सम्बन्ध बनाने के सम्बन्ध में।*

*मान्यवर,*

*निवेदन है कि मै .... पिता .......ग्राम...........थाना ........... जिला ........... की निवासी हूं तथा वर्तमान में ...............तह....................जिला......................के पद पर कार्यरत हूं । हितेन्द्र पेन्ड्राम दिनांक 14 अगस्त 2012 में अपने ग्राम .........में मेरे माता पिता घर पर नहीं थे उसी रात समय 8.00 पीएम को घर पर अकेले देखकर हितेन्द्र पेन्ड्राम के द्वारा ........... में तुमसे शादी करूंगा, जिन्दगी भर साथ रहेगें ऐसा बोलकर मेरे साथ जबरन शारीरिक सम्बन्ध बना लिया मेरे बार बार मना करने पर भी मेरे से गलत काम किया । ................................ के घर में कमरा किराया लेकर रहने लगी वहां साथ में मेरे साथ रहने लगा हम दोनों के सम्बन्ध के बारे में मकान मालिक .............. उसकी पत्नि...................., मेरे मम्मी पिता जी, हितेन्द्र के मम्मी पिता सब रिलेशन के बारे में मालुम था। मेरे द्वारा शादी करने को कही गई तो इस वर्ष उस वर्ष करेगें कहकर टाल मटोल करता रहा । 2012 से 2022 तक मेरे साथ शारीरिक सम्बन्ध बनाते रहा। अब हितेन्द्र पेन्ड्राम दूसरी लडकी से शादी कर रहा है। अब मुझे बदनामी झेलना पड रही है। मानसिक सामाजिक, शारीरिक रूप से प्रताडित हो चुकी हूं।*

*अतः श्रीमान से निवेदन है कि हितेन्द्र पेन्ड्राम के विरूद्ध कानूनी कार्यवाही किये जाने की कृपा करें।*

*आवेदिका*

.............

## Contents of MLC

*"2012 में मै घर पर अकेले थी मम्मी पापा गांव गये थे रात ( 14.08.2012 ) को घर आकर मेरे से गलत किया बलात्कार फिर फिर बार बार आकर धमकी देता था । फिर शादी करने का बोला था फिर अब वो शादी के लिये मना कर रहा है। फिर मैने केस कर दिया।"*

## Statement of prosecutrix recorded under Section 161 of cr.p.c. :

**"***में ग्राम ..............की रहने वाली हूं । में वर्तमान में ए.एन.एम. के पद पर ग्राम . ..........में पदस्थ हूं । ग्राम ......... में किराये से कमरे में रहती हूं। हितेन्द्र पेन्ड्राम पिता इन्द्रसिंह पेन्ड्राम मेरे मामा का लडका है। हम ग्राम ..............में एक ही मोहल्ले में रहते है। हमारे घर उसका आना जाना रहता है। दिनांक 14.08.2012 को रात करीब 8.00 बजे जब मेरे घर में कोई नहीं था तब हितेन्द्र पेन्ड्राम मेरे घर आया और मेरे मम्मी पापा को पूछने लगा कि कहां है कब आयेगें मैने कहा मम्मी पापा मेरे चाचा के गांव गये है कल आयेगें तो हितेन्द्र ने कहा कि मै पंसन्द करता हूं और तुमसे शादी करना चाहता हूं में तुम्हे बहुत पहले से पसंद करता हूं कहकर मुझे शारीरिक सम्बन्ध बनाने कहा मेने मना की तब भी हितेन्द्र ने सूना पाकर मेरे साथ जबरदस्ती बलात्कार किया मैने कहा कि मै अपने घर में बतांउगी जो तुमने मेरे साथ गलत काम किया है तो हितेन्द्र बोला कि में तुम्ही से शादी करूंगा तुम किसी से मत बताना वरना तुम्हारी सब जगह बदनामी हो जायेगी तो मैने अपने घर में बदनामी के डर से किसी को कुछ नहीं बताया हमारे समाज में मामा के लडके से शादी हो जाती है तब मैने शादी का कहने पर हां कह दिया इसके बाद कई बार मुझे शादी करूंगा कहकर मेरे साथ गलत काम करता था। दो साल बाद मेरे व उसके घर में हमारे बीच प्रेम सम्बन्ध की बात पता चल गई फिर मुझे ए.एन.एम. की जाब लग गई और मै.......... में ................के घर किराये के कमरे में रहने लगी हितेन्द्र पंद्राम वहां भी आकर मेरे कमरे में रूकता था जिससे मेरे मोहल्ले विभाग वालों को भी हमारे बीच रिश्ते की बात पता चल गई मैने हितेन्द्र को शादी करने को कहा तो वह कहने लगा नौकरी लग तब हम शादी करेंगे उसे 2017–18 में नौकरी भी लग गयी तब भी मैने उसे कहा कि शादी कर लेते है सब जगह हमारे प्रेमसंबंध और शादी होने वाली है ये बाते पता चल गई है तो हितेन्द्र मुझे कहा अगले साल कर लेगे फिर दीदी की शादी हो जाये भैया की शादी पहले हो जाये फिर शादी कर लेगे कह कर मुझे टालता रहा व पिछले करीब दो साल से हितेन्द्र का व्यवहार मेरे लिये बदल गया उसने मुझसे बात करना कम कर दिया था कहने लगा कि मै व्यस्थ रहता हूं में शादी के लिये कहती तो मै तुमसे ही शादी करूंगा कह कर मुझे अलग अलग बहाने बनाकर बताता था मैने उसे बहुत समझाने की कोशिश करी पर*

*उसने शादी नहीं की  और अब शादी के लिये सीधे मन कर रहा है मेरी सब जगह हितेन्द्र पन्द्राम को लेकर बदनामी हो गयी है और अब हितेन्द्र मुझसे शादी न करके मेरा पूरा जीवन बर्बाद कर दिया है। हितेन्द्र पन्दाम ने मेरे साथ जबरदस्ती बलात्कार किया और फिर शादी करूंगा कहकर मेरा शोषण करता रहा जिससे बहुत परेशान होकर मैने हितेन्द पेन्द्राम के विरूद्ध रिपोर्ट करने के लिये आवेदन दी हू।"*

**Statement of prosecutrix recorded under Section 164 of Cr.P.C.** :

*"में ग्राम ..............में ए.एन.एम. के पद पर पदस्थ हूं दिनांक 14.08.2012 को ........... .......में जब में अपने घर पर थी मेरे मम्मी पापा चाचा चाची के गांव बावली गये थे तब मेरे मामा का लडका हितेन्द्र आया और कहने लगा कि बुआ और मामा जी कहा है तो मैने बताया कि गांव गये है। तब उसने मुझसे कहा कि मै तुमसे शादी करूंगा और हमेशा हम साथ रहेगें कहते हुये मेरे साथ मेरे मना करने पर भी गलत काम किया और कहने लगा कि अभी घर में किसी को मत बताना मैं खुद बुआ से बात करूंगा। कुछ दिन बाद उसने मेरी मम्मी को बताया कि मै इसके साथ  शादी करूंगा इसका विवाह कहीं और मत करना। फिर मेरी पोस्टिंग ग्राम .......... में हुई, वहां में कमरा लेकर अकेले रहती थी। तो वह वहां भी आना जाना करने लगा और बार बार मेरे साथ सम्बन्ध बनाता रहा। मै मना भी करती थी तो कहता था कि जब हम शादी करने वाले है तो क्यों नहीं करेगें। यदि तुम दूसरी जगह  शादी करोगी तो मंडप से उठवा लूंगा। ये बात मेरे मकान मालिक एंव मेरे मामा मामी को भी पता थी । अभियुक्त हितेन्द्र ने मेरे साथ सन 2012 से सन 2022 तक मेरे साथ गलत काम इस धोखे में रखकर करते रहा कि वह मुझसे शादी करेगा।  किन्तु अब वह किसी दूसरी लडकी से  शादी कर रहा है। इस कारण से मैने महिला थाना डिण्डौरी में रिपोर्ट लेख करायी और मेरा मेडीकल परीक्षण हुआ। वहां से मुझे आरक्षी केन्द्र करंजिया भेजा गया। यही मेरे कथन है। मै चाहती हूं कि इंसाफ मिले।"*

**17**. Thus, perusal of aforesaid written report filed by prosecutrix as well as contents of MLC and statements recorded under Sections 161 and 164 of Cr.P.C. of

prosecutrix, reveals following facts/allegations mentioned therein that are relevant for present purpose and they are as follows:-

> *"**(i)**that, period of incident is from 14.08.2012 to 31.12.2022;*
>
> ***(ii)** that, FIR has been lodged on 18.5.2024 and FIR has been lodged on the basis of written report submitted by the prosecutrix;*
>
> ***(iii)** that, on 14.8.2012, prosecutrix was aged approximately 21 years and on the date of FIR, prosecutrix was aged 33 years;*
>
> ***(iv)** that, prosecutrix is an educated lady and during aforesaid period, she got posted as ANM worker and petitioner got job in the year, 2017-2018.*
>
> ***(v)** that, in aforesaid documents, on the one hand, it has been mentioned that petitioner established physical relations with the prosecutrix on false pretext of marriage and on the other hand, in some documents, it has been mentioned that petitioner established physical relations with the prosecutrix forcibly and without her consent and petitioner repeatedly threatened the prosecutrix;*
>
> ***(vi)** that, in some documents, it has also been mentioned that despite refusal/denial by the prosecutrix, still petitioner established physical relations with the prosecutrix."*

**FINAL CONCLUSIONS** :-

**18**. Thus, if facts/allegations, as mentioned in the preceding paras, are examined and considered conjointly/cumulatively in the light of principles of law as discussed in the foregoing paras, in this Court's considered opinion, even if the allegations as mentioned in the preceding paras are taken at their face value and accepted in their entirety, still, then, it cannot be said that petitioner established physical relations with the prosecutrix on the false pretext of marriage.

**19**. Further, it is not a case of passive submission in the face of any psychological pressure exerted and there was tacit consent and the tacit consent given by prosecutrix was not the result of any misconception created in her mind. It is apparent that prosecutrix had taken a decision after active application of mind to the things that had happened. In the facts and circumstances of the case, it cannot be said that petitioner established physical relation with prosecutrix on false pretext of marriage.

**20**. Further, having regard to overall facts and circumstances of the case, even *prima facie*, it cannot be said that petitioner established physical relation with prosecutrix forcibly and without her consent. Hence, in this Court's considered opinion, material ingredients essential for constituting the offence of rape, are missing in the present case.

**21.** Hence, in view of discussion in the foregoing paras & for the reasons stated as above, instant MCRC is allowed and FIR No.120/2024 registered at P.S.-

Karjiya, District- Dindori under Sections 376, 376(2) (n) & 376 (2)(f) of IPC and all the consequential proceedings arising thereto, including S.T.No.76/2024 pending in the Trial Court, are hereby **quashed**.

**22**. Accordingly, this M.Cr.C. **stands allowed** and **disposed off**.

**(ACHAL KUMAR PALIWAL)**
**JUDGE**

*Hashmi**