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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.999 OF 2024(F)

Pushkar Vaigankar
S/o. Shamsundar Vaigankar
26 years, Indian National,
R/o. H.No.1049, Madel, Chodan,
Chorao, Tiswadi, Goa. ...Petitioner

Versus

1. State of Goa
Through the Public Prosecutor,
High Court of Bombay at Goa.
Panaji, Goa.

2. The Police Inspector,
Panaji Police Station,
Dist – North Goa, Goa.

3. XXX,
Major in age,
R/o. H.No.115/1,
Near PDA Office,
Mala, Panaji, Goa. ...Respondents

Mr Vibhav Amonkar, Advocate for the Petitioner.

Mr Somnath Karpe, Additional Public Prosecutor for Respondent
Nos.1 and 2.

Mr Shirin V. Naik, Advocate for Respondent No.3.

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED: 2nd APRIL 2025

JUDGMENT : (*Per Nivedita P. Mehta, J.*)

- 1.** Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.
- 2.** This Criminal Writ Petition invokes our jurisdiction under Article 226 as well as our inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'). The petition seeks to quash and set aside the FIR bearing No.131/2024 dated 01.10.2024 registered against the petitioner alleging the commission of offences punishable under Sections 376 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').
- 3.** The petitioner, aged 26, is the husband of respondent no.3, who is of a mature age. It is not in dispute that the marriage between petitioner and respondent no. 3 was registered before the Office of the Civil Registrar, Tiswadi on 01.07.2022 under entry No. MR-TIS-566-2022 and bearing Certificate of Marriage No. 1403-2023. It is also not disputed that the marriage was not solemnized traditionally in accordance with the religious customs.
- 4.** According to the petitioner, he agreed to marry respondent no. 3 due to constant persuasion and pressure from his father, as well as in light of the deteriorating health of his father. He states that after their marriage was registered, he discovered that respondent no.3 was in a relationship with one Agnelo when he accessed her mobile phone. The

petitioner further claims to have found disturbing messages between respondent no. 3 and two other individuals, namely 'Vishwajeet' and 'Soham'.

5. The petitioner alleges that when he confronted respondent no.3 regarding the aforementioned incident, she threatened to involve him in false criminal proceedings. As a precautionary measure, the petitioner reportedly filed a police complaint on 28.06.2024 at the Panaji Police Station. In this complaint, he stated that due to his ongoing efforts to file a matrimonial proceeding for the annulment of marriage, respondent no. 3 has been attempting to implicate him in false criminal charges, thereby seeking police assistance if necessary.

6. On 02.07.2024, the petitioner filed a Matrimonial Petition, bearing no.84/2024/B, before the Court of the Civil Judge Senior Division in Panaji, seeking annulment of the marriage. In the aforementioned petition, the petitioner stated that the marriage between the petitioner and respondent no.3 had not been solemnized according to religious practices and that the marriage had not been consummated. Furthermore, the petitioner indicated that they had not cohabited as husband and wife in the matrimonial home.

7. The petitioner asserts that respondent no.3 filed a complaint against him at the Panaji Police Station on 30.09.2024, alleging the commission of offenses under Sections 375, 376, and 420 of the IPC. This complaint led to the impugned FIR, which the present petition seeks to quash.

8. Respondent No.3, in her affidavit in reply, has denied the allegations levelled against her by the petitioner and asserted the following facts:

(8.1) The petitioner proposed to marry her, claiming he would inform his parents and marry her once his elder sister got married.

(8.2) Despite the petitioner's demands for sexual favours, respondent no.3 states she never conceded to them. The petitioner promised to marry her and registered their marriage to convince her, assuring that they would solemnize it religiously once he informed his parents.

(8.3) Following the registration of their marriage, respondent no.3 states she had consensual sexual intercourse with the petitioner. She alleges that on one occasion, she conceived a child and was forced to undergo termination of pregnancy at six weeks of gestation at the petitioner's insistence.

(8.4) In June 2024, after the petitioner's sister's marriage was fixed, respondent no.3 urged the petitioner to hold a religious ceremony to solemnize their marriage. The petitioner rejected this request, stopped receiving her calls, and stopped visiting her maternal home. Consequently, respondent no.3 decided to reside with the petitioner, which was followed by a police complaint filed by him against.

(8.5) A notice from the Court of Civil Judge Senior Division was served upon respondent No. 3 in Matrimonial Petition No. 84/2024/B, informing her of the Petition for Annulment of Marriage filed by the petitioner on the grounds that the marriage was not consummated.

SUBMISSIONS :

9. Heard Mr. Vibhav Amonkar, learned Advocate for the petitioner and Mr. Somnath Karpe, Learned Assistant Public Prosecutor for the State.

10. Mr. Vibhav Amonkar, learned Advocate representing the petitioner, advanced the following submissions:

(10.1) That the complaint dated 30.09.2024 filed by respondent no.3 against the petitioner, which led to the impugned FIR was filed in retaliation for the matrimonial proceedings initiated by the petitioner seeking annulment of their marriage. This statement, according to the petitioner, is supported by the fact that the criminal proceedings were instituted by respondent no.3 only after being served with notice of the matrimonial proceedings.

(10.2) The contents of the FIR and the accompanying complaint, *prima facie*, do not constitute the alleged offenses. A cursory review of the FIR and the complaint is sufficient to conclude that no offense has been established against the

petitioner. Therefore, the FIR deserves to be quashed and set aside.

(10.3) The criminal proceedings have been initiated against him as a calculated countermeasure to the matrimonial petition for annulment of marriage instituted by him, constituting a blatant misuse of the law and legal procedures and undermining the pursuit of justice.

(10.4) Considering that the marriage between the parties was duly registered, there is no question of false promise to marry with the intention to establish a sexual relationship, constituting the offences of rape and cheating, as the parties are legally wedded.

(10.5) Learned Advocate relies on the following judgments to substantiate his arguments:

(i) *Mahesh Damu Khare V/s. State of Maharashtra & Anr.*¹,

(ii) *Pramod Suryabhan Pawar V/s. State of Maharashtra & Anr.*²

11. Mr. Somnath Karpe, the learned Assistant Public Prosecutor representing the State, vehemently opposed the case presented by the petitioners. He argued that the conduct of the petitioner constitutes

¹ 2024 SCC OnLine SC 3471

² (2019) 9 SCC 608

making a false promise of marriage with the intent to establish a sexual relationship by obtaining the consent of respondent no.3 under a misconception of fact.

He further argued that the petitioner did not intend to solemnize his marriage with respondent no. 3 and registered the marriage solely to persuade the petitioner to engage in sexual intercourse under the pretext of eventually marrying her in accordance with religious customs. This assertion, according to him, is supported by the fact that the petitioner filed a matrimonial petition seeking an annulment of the marriage in response to repeated requests from respondent No. 3 to arrange a traditional marriage.

CONSIDERATIONS/ FINDINGS :

12. The petitioner has been accused of sexually exploiting respondent no.3, undermining her consent to engage in sexual intercourse with him based on a false promise of marriage, constituting offenses punishable under sections 320 and 376, IPC.

13. Section 376, IPC prescribes punishment for committing the offence of rape, which is defined under Section 375, IPC. Section 375 defines rape and lists circumstances under which the offence of rape would be constituted. The relevant portion of the said section is extracted hereunder:

*“375. Rape.—A man is said to commit “rape”
if he—*

under the circumstances falling under any of the following seven descriptions—

.....

Secondly - Without her consent.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

14. It is essential to refer to Section 90, IPC at this juncture. The relevant portion of the aforesaid section reads thus:

“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;”

15. Whilst Section 90, IPC does not define the term “consent”, “consent” based on a “misconception of fact” is not consent in the eyes of the law. Thus, in case of woman engaging in sexual relations on false promise to marriage, her “consent” is based on “misconception of fact”, and such sexual act(s) will amount to rape.

16. To establish a false promise to marry, it is essential for the accused to have the intention to deceive the complainant at the time of making such a promise. This deception must persuade her to engage in sexual activities, vitiating her consent due to a misconception of fact. Respondent no. 3 does not dispute that she was aware of the legally registered marriage between herself and the petitioner before they engaged in a sexual relationship. Furthermore, she does not claim that the petitioner misrepresented the status of their marriage registration. Therefore, it is sufficient to state that, given the existence of a legally recognized marriage known to both parties, it cannot be argued that respondent no.3's consent to engage in a sexual relationship was vitiated by a promise to marry based on religious customs.

17. Respondent No. 3 further states at paragraph no.13 of her reply dated 03.02.2025 that, following the civil registration of their marriage, the parties engaged in consensual sexual intercourse on several occasions. This indicates that respondent no.3 was fully aware of the bond of matrimony existing between the parties on account of the civil registration of their marriage, and thus consciously decided to engage in consensual sexual interactions. Her consent cannot be interpreted as being based on a 'promise to marry according to religious customs', given that the parties were already legally married.

18. At this stage, it is necessary that a distinction be drawn between ‘false promise to marry’ and ‘breach of promise to marry’. Applying the principles set forth in *Uday V/s. State of Karnataka*³, *Deepak Gulati V/s. State of Haryana*⁴ and *Deelip Singh V/s. State of Bihar*⁵, the Hon’ble Supreme Court in *Manish Yadav V/s. State of Uttar Pradesh*⁶ held that a breach of promise to marry would stand at a completely different footing from a false promise to marry. The relevant paragraphs of the aforesaid judgment read thus:

“16. This Court, in the case of *Deepak Gulati V/s. State of Haryana* (supra), while discussing the nature of the ‘consent’ in cases where sexual intercourse occurs on the promise of marriage, distinguished between a mere ‘breach of promise’ and ‘not fulfilling a false promise’. The Court held as follows:

“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

³ (2003) 4 SCC 46

⁴ (2013) 7 SCC 675

⁵ (2005) 1 SCC 88

⁶ 2025 SCC OnLine SC 363

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.

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.”

(emphasis supplied)

17. Moreover, in *Deelip Singh V/s. State of Bihar*⁷, the Court acquitted and set aside the conviction of the accused, holding that while there was a breach of promise to marry, it was not a case of false promise to marry. The relevant extract is produced hereinunder:

“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*[(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] at para 24 come to the aid of the appellant.”

18. Applying the above principle to the case at hand, it is clearly discernible that in the present case, the complainant had agreed to indulge in intimate relations

⁷ (2005) 1 SCC 88

with the appellant on the accord of her own desires and not on the basis of any false promise of marriage made by the appellant. Therefore, while the present case may involve a breach of promise, it does not constitute a case of an inherently false promise to marry. Based on the circumstances, it cannot be concluded that the appellant obtained the complainant's consent to engage in a physical relationship under the pretext of a false promise of marriage."

(emphasis supplied)

19. In the matter at hand, it is clear that the petitioner's promise to marry respondent no.3 according to religious customs cannot, by any stretch of the imagination, be interpreted as a false promise to marry, especially considering that the marriage between the parties had already been legally registered. At most, the petitioner's actions constitute a breach of promise to marry, as he refused to solemnize their marriage according to religious customs after discovering the alleged relationships of respondent no.3 with other men. This led him to file a Matrimonial Petition seeking the annulment of their civil marriage.

20. It must be borne in mind that, when exercising its jurisdiction under Section 528 of the BNSS, which is akin to the former Section 482, IPC, the Court cannot adjudicate the veracity of the allegations, nor can it evaluate the evidence presented. The limited question that should be addressed in such cases is whether, even when accepting the contents of the FIR and the accompanying material in their entirety, there exists, prima facie, any cognizable offense against the petitioner.

21. In *State of Haryana V/s. Bhajan Lal*⁸, the Hon'ble Supreme Court has examined the scope of the inherent power under Section 482 of the Cr.P.C. and the categories of cases where the High Court may exercise its power relating to cognizable offences. It has enumerated these categories as follows:

“105. 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 extra-ordinary 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 formulae 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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.

⁸ 1999 Supp (1) SCC 335

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.
4. Where, the allegations in the F.I.R. 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.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, 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.”

22. The current matter, in our opinion, is best categorized under categories 1, 3 and 7 listed in *Bhajanlal* (supra). In our considered opinion, a straightforward examination of the contents of the impugned FIR, even if taken at face value and accepted in their entirety, does not, prima facie, constitute any offense or establish a case against the petitioner. Furthermore, the allegations made in the FIR or complaint, along with the evidence collected in support of

them, do not indicate the commission of any offense by the petitioner. and the complaint filed by respondent no.3 reveals that the alleged offences punishable under sections 376 and 420 IPC are not constituted. The allegations levelled against the Petitioner in the complaint do not make out a case against the accused. Moreover, the complaint was filed by respondent no.3 on 30.09.2024 after being served with the notice in the Matrimonial Proceeding on 05.09.2024. The initiation of criminal proceedings against the petitioner, therefore, appears to be an attempt at influencing the matrimonial proceedings pending before the Court of the Civil Judge Senior Division or a vexatious counterblast to the aforesaid proceedings.

CONCLUSION :

23. Considering the facts and circumstances of the present case, we conclude that the offenses of rape and cheating based on a false promise to marry are not established against the accused. It appears that the sexual relationship between the parties was consensual, given that they were legally married at the time they engaged in such a relationship.

24. In light of the above discussion and the principles for quashing of criminal proceedings in the exercise of the inherent powers of this court crystallised by various judgments of the Hon'ble Supreme Court, the petition is hereby allowed. The FIR dated 01.10.2024 bearing

No.131/2024 and the subsequent chargesheet/final report bearing no.
130/2024 dated 26.11.2024 are quashed and set aside.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.