IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 2nd OF JULY, 2024

MISC. CRIMINAL CASE NO. 5754 OF 2022

Vs.

State of Madhya Pradesh & Anr.

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Present : ***Shri Manish Datt, Senior Advocate assisted by Shri Eshaan Datt, Advocate for the petitioner.***
Shri A. Bhurok, Panel Lawyer for the respondent-State.
None for the respondent No.2/complainant.

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Reserved on : 09.05.2024

Pronounced on : 02.07.2024

ORDER

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure seeking quashing of charge sheet/Final Report filed against the petitioner by respondent No. 1 on account of registration of a criminal case vide Crime No. 54/2021 at Police Station Mahila Thana, District Katni for the offence punishable under Sections 376, 376(2)(n), 506 and 366 of the Indian Penal Code.

2. As per the case of the prosecution and the contents of FIR, on 26.11.2021, a written complaint was made to the police at Mahila Thana, Katni by the prosecutrix alleging therein that the petitioner-Nageshwar Prasad Jaisal by making false promise of marriage has developed physical relation with her. In the complaint it is stated by the prosecutrix that she is a resident of Khitola, Thana Barhi, District Katni and acquired education till MA. She knows the petitioner, who is also a resident of same vicinity and belongs to the same caste as the prosecutrix and they know each other since last 11 years. It is stated by the prosecutrix that when the petitioner was studying in the Navoday Vidyalaya, Badwara, she was studying in 11th Class. During summer vacation, petitioner used to come to his village and used to meet her. There was affair between them. The petitioner had also proposed and assured the prosecutrix for marriage and also asked her to continue her studies and as such in the month of June, 2010, when petitioner came to his village during summer vacation, he developed physical relation with the prosecutrix. This relationship continued till 2020 and whenever petitioner used to come to the village in summer vacation, he and prosecutrix used to develop physical relation. Thereafter petitioner got posted in Government Hospital, Katni as a doctor. He often called the prosecutrix in his house allotted to him in the hospital premises and used to develop physical relation with her, but later on the petitioner refused to marry her. Thereafter, prosecutrix informed her father and lodged a report alleging that the petitioner has threatened her that if report is lodged, he would kill her.

3. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has reiterated the same facts which she has narrated in the written complaint given to the police.

4. Learned counsel representing the petitioner has argued that upon reviewing the facts mentioned in the complaint, it becomes evident that it is not a case of rape. According to the counsel, the relationship between the prosecutrix and the petitioner was consensual, and crucially, the consent was not obtained under a misconception of fact. It is also contended that the elements required to establish rape as defined under Section 375 of the Indian Penal Code are not available in present case. It is further contended by the learned counsel that as per the definition of 'consent' given in Section 90 of IPC and from the facts of the present case, it is clear that it is a clear-cut case of consent and therefore no offence as registered against the petitioner is made out and consequently he is claiming that the impugned FIR be quashed and all consequential action based upon the said registration of FIR, which has ultimately culminated into a final report is also required to be set aside. He has placed reliance upon the cases reported in **(2003) 4 SCC 46- Uday Vs. State of Karnataka, (2019) 9 SCC 608 – Pramod Suryabhan Pawar vs. State of Maharashtra and another, (2020) 10 SCC 108- Maheshwar Tigga vs. State of Jharkhand, Criminal Appeal No. 504/2018 (arising out of SLP (Crl.) No. 454 of 2017-Shivshankar @ Shiva vs. State of Karnataka & Anr., (2019) 18 SCC 191-Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra and another, (2013) 7 SCC 675-Deepak Gulati vs. State of Haryana, Criminal Appeal No. 233/2021 (Arising out of SLP (Cri) No. 11218/2019)** and

the orders passed by the High Court in **MCRC No. 11456/2020-Madhur Baghrecha vs. State of Madhya Pradesh** decided on 14.01.2022 and **MCRC No. 46602/2022-Amar Singh Rajput vs. The State of Madhya Pradesh**, decided on 13.07.2023.

5. On the other hand, learned counsel for the State has relied upon the fact that the prosecutrix in the complaint has very categorically stated that before developing physical relation, petitioner, promised to marry her and that statement is also given by the prosecutrix in her 164 Cr.P.C. statement. According to him, from perusal of case diary it is clear that police has not committed any illegality in registering the offence against the petitioner. He has also pointed out that later on an offence under Section 366 of IPC was also added against the petitioner. As per the learned counsel, there is sufficient material available in the case diary and also in the charge sheet filed by the prosecution to constitute an offence under Section 376 of IPC against the petitioner.

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

7. 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 almost 10 years 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 re* **Uday (supra)** dealing with the factual circumstances existing in the said case 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."

In re **Pramod Suryabhan Pawar (supra)**, the Supreme Court dealing with the factual aspect of the matter interpreted as to how it is determined that the consent has been obtained under misconception of fact and observed as under:

> "14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise

> to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)
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> "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."
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> 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)
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> "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;""

Thereafter, *in re* **Maheshwar Tigga (supra)** again the Supreme Court dealing with the facts of the case of Section 376 of IPC has reiterated as to how it is determined that the consent given by the prosecutrix is under misconception of fact and observed 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.
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> 17. This Court recently in Dhruvaram Murlidhar Sonar v. State of Maharashtra [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672 : AIR 2019 SC 327] and in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] 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."

In re **Shivashankar @ Shiv (supra)**, the Supreme Court observed as under:-

> "In the facts and circumstances of the present case, it is difficult to sustain the charge levelled against the appellant who may have possibly, made a false promise of marriage to the complainant.
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> 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 facts of the complainant's own allegation that they lived together as man and wife."

Further *in re* **Dr. Dhruvaram Murlidhar Sona (supra)**, considering the existing facts and circumstances of the case, which are almost similar to the case in hand, 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)
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> "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."

In re **Deepak Gulati (supra)**, the Supreme Court observed as under:-

> "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."

In re **Sonu @ Subhash Kumar (supra)**, the Supreme Court observed as under:

> "Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purpose of considering the application for quashing under Section 482 of CrPC, 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 second respondent which gave rise to the registration of the FIR. On these facts, we are of

> the view that the High Court weas in error in declining to entertain the petition under Section 482 of Cr.P.C. on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established."

This Court *in re* **Madhur Baghrecha (supra)** relying upon several judgments of the Supreme Court also considered the definition of rape provided under Section 375 of IPC and also the definition of consent known to be given under fear or misconception provided under Section 90 of IPC. The relevant paragraph of the judgment reads thus:-

> "**12.** Further in the case of **Pramod Suryabhan Pawar (supra)** again the Supreme Court has considered the scope of respective provisions of Sections 375 and 90 of IPC and observed as under:-
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> 9. The present proceedings concern an FIR registered against the appellant under Sections 376, 417, 504 and 506(2) IPC and Sections 3(1)(u), (w) and 3(2)(vii) of the SC/ST Act. Section 376 IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. For the present purposes only the second such description, along with Section 90 IPC is relevant and is set out below:
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> "375. Rape.—A man is said to commit "rape" if he—
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> under the circumstances falling under any of the following seven descriptions—
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> Firstly.—
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> Secondly.—Without her consent.
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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."

"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"

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 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."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above). Section 3(1)(w) of the SC/ST Act also incorporates this concept of consent:

"3. (1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

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Explanation.—For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

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;"

15. In Yedla Srinivasa Rao v. State of A.P. [Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] 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 fulfill 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 [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.] ."

(emphasis supplied)

> In the aforesaid case, the Supreme Court has also taken note of the law laid down in the case of Uday (supra)."

Further *in re* **Madhur Baghrecha (supra)** taking note of the legal position on the issue, as has been considered by the Supreme Court in the case of **Maheshwar Tigga (supra),** this Court observed as under:

> "**14.** In the case of **Maheshwar Tigga (supra)** also the Supreme Court has considered the scope of Sections 375 and 90 of IPC relying upon the law laid down in the cases of Dr. Dhruvaram Murlidhar Sonar and Pramod Suryabhan Pawar (supra) reiterating the same legal position and also observed that the proceeding under Section 482 of Cr.P.C. can be initiated for quashing the proceedings. The observation of the Supreme Court is imperative to be mentioned, which is as under:
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> "17. This Court recently in Dhruvaram Murlidhar Sonar v. State of Maharashtra [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672 : AIR 2019 SC 327] and in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] 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.
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> 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."

15. So far as the cases i.e. Laxmi Narayan and Pawan Gaur (supra) relied upon by the learned counsel for the respondent-State is concerned, on bare perusal of the same, it is clear that the facts of the said cases are altogether different from the present case because in the said cases the Supreme Court and the High Court dismissed the petition filed under Section 482 of Cr.P.C. on the ground that the compromise taken place between the parties is not sufficient and cannot be the sole ground for quashing the proceedings. In the said cases the petitioners had not raised any other ground except the ground of compromise taken place between the parties, but, here not only the facts of the present case are different than that of those cases relied by the counsel for the respondent-State, but the quashment of the proceeding is not being sought by the counsel for the petitioner on the ground that the parties entered into the compromise, it is argued that even from the allegation and the material produced by the prosecution, the offence under Section 376 of IPC is not made out against the present petitioner. According to the learned counsel for the petitioner, it is a case of consensual sexual intercourse because the petitioner and the prosecutrix both are major, literate, having affair and developed the physical relation out of their own free will, although for some reasons the said relationship could not be converted into marriage and annoying with the failure of the said situation, the complainant lodged the FIR and later on when the marriage of the prosecutrix was settled with some other boy, she filed an affidavit stating therein that since her marriage has been settled, she wants to enjoy her married life and if the case is continued in future, her remaining life would be adversely affected and, therefore, she has compromised the matter and further she does not want to prosecute the matter any further. On analyzing the facts

> and circumstances of the cases cited by the learned counsel for the respondent-State and the case at hand, it is apparent that the analogy drawn on by the Supreme Court Court and the High Court in the aforesaid cases is not applicable in the present case. In the present case, the petitioner is not seeking quashment of the FIR and proceeding thereof on the ground that the matter has been settled between the parties, but he is seeking quashment mainly on the ground that if the contents of FIR or allegations attributed by the complainant against the petitioner are taken to be true on its face value, the offence under Section 376 of IPC is not made out. As per Shri Datt, it is a clear-cut case of consent and consensual relation between two major persons with their consent as they were in relation. As such he has claimed quashment of the FIR and proceeding thereof.
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> **16.** Considering the arguments advanced by the learned counsel for the parties, the material available in the case diary, the facts and circumstances of the case and also in view of the enunciation of law laid down by the Supreme Court in the cases cited above, in my opinion, this Court can exercise the power provided under Section 482 of Cr.P.C. and quash the FIR and the proceedings initiated thereof against the petitioner. It is not only for the reason that in view of the existing facts and circumstances of the case the conduct of the petitioner does not fall within the definition of rape as defined in Section 375 of IPC, but also for the reason that the power provided under Section 482 Cr.P.C. can be exercised to secure the ends of justice. In the present case, the complainant and her counsel has informed this Court that the marriage of the prosecutrix has been settled with some other boy and if the present case is continued further, that may adversely affect newly married life of the prosecutrix. I find substance in the submission made by the learned counsel for the complainant/prosecutrix that in such circumstances, it would be appropriate to quash the proceedings arising out of the FIR No. 62/2020."

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 also 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.

14. Resultantly, in view of the discussion made herein above and also the observation made by the Supreme Court and the High Court in the cases referred hereinabove, this **petition succeeds**. The FIR registered against the petitioner vide Crime No. 54/2021 at Police Station Mahila Thana, District Katni for the offence punishable under Sections 376, 376(2)(n), 506 and 366 of the Indian Penal Code is hereby quashed and consequently the charge sheet/Final Report filed against the petitioner

by respondent No. 1 on account of registration of said criminal case is also hereby quashed.

(SANJAY DWIVEDI)
JUDGE

Raghvendra

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SHARAN SHUKLA
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