



**IN THE COURT OF THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI**

Present

Sri.A.SAMIULLA B.Sc, LL.B.,

**II Additional District & Sessions Judge,
Udupi**

Dated: 25th day of June 2026

Crl.RP.No.76 of 2025

Between:

Smt.Mariyam Alisha Sunnaina,
Age; 36 years, D/o Abdul Jabbar,
R/at 10-4-34D, Sheikh Manzil,
Anjuman Road, Udupi Taluk & District.

**..... Petitioner
(By Sri.MI)**

Versus

Dr.Javed Mehmudur Rehman,
Age; 64 years,
S/o Muhammad Atfur Rehman,
R/at B.M.Road, Nagaon,
Assam, India-782001.

**..... Respondent
(Absent)**

ORDER

The revision petition is filed under Sections 438 and 440 of BNSS, 2023 questioning the correctness and legality of the impugned order dated 15.11.2025 passed by the learned II Additional Senior Civil Judge



& ACJM, Udupi in PC.No.121/2024 for the offences punishable under Sections 354(i)(iii), 354A(i)(iv), 354B, 354C & 420 of IPC and Section 66D of IT Act, wherein the complaint was dismissed.

2. Parties shall be referred to by their original rank.

3. Facts in brief: The complainant had married one Akram and their marriage was dissolved in 2015. Thereafter, she and her parents were searching for a bridegroom & opened a profile on Nikha.com, wherein she came across the profile of the accused, aged 60 years, a permanent resident of London, and he intends to marry a Muslim girl aged around 26 to 40 years, including a divorcee. Since she liked his profile, which showed that he would treat the future bride as a caretaker, during conversation he disclosed that he is a resident of Assam. Though there was an issue of age



gap between them, still they proceeded as it is permissible in their community.

i) He agreed to visit Karnataka to discuss the matter with her parents, to which she agreed. Thereafter, he started to talk with her via phone number 447624228866 and also sent an email expressing his desire to accept her as his wife and promised to marry her. He further stated that in case their families refuse to perform their marriage, he will drop her at Assam where she can reside and he will marry her later.

ii) He used to make video calls daily. On many occasions he forced her to strip her clothes in front of the mobile camera, which she declined stating that still they have not married. She requested him to visit India in October 2020 and talk with her parents and



sisters, but due to the corona pandemic he expressed his inability to visit India. He assured to visit India during December 2020 or January 2021 and finalize the marriage talks, but he never came to India.

iii) On the other hand, he requested her to visit Dubai where her sister is working. At that time her mother is also staying at Dubai. So she and her father went to Dubai by spending lakhs. For the first visit she spent ₹1.5 lakh and ₹25,000 for her father's return ticket. Further, she spent ₹45,000 for renewal of visa.

iv) Thereafter, she requested him to come to Dubai and talk to her parents. He came to Dubai for nine days. Every day he used to visit her house and left without finalizing the marriage talks. Sometimes he forced her to come to a room where he stayed, which she refused stating that after marriage she will



be for him forever. Due to this he was not happy with her. Then she started to suspect that he is not interested to marry her and his whole intention is to exploit her for his sexual lust.

▼) Thereafter, he used to say that she is not up to his level and inactive. On the other hand, he started to compel her to do any job at Dubai, or come to UK with an employment visa or holiday visa. But due to expensive issue they are not capable of employment visa or any holiday visa. Since then he is not talking with her properly and shows no interest in marriage. Earlier he was ready to marry her though she is 28 years younger to him. At that time he told her the age is not an issue. After sometime, he completely turned back and started showing hostile attitude. She took a freelancer visa for two years by paying ₹1.90 lakh and



she has spent more than ₹6.2 lakh for air tickets to Dubai for his lavish trip and she also spent ₹4 lakhs for a second visit for joining employment because the visa was issued for two years. Now she has come to know that he had no intention of marrying her and he is only behind her for his sexual lust and her money. He exploited her sexually & cheated her by promising to marry her and denied later.

vi) His acts of promising to marry her and then refusing clearly shows that he intended to deceive her & had no intention to marry. Thus, he has committed offences punishable under Sections 354(i)(iii), 354A(i)(iv), 354B, 354C and 420 of IPC and Section 66D of IT Act. She put the criminal law in motion by filing a complaint before the Superintendent of Police, Udupi, who referred the complaint to Udupi Town PS, wherein



an endorsement was issued on 30.10.2024 directing her to approach Udupi Women PS. After enquiry, the Udupi Women Police issued an endorsement dated 15.11.2024 to approach the Court of law, and she filed a private complaint, dated 26.11.2024 which was registered as PC.No.121 of 2024.

4. After registration of the private complaint, the sworn statement of complainant was recorded and documents Exhibits P1 to P4 were marked. After hearing, learned Magistrate dismissed the complaint.

5. Being aggrieved, the petitioner filed this Revision Petition on the following;

G R O U N D S

i) The impugned order is incorrect and the same is not maintainable either in law or on facts. The finding of the Trial Court that the complainant has not filed application under Section 156(3) CrPC to refer the



case for investigation is not correct. In the present case, the police refused to entertain the complaint and issued an endorsement to approach the Court for necessary relief. She hasn't filed any application to refer the matter for investigation as the same would be waste of time for the police as well as for the complainant. Hence she made up her mind to give her sworn statement and take cognizance of the case including referring the matter for investigation. The approach of the Trial Court is not correct.

ii) The Trial Court ignored the contents of the WhatsApp texts sent by the accused to complainant for sexual exploitation. Further, the Trial Court has failed to consider the intention of the accused in exploiting her sexually. The impugned order is illegal and against the principles of natural justice and as



such it is liable to be quashed. It has been passed mechanically and the same is not a speaking order. Hence, prayed to allow the revision petition and to set aside the impugned order.

6. Before advertng to the merits of the case, it is just and necessary to find out whether the new Acts, BNS and BNSS, are applied to the facts or the old laws, IPC and CrPC.

a) The alleged offences of cheating, false promise, outranging modesty of woman etc occurred between 2019 and June 2024 (*prior to July 1, 2024 implementation date of the new laws*), the penal Sections attracted will be of the IPC. This is protected by Article 20(1) of the Constitution of India, which prohibits the retrospective application of penal laws. Thus, the substantive law IPC applies.



b) The private complaint was filed on November 26, 2024, which is after the BNSS came into force (*July 1, 2024*). Under Section 531(2)(a) of the BNSS (*the Repeal & Savings clause*), the old CrPC is only preserved for applications, inquiries, trials, or investigations that were already pending immediately before July 1, 2024. Thus, the procedural law BNSS applies.

7. In light of the application of substantive law and procedural law, let us find out which law was made applicable by the learned Trial Court to pass the impugned order.

8. On a plain reading of the impugned order, it is evident that learned Magistrate applied substantive law, IPC. However, while applying the procedural law, wrongly applied the CrPC instead of the BNSS, 2023.



9. Let us examine the impact of wrongful application of procedural law to the *factual matrix* of the present case.

a) The learned Magistrate tested the complaint on the anvil of Section 200 CrPC instead of Section 223 BNSS. BNSS introduced a mandatory notice to accused before cognizance under Section 223, which was never issued.

b) The consequence of applying repealed CrPC is not merely a technical irregularity but a jurisdictional error affecting substantive rights. Under BNSS, the procedure for taking cognizance under Section 223, recording statement under Section 225, and dismissal under Section 226 is fundamentally different from CrPC. The complainant has been denied the benefit of:

i) Notice to accused before cognizance under Proviso to Section 223 BNSS. Pre-cognizance notice is



a mandatory substantive right. The Court was statutorily obligated to issue a pre-cognizance notice to the proposed accused, appending copies of the complaint and statements, to afford an opportunity of being heard. By bypassing this mandatory statutory provision, the Magistrate committed a major procedural error.

ii) Liberal rules of electronic evidence under BSA, 2023.

10. In the present case, the complainant exhausted her administrative avenues. The jurisdictional police turned her away via a written endorsement. By shutting the doors of the Court at the absolute threshold through an improper procedural shortcut, the trial Court left the complainant completely remediless.

11. On the face of the merits, the learned Magistrate completely misconstrued the boundary lines between a



simple civil breach of promise to marry and the criminal offence of cheating. The uncontradicted deposition of the complainant, corroborated heavily by digital chat records, clearly set out that the accused had an insincere, fraudulent intention from the very inception of the relationship in 2019, using the lure of marriage solely to extract money.

12. The learned Magistrate committed a error by testing the case on standard-of-proof applicable only at the stage of a full trial. The question of whether the promise of marriage was fraudulent from the inception or a subsequent breach is a matter of trial based on animus, which can only be adjudicated after process is issued and the accused is brought before the Court.

13. If the impugned order is allowed to stand, it will result in an incurable miscarriage of justice. The



petitioner, having been turned away by the police, has now been denied access to judicial remedy at the very threshold. In the absence of any contrary material on record, the learned Magistrate had no legal basis to disbelieve the complainant and summarily throw out the complaint. The Court acted as a trial Court at the threshold stage, completely forgetting that its limited domain was only to ascertain if a *prima facie* case was disclosed, and not whether the material was sufficient for an ultimate conviction.

14. It is worth noting that; an initial false promise made with a deceptive mindset satisfies the definition of cheating. By treating the complaint as a civil breach of contract at the preliminary stage, the Magistrate conducted a premature mini-trial. At this stage, the Court's limited role was to evaluate if a triable, *prima*



facie suspicion existed, not to demand a reasonable doubt. Hence, the impugned order is not sustainable and liable to be set aside. Thus, interference is warranted. Accordingly, point-1 is answered in the affirmative.

15. Point-2: By virtue of above findings Court proceeds to pass the following;

ORDER

The Criminal Revision Petition is hereby allowed.

The Impugned order dated 15.11.2025 passed by the learned II Additional Senior Civil Judge & ACJM, Udupi in PC.No.121/2024 under the provisions of the repealed CrPC is hereby set aside for total lack of jurisdiction and material procedural irregularity.



The private complaint is restored to its original file and status.

The matter is remanded back to the file of the learned Magistrate with direction to register, track and process the complaint strictly under the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), treating the substantive offences under the relevant Sections of the Indian Penal Code, 1860.

The Learned Magistrate is directed to treat the recorded sworn statement and documents as part of the pre-cognizance record. In strict compliance with the first proviso to Section 223(1) of the BNSS, the Court shall issue a mandatory pre-cognizance notice to respondent (accused), appending therewith copies of the private



complaint, the recorded sworn statement, and copies of the documents on record.

The learned Magistrate shall, upon providing the proposed accused a meaningful opportunity of being heard, to determine whether a *prima facie* case is made out to take cognizance and issue process under Section 227 of the BNSS, completely un-influence by any of the observations made in the previous set-aside order.

The revision petitioner is directed to appear before the learned Magistrate on **25.07.2026** without waiting for any fresh notice.

Send a copy of this order to the Trial Court forthwith.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 25th day of June 2026).

(A.Samiulla)
II Addl. District & Sessions Judge,
Udupi