



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 1102 OF 2026

BETWEEN:

SRI. SRUJAN JAI SURYA G.,
AGED ABOUT 24 YEARS,
S/O N.GANGADHAR,
R/AT FLAT NO. BF 04,
SVS WIND GATES, 13TH STREET,
HORAMAVU AGARA MAIN ROAD,
KALYAN NAGARA, BENGALURU – 560 043.

...PETITIONER

(BY SRI. NANJUNDA GOWDA M. R., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY WEST WOMEN POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU – 560 001.
2. MALLIKA GOWDA,
D/O LINGE GOWDA,
AGED ABOUT 25 YEARS,
R/AT NO.22/1, 7TH MAIN,
13TH CROSS, AGRAHARA DASARAHALLI,
BENNGALURU – 560 079.

...RESPONDENTS

(BY SRI. B.N.JAGADEESHA, ADDL. SPP FOR R1;

SRI. ARUN K. S., ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.528 BNSS PRAYING TO QUASH
THE FIR AGAINST THE PETITIONER IN CRIME NO.262/2025 OF





WEST WOMEN POLICE WHICH IS NOW PENDING ON THE FILE OF THE 24th ADDL CJM, BENGALURU FOR THE OFFENCES P/U/S/ 69, 318(1), 318(2) OF BNS.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner is before this Court seeking the following prayers:

"i) Call for L.C.R in Crime No.262/2025 of West Women Police which is now pending on the file of the 24th Additional Chief Judicial Magistrate, Bengaluru for the offences punishable under Section 69, 318(1), 318(2) of BNS.

ii) Quash the FIR against the Petitioner in Crime No.262/2025 of West Women Police which is now pending on the file of the 24th Additional Chief Judicial Magistrate, Bengaluru for the offences punishable under Section 69, 318(1), 318(2) of BNS.

iii) Pass any other order/s as deems fit in the facts and circumstances of the case in the interest of justice."

2. Heard Sri.Nanjunda Gowda M.R., learned counsel appearing for the petitioner, Sri.B.N.Jagadeesha, learned Addl. SPP appearing for the respondent No.1, Sri.Arun K.S., learned counsel appearing for respondent No.2 and have perused the material on record.



3. The petitioner is the accused, respondent No.2-the complainant. Two meet in 2023 and had relationship for close to two years. The relationship was physical as well. It transpires that both the petitioner and the complainant have traveled to all places. Alleging that relationship between the two has been on the promise of marriage and on its breach, the complainant registers a complaint which become a crime in Crime No.262/2025 for Section 69, 318(1), 318(2) of BNS.

4. The registration of the crime has driven the petitioner to this Court in the subject petition.

5. Learned counsel appearing for the petitioner submits that the acts between the two were purely consensual and never on the promise of marriage. The consensual acts cannot form the ingredients under Section 69 of the BNS, 2023, is his submission.

6. Learned counsel appearing for the respondent-complainant would submit that the complainant would not wish to pursue the matter any further and therefore, would leave the decision to the Court.



7. In that light, what remains is the consideration of the facts obtaining in the case at hand and the law that is laid down by the Apex Court in plethora of cases where the consensual acts between the two consenting adults would not become the ingredients of section 69 of BNS.

8. The Apex Court in the case of **PRITHIVIRAJAN v. STATE¹**, holds that merely because physical relations were established based on a promise of marriage, it will not amount to rape. The judgment reads as follows:

"4. The entire case of the prosecution is that the appellant is being charged, inter-alia, under Section 376 of the IPC for the reason that the appellant had given false promise of marriage to the prosecutrix and thus obtained her consent for sexual relationship but later backed out of his promise, and for that reason it is a case of rape. The logic given here is that in case there is no consent then it would be rape as defined under section 375 of IPC. In order to prove that there is no consent usually reliance on section 90 of IPC is also taken. Section 90 of IPC is as follows:

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

¹ 2025 SCC OnLine SC 696



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.

The prosecution would thus like to prove that because of the 'misconception', consent was given and hence it is a case of rape.

.....

6. This Court has time and again reiterated that only because physical relations were established based on a promise to marry, it will not amount to rape. For the offence of rape to be attracted, the following conditions need to be satisfied : first, the accused promised to marry the prosecutrix solely to secure consent for sexual relations without having any intention of fulfilling said promise from the very beginning; second, that the prosecutrix gave her consent for sexual relations by being directly influenced by such false promise of marriage. [See : *Pramod Suryabhan Pawar v. State of Maharashtra* [(2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903]; *Mahesh Damu Khare v. State of Maharashtra* (2024 SCC OnLine SC 3471)]

7. The instant case is one of consensual relationship between the appellant and prosecutrix. Even otherwise, it does not appear from the record that the initial promise to marry allegedly made by the appellant was false to begin with. Perusal of FIR itself suggests that the alleged promise to marry could not be fulfilled by the appellant due to intervening circumstances. Consequently, the relationship ended because of which the present FIR came to be registered. Under these circumstances, letting the appellant face trial would be nothing short of an abuse of the process of the Court. This cannot be permitted."

(Emphasis supplied)



8.2. The Apex Court in the case of **MANISH YADAV v. STATE OF U.P.**², quashed the rape case registered against the petitioner therein on the ground that the victim indulged in intimate relations on accord of her own desires and not on the 'promise of marriage'. The judgment reads as follows:

13. The complainant further stated that later on, her cousin Vatika had also come to reside with her. She alleged that in February, 2022, she saw the appellant and Vatika engaged in an inappropriate position. In retaliation, she befriended a person, namely, Ajay to make Manish jealous. Thereafter, Manish cast aspersions on her character and refused to marry her stating that he was not willing to marry someone with whom he had been intimate once.

14. In our opinion, it is clearly discernible that both the appellant and the complainant were major and thus, both were competent enough to make rational decisions. As per the statement of the complainant (supra), **their initial physical relations were consensual in nature, and without there being any promise of marriage being offered by the appellant. While it can be said that initially the relationship between the complainant and appellant had developed on the basis of mutual attraction and affection, the same cannot by any stretch of imagination fall within the ambit of a relationship flowing from a promise to marry.**

15. The criminal jurisprudence on the scope of 'consent' in cases where sexual intercourse took place on the promise of marriage has been well established through a catena of judgments by this Court. In *Uday v. State of Karnataka*, [(2003) 4 SCC 46], this Court acquitted the accused based on the reasoning that the prosecutrix, a mature college student, consented to sexual intercourse with the accused of

² 2025 SCC OnLine SC 363



her own free will. The Court found that she was fully aware of the consequences of her actions and held that her consent was not based on any misconception of fact. In *Uday* (supra), the Court noted that:

"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."

(emphasis supplied)

16. This Court, in the case of *Deepak Gulati v. State of Haryana*, [(2013) 7 SCC 675], 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



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mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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. State of Bihar*, [(2005) 1 SCC 88], the Court **acquitted and set aside the conviction of the accused while 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."

(emphasis supplied)

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 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.



22. In view of the above discussion, we are of the opinion that the present case appears to be one where a consensual physical relationship between two adults has turned sour due to certain intervening events. Hence, allowing the prosecution of the appellant for the offences mentioned above would tantamount to sheer abuse of the process of law and nothing else."

(Emphasis supplied)

8.3. The Apex Court in the case of **JOTHIRAGAWAN v. STATE³**, holds that a breach of a 'promise to marry' does not automatically amount to rape unless fraudulent intent existed at the time of consent. The judgment reads as follows:

"8. As per the complaint and the statement given by the victim, the couple had sexual intercourse thrice. They first met in a family function, where they both exchanged their phone numbers. After a few days, the accused expressed his desire to marry the victim, when the victim categorically told him that she was studying and she would think it over, after completing her studies. Thus, started a relationship which resulted in frequent conversations and exchange of messages over the mobile phone and intermittent visits by the accused, to the house of the victim's grandmother, where she was residing; as stated by the complainant herself. On 17.04.2021, at the request of the accused, the victim accompanied him to a movie after which, she felt dizzy and they took a room in a hotel where according to the victim, there was an 'abrupt and unexpected' sexual intercourse, under coercion against her wish. Despite protesting and crying out the accused continued the act, after which she told him that he had ruined her life. It was at this juncture, that a promise was made by the accused,

³ 2025 SCC OnLine SC 628



putting his hand on her head, that he would marry her. From the statements recorded we do not find any inducement by the accused, with a promise of marriage, before the alleged crime, leading to the sexual intercourse. The marriage proposal was not accepted by the victim and there is not even a statement that she succumbed to the sexual intercourse on such proposal; being made. It is the definite case put forth by the victim that the accused had acted unexpectedly and she was coerced into a sexual intercourse despite her protests. The promise as stated, if at all, was after the intercourse.

9. The complaint proceeds that again on the pretext of discussing marriage, the accused called the victim and she willingly accompanied him to the very same hotel. It was stated that the accused made entries in the hotel register, falsifying their names. On entering the room when the victim wanted to talk about marriage, it is the specific statement that the accused refused to talk about it till they had an intercourse and thus again the victim was coerced into a sexual intercourse. **At this stage also, there is no promise of marriage or any inducement thereby and the allegation was that the accused threatened her that he would not marry, if she did not have sexual intercourse with him and then forcibly had such intercourse. These are mutually destructive contentions, since, if there is consent, there cannot be alleged forceful intercourse and it could only be contended that consent was obtained on misrepresentation or coercion.**

10. It is also the categorical statement of the victim that after both instances the victim was mentally upset but this did not prevent her from, still again going to the very same hotel at the request of the accused, a third time. The story was repeated, of the talk of marriage having been kept aside till the sexual intercourse had been carried out, again forcefully. There is also an allegation of threat and coercion before they had physical relationship. It is the victim's case that after the three incidents, the complainant refused to pick up the telephone and when the victim eventually could contact him, he refused to solemnise their relationship by a valid marriage.



11. We have already found that there is no promise of marriage to coerce consent from the victim for sexual intercourse; as forthcoming from the statements made by the victim. The promise if any was after the first physical intercourse and even later the allegation was forceful intercourse without any consent. In all the three instances it was the allegation that, the intercourse was on threat and coercion and there is no consent spoken of by the victim, in which case there cannot be any inducement found, on a promise held out. The allegation of forceful intercourse on threat and coercion is also not believable, given the relationship admitted between the parties and the willing and repeated excursions to hotel rooms.

12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the sexual relationship admitted by both the parties was without the consent of the victim. That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms.

13. Having heard both sides in this case, we have absolutely no doubt in our mind that the criminal proceedings initiated against the present appellant are nothing but an abuse of process of the court. This is precisely a case where the High Court should have interfered in exercise of its inherent and extraordinary powers under Section 482 of the Cr. P.C. These proceedings cannot go on. Hence, we direct that the proceedings initiated at the instance of the complainant which are presently going on



before Sessions Judge (Mahila Court), Erode in S.C. No. 49 of 2022, be hereby quashed."

(Emphasis supplied)

8.4. The Apex Court in the case of **SAMADHAN v. STATE OF MAHARASTHRA**⁴ holds that a mere break-up of a relationship between a consenting couple cannot constitute rape and cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The judgment reads as follows:

"**25.** The allegation of rape in the present case hinges entirely on respondent No. 2's claim that appellant established physical relations with her on false pretext of marriage. It is alleged by the appellant that respondent No. 2 opposed the idea of marriage whenever the appellant broached the said idea; however, the appellant kept on insisting possibly this was because her first marriage was in subsistence. It is, however, not clear as to why, despite being opposed to the idea of marriage, respondent No. 2 continued to meet the appellant and indulged in physical relations with him even though she was already married.

26. The FIR in the present case also states that in September 2022, when respondent No. 2 found out that she was pregnant with the appellant's child, she told the appellant, "You live your life and I will live my life". At that time, the appellant again assured her that they would get married and asked for some time from respondent No. 2, to which she refused. However, despite her refusal to be with the appellant, respondent No. 2 continued to meet him at Hotel Citizen and engaged in physical relations with him.

⁴ 2025 SCC OnLine SC 2528



27. In this regard, it becomes relevant to refer to the decision of this Court in the case of *Mahesh Damu Khare v. State of Maharashtra*, (2024) 11 SCC 398, ("Mahesh Damu") wherein the following observations were made:

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

(underlining by us)

28. We find that the present case is not a case where the appellant lured respondent No. 2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest



kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

30. In *Prashant v. State of NCT of Delhi*, (2025) 5 SCC 764, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. The relevant portion is extracted as under:

“20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no



purpose would be served by continuing the prosecution."

(underlining by us)

31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

32. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate that it is a classic instance of a consensual relationship having subsequently turned acrimonious.

33. The appellant has unequivocally asserted that, during the subsistence of the relationship, no grievance or allegation was ever raised by respondent No. 2 regarding the absence of consent in their physical relations. It was only upon the appellant's refusal to fulfil her demand for payment of the sum of Rs. 1,50,000/- that the present criminal proceedings came to be instituted. Furthermore, the alleged incidents are stated to have occurred between 12.03.2022 and 20.05.2024; however, the FIR was lodged only on



31.08.2024, i.e. nearly three months after the last alleged act of sexual intimacy.

34. The FIR is conspicuously silent as to any specific allegation that the appellant had either forcibly taken or compelled respondent No. 2 to accompany him to the hotel, nor does it disclose any circumstance suggesting deceit or inducement on the part of the appellant to procure her presence there. Therefore, the only logical inference that emerges is that respondent No. 2, of her own volition, visited and met the appellant on each occasion. It is also borne out from the record that whenever the appellant brought up the subject of marriage, respondent No. 2 herself opposed the proposal. In such circumstances, the contention of respondent No. 2 that the physical relationship between the parties was premised upon any assurance of marriage by the appellant is devoid of merit and stands unsustainable.

35. We deem it appropriate to refer to the decision of this Court in *Rajnish Singh v. State of Uttar Pradesh*, (2025) 4 SCC 197, whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the



appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

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39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

(underlining by us)

36. By the impugned order dated 06.03.2025, the High Court observed that although it was contended on behalf of the appellant that the relationship between him and respondent No. 2 was consensual in nature, no such categorical statement was made by him in the memo of



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application and that the plea of consent was merely inferred. In this regard, reliance was placed by the High Court on the case of *Ganga Singh v. State of Madhya Pradesh*, (2013) 7 SCC 278 : (2013) 3 SCC (Civ) 505 : (2013) 3 SCC (Cri) 314, wherein this Court had stated that unless there was a specific defence of a consensual relationship, such a defence cannot be inferred.

37. The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No. 2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition. It is also pertinent to note that, at the relevant time, the marriage of respondent No. 2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.

38. At this stage it is material to refer to the decision of this Court in *Mahesh Damu*, wherein the following observations were made:

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], in which it was held as follows : (SCC pp. 682-84, paras 21 & 24)



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"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

xxx

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."



(underlining by us)

39. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, this Court formulated the parameters in terms of which the powers under Section 482 of the Criminal Procedure Code, 1973 (now Section 528 of the BNSS) could be exercised. While it is not necessary to revisit all these parameters, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

"102.

xxx

(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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

xxx"

40. In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No. 2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery."

(Emphasis supplied)

9. If the law laid down by the Apex Court in the afore-quoted judgments is applied to the facts of this case what



would unmistakably emerge is that, continuation of criminal proceedings against the petitioner in the subject crime would become an abuse of process of the law. In that light, I deem it appropriate to obliterate the proceedings.

10. For the aforesaid reasons, the following:

ORDER

[I] Criminal Petition is **allowed**.

[II] The proceedings in Crime No.262/2025 registered for offences punishable under Sections 69, 318(1), 318(2) of BNS pending before the 24th Additional Chief Judicial Magistrate, Bengaluru, *qua* the petitioner, stands **quashed**.

Sd/-
(M.NAGAPRASANNA)
JUDGE