



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 25TH DAY OF FEBRUARY, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE RAJESH RAI K
CRIMINAL APPEAL NO. 200027 OF 2026 (U/S 14 (A))**

BETWEEN:

ARUNKUMAR
S/O VENKATESH EDIGAR
AGE: 30 YEARS, OCC: DRIVER
R/O ICHALABOMMANAHALLI
TQ: KUDLIGI
DIST: VIJAYANAGAR-583135

...APPELLANT

(BY SRI SHIVANAND V. PATTANSHETTI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH VIJAYAPUR WOMEN POLICE STATION
VIJAYAPURA, DIST: VIJAYAPURA-586101
R/BY ADDL. SPP KALABURAGI
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585107

2. MANGALA
D/O YACHARAPPA CHALAWADI
AGE: 28 YEARS
OCC: WORKING IN CLOTH SHOP
R/O KASTURI COLONY, VIJAYAPURA
DIST: VIJAYAPURA-586101

...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1;
SRI B. C. JAKA, AMICUS CURIAE FOR R2)





THIS CRIMINAL APPEAL IS FILED U/SEC. 14-A (1) OF SC/ST (PA) ACT, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 13.01.2026 PASSED IN SPL.CASE (SC/ST) NO.49/2025 BY II ADDL. DISTRICT AND SESSIONS AND SPECIAL JUDGE VIJAYAPURA AND TO DISCHARGE THE APPELLANT IN SPL.C. (SC/ST) NO.49/2025 (VIJAYAPURA WOMAN PS CRIME NO.29/2024 DISTRICT VIJAYAPURA) FOR THE OFFENCES PUNISHABLE U/SECS.376(2)(n), 417, 504, 506 OF IPC AND 3(1)(w)(i), 3(2)(Va) OF THE SC/ST (PREVENTION OF ATROCITIES) AMENDED ACT, 2015.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

This appeal is filed against the order dated 12.01.2026 passed on I.A.No.1/2025 by the II-Additional District and Sessions Judge and Special Judge at Vijayapura [hereinafter referred to as 'the learned Sessions Judge' for brevity], whereby the learned Sessions Judge rejected the application filed by the accused-appellant under Section 227 of Cr.P.C. seeking discharge in Special Case (SC/ST) No.49/2025, arising out of Crime No.59/2025, registered by Women Police Station, Vijayapura, for the offences punishable under Sections 376(2)(n), 417, 504, 506 of IPC, 1860 and Sections



3(1)(w)(i) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 [for brevity, 'the SC & SC (POA) Amendment Act'] alleging that on the false promise of marriage, the accused committed sexual intercourse with respondent No.2 from the year 2024. Thereafter, he failed to marry her for the reason that she belongs to Scheduled Caste. As such, she lodged the complaint before respondent No.1-Police against the appellant/accused for the aforementioned offences. Based on the same, FIR came to be registered against the appellant and charge sheet came to be filed by the said Police before the Special Court. Hence, the appellant filed an application under Section 227 of Cr.P.C. seeking his discharge and the said application was rejected by the learned Sessions Judge. Aggrieved by the said order, the appellant preferred this appeal.

2. Heard learned counsel for the appellant, learned High Court Government Pleader for respondent No.1 and learned *Amicus Curiae* for respondent No.2.



3. The contention of the learned counsel for the appellant is, the victim-respondent No.2 was aged about 27 years and a married woman having a child, had consensual sexual act with the appellant. Further, in the complaint or in the charge sheet averments it is not stated that in order to belittle the caste of victim or with knowledge that she belongs to Schedule Caste, the appellant/accused committed sexual act with her. As such, he submits that the offences charge sheeted against the appellant do not attract against him. Accordingly, he prays to allow the appeal.

4. *Per contra*, learned *Amicus Curiae* for respondent No.2 and the learned High Court Government Pleader for respondent No.1 jointly opposed the prayer on the ground that, by inducing the victim that he would marry her, the appellant committed sexual intercourse on her for more than one year. Accordingly, they pray to dismiss the appeal.



5. I have given my anxious consideration on the submissions made by the learned counsel for the respective parties, entire charge sheet materials and the documents available on record including the order passed by the learned Sessions Judge.

6. It could be gathered from records that the victim was aged about 27 years and was a married woman having a child. According to the victim, based on the promise of accused to marry her, they both were sexually active for more than a year. In such circumstances, the Hon'ble Apex Court in the case of **Shiva Prathap Singh Rana V/s State of Madhya Pradesh and Another** reported in **(2024) 8 SCC 313** held that the consensual sexual act of a major without any force or inducement does not attract the provisions of Sections 376 or 417 of IPC. The Hon'ble Apex in the said judgment held in paragraphs No.26 to 33 as under.

"26. We have carefully gone through the definition of "rape" provided under Section 375 IPC. We have also gone through the provisions of



Section 376(2)(n) IPC, which deals with the offence of rape committed repeatedly on the same woman. Section 375 IPC defines "rape" by a man if he does any of the acts in terms of clauses (a) to (d) under the seven descriptions mentioned therein. As per the second description, a man commits rape if he does any of the acts as mentioned in clauses (a) to (d) without the consent of the woman. Consent has been defined in Explanation 2 to mean an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific sexual act. However, the proviso thereto clarifies 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.

27. *Having regard to the above and in the overall conspectus of the case, we are of the view that the physical relationship between the prosecutrix and the appellant cannot be said to be against her will and without her consent. On the basis of the available materials, no case of rape or of criminal intimidation is made out.*

28. *The learned counsel for the respondents had placed considerable reliance on the provisions of Section 90IPC, particularly on the expression "under a misconception of fact". Section 90IPC reads thus:*

"90. Consent known to be given under fear or misconception.—A consent is not such a consent as it 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



HC-KAR

reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

29. Section 90 IPC says that a consent is not such a consent as it is intended by any section of IPC, if the consent is given by a person under the fear of injury or under a misconception of fact.

30. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra* [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] , this Court after examining Section 90IPC held as follows : (SCC p. 198, para 17) “17. Thus, Section 90 though does not define “consent”, but describes what is not “consent”. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.”

31. This Court also examined the interplay between Section 375IPC and Section 90IPC in the context of consent in *Pramod Suryabhan Pawar v.*



State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , and held that consent with respect to Section 375IPC 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. After deliberating upon the various case laws, this Court summed up the legal position as under : (SCC p. 620, para 18)

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

32. *The learned counsel for the respondents had relied heavily on the expression "misconception of fact". However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting*



on having a relationship with the prosecutrix, the later had turned down the same on the ground that the appellant was the friend of her younger brother and a distant relative of her jijaji. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that the appellant had surreptitiously taken photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that the appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra along with the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged.

33. *As already pointed out above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The alleged cheque of the prosecutrix's mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire substratum*



of the prosecutrix's case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, the Court is of the view that compelling the appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the court, result of the trial being a foregone conclusion."

7. Further, the Hon'ble Apex Court in the case of **Deepak Gulati vs. State of Haryana** reported in **2013 Crl. Law Journal 2990**, held in para Nos.18 and 21 as under:

"18. *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 mis-representation 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.

21. *Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at 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."*

8. So far as the provisions of SC & ST (POA) Amendment Act is concerned, it is rightly contended by the learned counsel for the appellant that, at the time of commission of the offences, the accused had no such



intention or knowledge that the victim belongs to Schedule Caste and he committed the sexual act with her in order to belittle her caste. In such circumstance, the offences punishable under the provisions of SC & ST (POA) Amendment Act also do not attract against the appellant.

9. In view of the above discussion, I am of the considered view that continuation of the proceedings against the appellant/accused would amount to abuse of process of Court. Accordingly, I proceed to pass the following:

ORDER

- i. The appeal is ***allowed***.
- ii. The order dated 12.01.2026 passed in Spl.Case (SC/ST) No.49/2025 by the II Additional District and Sessions and Special Judge, Vijayapura is set-aside.
- iii. The appellant/accused is discharged from the charges leveled against him in Special Case (SC/ST) No.49/2025 (arising out of Crime No.59/2025, registered by Women



Police Station, Vijayapura), pending on the
file of II Addl. District and Sessions and
Special Judge, Viayapura.

The Karnataka Legal Services Authority, is directed to
pay an amount of Rs.10,000/- to *Amicus Curiae*.

Sd/-
(RAJESH RAI K)
JUDGE

SWK
List No.: 1 Sl No.: 17
CT-BH