



**IN THE HIGH COURT OF KARNATAKA**

**KALABURAGI BENCH**

**DATED THIS THE 25<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE RAJESH RAI K**

**CRIMINAL PETITION NO. 201811 OF 2025**

**(482(Cr.PC)/528(BNSS))**

**BETWEEN:**

SRI. RAJESH S/O. YANKOBA MASARAKAL,  
AGED ABOUT 27 YEARS,  
OCC: PRIVATE SERVICE,  
R/O. BOMMANAHALLI,  
TQ: TALIKOTI, DIST: VIJAYPUR-586101

...PETITIONER

(BY SRI. SHARANABASAVESHWAR MAMADAPUR, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
THROUGH PSI, VIJAYPUR  
WOMEN POLICE STATION,  
REP BY ITS ADDL. STATE PUBLIC PROSECUTOR,  
ADVOCATE GENERAL'S OFFICE,  
HIGH COURT BUILDING,  
KALABURGI-585 103
2. MALA D/O ANNAPPA MYAGERI  
AGED ABOUT 27 YEARS,  
OCC: NURSE, R/O. SHINDIKURUBET,  
TQ: GOKAK, DIST: BELGAUM-590001  
(DE-FACTO COMPLAINANT)

...RESPONDENTS

(BY SRI.JAMADAR SHAHABUDDIN, HCGP FOR R1;  
SRI. SYED MASTAN ADV., FOR R2)





THIS CRL.P IS FILED U/S. 528 OF BNSS, U/SEC 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING ON THE FILE OF THE HONOURABLE II ADDL. DISTRICT AND SESSIONS JUDGE, VIJAYPUR IN SPECIAL CASE SC/ST NO.36/2024 ARRANGING CRIMEN NO.11/2024 WOMEN POLICE STATION, VIJAYPUR FOR THE OFFENCES UNDER SECTION 376(2)(n), SECTION 417 OF IPC AND SECTION 3(1)(w), 3(2)(v) OF THE SC/ST (POA) ACT AND THE PROCEEDINGS AND CONSEQUENTLY DISCHARGE HIM OF THE ALLEGED OFFENCES.

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

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

**ORAL ORDER**

This petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the proceedings against the petitioner/accused in Special Case No.36/2024, arising out of Crime No.11/2024 registered by Women Police Station, Vijayapura, for the offence punishable under Sections 376(2)(n) and 417 of IPC and Sections 3(1)(w) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989(for short, "SC/ST (POA) Act"), pending on the file of the learned II Addl. District and Sessions Judge, Vijayapura (for brevity, "the Sessions Judge").



2. The abridged facts of the case are, respondent No.2 was serving as a nurse at Sumukha Home Care, Banashankari, Bengaluru. She came in contact with the petitioner/accused No.1 in the year 2021 through Facebook platform and gradually both of them started loving each other. Thereafter, they planned to get married and started to reside in a rented house at Kumaraswami Layout, Bengaluru for a period of nearly 3 years and during the said period they were sexually active. Thereafter, on 05.02.2024 the respondent No.2 met the parents of petitioner at Golgumbaz, Vijayapura and they enquired about her caste and after coming to know that she belongs to scheduled caste, they refused to perform the marriage of the petitioner with her. On the same day, petitioner had sexual act with respondent No.2 in a lodge at vijayapura. Subsequently, on 17.02.2024 the petitioner denied to marry her, assaulted and abused her by mentioning her caste. Hence, she lodged a complaint before respondent No.1-Police, which was registered in



Crime No.11/2024. Subsequently, respondent No.1-Police investigated the case and laid charge against the petitioner for the aforementioned offences. Accordingly, learned Magistrate took cognizance of the offences. Aggrieved by the same, the petitioner preferred this petition.

3. Heard learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1-State and learned counsel appearing for respondent No.2.

4. Apart from urging several contentions, learned counsel for the petitioner contended that, respondent No.2 was aged about 24 years at the time of incident and she voluntarily had an affair with the petitioner and stayed together. According to him, the petitioner was unaware about the caste till she lodging the complaint and at not point of time he had the intention to belittle her caste. As such, the offence under Section 376(2)(n) and 417 of IPC and Sections 3(1)(w) and 3(2)(v) of SC/ST (POA) Act does



not attract against the petitioner. Accordingly, he prays to allow the petition.

5. *Per contra*, learned High Court Government Pleader for respondent No.1-State and learned counsel for respondent No.2 opposed the petition on the ground that now the charge sheet has been laid against the petitioner. Hence, the proceedings cannot be quashed against him. Accordingly, they pray to dismiss the petition.

6. I have given my anxious consideration both on the submissions made by the learned counsel for the respective parties and the documents made available on record.

7. As could be gathered from the complaint and charge sheet averments, admittedly the victim was aged about 24 years at the time of the incident. She came in contact with the petitioner through Facebook platform. Thereafter, they both became intimate friends and had consensual sexual act for a period of more than 2 years



and they both resided in a house at Bengaluru. In the complaint and charge sheet averments, none of the witnesses have stated that by knowing fully well that respondent No.2 belongs to scheduled caste and with an intention to insult/belittle her caste, the accused committed sexual act with her. In such circumstances, the provisions of SC/ST (POA) Act does not attract against the petitioner. The allegation that they both were sexually active based on the promise of the petitioner that he would marry her also does not attract the provision of Section 417 or 376(2)(n) Indian Penal Code, 1860.

8. 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 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."*

9. 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."*

10. Collocating the above findings of the Hon'ble Apex Court in the above judgments to the facts and



circumstances of the case, in my considered view, the entire allegation taken on its face value, the offences charge sheeted against the petitioner do not attract against him. As such, the continuation of the proceedings against him is abuse of process of Court. Accordingly, I proceed to pass the following:

**ORDER**

- a. The petition is ***allowed***.
- b. The proceedings against the petitioner/accused in Special Case No.36/2024, arising out of Crime No.11/2024 registered by Women Police Station, Vijayapura, for the offence punishable under Sections 376(2)(n) and 417 of IPC and Sections 3(1)(w) and 3(2)(v) of SC/ST (POA) Act, pending on the file of the learned II Addl. District and Sessions Judge, Vijayapura, is hereby quashed.

**Sd/-**  
**(RAJESH RAI K)**  
**JUDGE**