



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 201929 OF 2025

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

BETWEEN:

SRI SHIVAPPA @ SHIVANNA
S/O BALAPPA @ BALAYYA,
AGE 21 YEARS, OCC. AGRICULTURE,
R/O SOMANANMARADI, TQ. DEVADURGA,
DIST. RAICHUR-584111.

...PETITIONER

(BY SRI ARUNKUMAR AMARGUNDAPPA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH THE SHO., JALHALLI PS,
DEVADURGA.
REPT. BY THE ADDL. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585102.
2. GANGAMMA @ GANGUBAYI
D/O. BHEEMAYA HIREHOLA,
AGE 20 YEARS, OCC. HOUSEHOLD,
R/O SOMANANMARADI, TQ. DEVADURGA,
DIST. RAICHUR-584111.

...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1;
R2 SERVED)

Digitally signed
by SHIVALEELA
DATTATRAYA
UDAGI

Location: HIGH
COURT OF
KARNATAKA



THIS CRL.P IS FILED U/S.482 OF CR.P.C. (OLD), U/SEC. 528 OF BNSS (NEW), PRAYING TO ALLOW THE PETITION AND FURTHER QUASH ENTIRE PROCEEDINGS IN S.C.NO.156/2022 PENDING ON THE FILE OF I ADDL. DISTRICT AND SESSIONS JUDGE RAICHUR REGISTERED ON THE CHARGE SHEET FILED BY THE RESPONDENT NO.1 - JALHALLI POLICE STATION BASED ON THE COMPLAINT FILED BY THE RESPONDENT NO.2 FOR THE ALLEGED OFFENCES PUNISHABLE U/SECS. 448 AND 376 OF IPC IN THE ENDS OF JUSTICE.

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 S.C.No.156/2022, arising out of Crime No.64/2022, registered by Jalhalli Police, Raichur, for the offences punishable under Sections 376 and 448 of IPC, pending on the file of I-Addl. Dist. And Sessions Judge, Raichur.

2. The abridged facts of the case are that respondent No.2 lodged a complaint against the petitioner/accused on 24.05.2022 alleging that she was staying with her aunt at Somanamaradi village from four



years prior to the incident and her parents passed away and she used to do coolie work. The petitioner, being the resident of same village, belong to same caste also known to her since three years, thereby expressed his love to her. Accordingly, they both fell in love. Thereafter, he had given assurance that he would marry her. On such promise, the petitioner and respondent No.2 were sexually active. Later on 19.05.2022 at about 10:00 p.m., when she was at her aunt's house, the petitioner trespassed into said house and enticed her with a promise to marry, committed sexual intercourse on her. She has not revealed the same to anybody, since he promised that he would marry her.

3. It is further alleged that, they were known to each other for a period of three years. Since the petitioner failed to marry her, she lodged the complaint before the respondent-Police on 24.05.2022. The said complaint came to be registered in Crime No.64/2022 for the offences punishable under Section 376 of IPC and Sections



4 and 6 of POCSO Act. Subsequently, respondent No.1-Police investigated the case. During the course of investigation, it was revealed that respondent No.2 was major at the time of incident. As such, the respondent-Police laid charge-sheet against the petitioner for the offences punishable under Sections 448 and 376 of IPC. Based on the complaint, the learned Sessions Judge took cognizance of the offences. Being aggrieved by the same, petitioner is before this Court.

4. Heard learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1-State. Though notice is served to respondent No.2, she remained absent.

5. Apart from urging several contentions, learned counsel for the petitioner primarily contented that respondent No.2 being major, petitioner and she were in love with each other and both were sexually active for three years and at the time of incident, petitioner has not committed sexual act upon such promise of marriage. In



such circumstance, the offence under Section 376 of IPC does not attract against the petitioner. Accordingly, prays to allow the petition.

6. *Per contra*, learned High Court Government Pleader opposed the prayer on the ground that charge-sheet allegation, more particularly, the statement of victim under Section 164 of Cr.P.C., she has stated that the accused-petitioner had committed forceful sexual act with her. Under such circumstances, he prays to dismiss the petition.

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

8. As could be gathered from records, initially complaint was lodged on 24.05.2022 alleging that respondent No.2 and the petitioner were known to each other for three years and they both belongs to same village and both were in love and sexually active.



According to her, she was not informed the same to anybody, since the accused promised her that he would marry her. Though in the complaint she has stated that she was aged about 17 years at the time of incident, during the course of investigation, it was revealed that she was major. As such, the respondent-Police laid charge-sheet only for the offences punishable under Sections 376 and 448 of IPC by leaving the provisions of POCSO Act. Admittedly, there is an inordinate delay in lodging the complaint.

9. Moreover, it is the specific case of the complainant that both she and petitioner were in love. It is not stated in the complaint or in her 164 statement that she was given consent by misconception of fact and before having such sexual act, he had promised that he would marry her.

10. In such circumstance, 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."

11. Further, the Hon'ble Apex Court in the case of ***Rajneesh Singh v. State of U.P.*** reported in **2025 (4) SCC 197** held that, when a women 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 facts or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of IPC. Thus, it is clear that accused can be convicted for rape only if the Court reaches a conclusion



that the intention of the accused was malafide, and that he had clandestine motives.

12. Further, the Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and Another*** in CrI.A.No.1165/2019 arising out of Special Leave Petition (Criminal) No.2712 of 2019, held in para Nos.16, 17 and 18 as under:

"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 this Court observed:

"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.

...

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. *In Uday v State of Karnataka¹² the complainant was a college going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors:*

"25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the



promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married..."

(Emphasis supplied)

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.

13. The materials placed in the case are sufficient to reject and overrule the factual assertion contained in the complaint and charge sheet that accusations are false. As such, continuation of proceedings/trial would result in abuse of process of the Court and would not serve the ends of justice, specially, when it is clear that the same would not conclude in the conviction of accused.

14. In view of the above, I am of the considered view that, since the victim was a consenting party and both the petitioner and respondent No.2 were sexually active for considerable period and they were in love. Therefore, the offences under Section 448 and 376 of IPC do not attract against the petitioner/accused. In such circumstance, continuation of proceedings against the petitioner/accused is nothing but abuse of process of Court.



15. Accordingly, the petition is ***allowed.***

16. The proceedings against the petitioner/accused in S.C.No.156/2022, arising out of Crime No.64/2022, registered by Jalhalli Police, Raichur, for the offences punishable under Sections 376 and 448 of IPC, pending on the file of I-Addl. Dist. And Sessions Judge, Raichur, is hereby quashed.

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

SDU
LIST NO.: 1 SL NO.: 32
CT:RJ