



Reserved on : 24.02.2026
Pronounced on : 04.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.35036 OF 2024 (GM – RES)

BETWEEN:

[REDACTED]

... PETITIONER

(BY SRI VIKRAM HUILGOL, SR.ADVOCATE A/W
SRI MOHAN KUMAR G., ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY I.O.,
MANGALURU WOMEN POLICE STATION.

2 . XXXXXX
XXXXXX
XXXXXX
XXXXXX
XXXXXX.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1
SRI PARAMESWARAPPA C., ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, 2023 PRAYING TO QUASH THE ZERO FIR DATED 19.10.2024 REGISTERED AS CRIME NO. 106/2024 BY THE RESPONDENT NO.1 I.E., MANGALORE WOMEN POLICE STATION/1ST RESPONDENT AGAINST THE PETITIONER (ANNEXURE A) UNDER SECTION 69, 115(2) OF THE BHARATIYA NYAYA SANHITA 2023 ON THE FILE OF THE III JMFC COURT, MANGALORE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.02.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No.106 of 2024 for offences punishable under Sections 69 and 115(2) of the Bharatiya Nyaya Sanhita ('BNS'), 2023.

2. Heard Sri Vikram Huilgol, learned senior counsel appearing for the petitioner, Sri B.N.Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri C. Parameshwarappa, learned counsel appearing for respondent No.2.

3. THE FACTUAL CANVASS:

3.1. The narrative begins in Ireland. In August, 2021, the petitioner then pursuing his Masters Degree in International Management at the National University of Ireland met the 2nd respondent/complainant. She too was then navigating her academic journey. Friendship sprouted, affection followed. The

camaraderie matured into physical relationship. By September, 2022 the petitioner had secured employment with Valeo Vision System. The complainant, despite earnest efforts had not secured employment. Proximity brought them closer, convenience matured into cohabitation. In December, 2022 they began living together, not as strangers bound by compulsion, but as consenting adults sharing companionship.

3.2. For two years, the two had several sexual escapades. The petitioner then comes to know that the 2nd respondent was already married and had a 7 years old child. The relationship between the petitioner and the complainant eventually soured. By mid 2024, communication frayed. Expectations collapsed. On 19-10-2024, upon returning to India, the complainant registered the subject complaint before the Women Police Station, Mangalore alleging that the petitioner had established physical relations with her on a false promise of marriage. The complaint becomes a crime in Crime No.106 of 2024 for offences punishable under Sections 69 and 115(2) of the BNS. Investigation would ensue. The petitioner calls in question the said crime in the subject petition.

3.3. On 16-01-2025, a coordinate Bench of this Court granted an interim order of stay, which is in subsistence even today. The matter is heard on an application filed by the State, seeking vacation of the interim order.

SUBMISSIONS:

PETITIONER'S:

4. The learned senior counsel appearing for the petitioner would vehemently contend that the relationship between the petitioner and the 2nd respondent for close to two years was purely on consensus. In the complaint, the complainant narrates that due to the relationship of the petitioner, the complainant had to apply and seek divorce from the hands of her husband. But, that is factually incorrect. The relationship between the complainant's husband and the complainant had strained long ago. Divorce petition was pending even before the complainant met the petitioner and thereafter all the acts between the two were purely on consensus, but never on promise of marriage. Due to registration of complaint, the effect is that the petitioner lost his job in Ireland, as communication is sent by the complainant to the

Company about registration of crime and today he is not getting any job for acts that have happened on consensus. Insofar as the complainant is concerned, the complainant has already moved on with another man. He would seek to place reliance upon certain posts on social media to demonstrate that the complainant has already moved to another relationship. Who has suffered in the bargain is the petitioner who lost his job and opportunity of getting a new job.

RESPONDENT/COMPLAINANT:

5. Per contra, the learned counsel appearing for the 2nd respondent/complainant would though dispute the fact that the complainant has moved on with another man, has admitted the fact that the divorce petition was pending even before the petitioner met the complainant for the first time. The learned counsel submits that the petitioner and the complainant lived together in Ireland and there was sexual relationship between the two only on the promise of marriage. After about two years, the petitioner is said to have breached his promise when he talked to his family about the

marriage between the petitioner and the complainant. It is then, the complainant returned back to this country and registered the crime. He would admit that all the escapades between the complainant and the petitioner have taken place beyond the shores of the nation.

THE STATE:

6. The learned Additional State Public Prosecutor representing the 1st respondent would however refute the submissions in contending that the matter is still at the stage of investigation. The offence is clearly met in the complaint, as sexual relationship between the two appears to have happened on the promise of marriage. If the petitioner did not have the intention to marry, it would become a false promise of marriage and would attract the provisions of Sections 69 of the BNS. Therefore, investigation in such cases must be permitted. Both the learned counsel for the complainant and the State would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the

material on record. In furtherance whereof, the issue that crystallizes is:

“Does the breakdown of a consensual live-in relationship, allegedly accompanied by an unfulfilled promise of marriage, *ipso facto* constitute an offence under Section 69 of the BNS?”

CONSIDERATION:

8. The afore-narrated facts are all a matter of record. Therefore, they would not require reiteration, except skeletal reference to few dates. It is an admitted fact that the petitioner and the 2nd respondent met in Ireland and were in a relationship from May 2022 till sometime in June 2024. Therefore, it was a relationship for over two years. Several acts of the petitioner and the 2nd respondent, their squabbles, skirmishes in the relationship are all narrated in the petition, which would not become necessary to be noticed for consideration of the issue in the *lis*. By the time the petitioner met the complainant, the complainant was already married and had a 7 year old child. The marriage was said to be in

doldrums and the complainant had already registered a petition for divorce with her husband. The divorce also is said to have been granted in the month of August 2023. It is then the relationship between petitioner and the complainant deepened and the two began to live-in under the same roof. Thereafter, the relationship between the petitioner and the complainant is said to have turned sore and eventually ended. It is then the complainant comes back to India and tries to contact the petitioner. The petitioner being evasive leads the complainant to register a complaint on the shores of this nation.

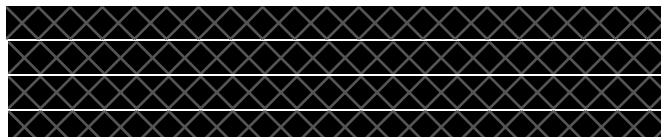
9. Since the entire issue has now sprung from the complaint so registered on 19-10-2024 by the 2nd respondent, I deem it appropriate to notice the complaint. It reads as follows:

THE COMPLAINT:

"To

The Station House Officer
Women P.S. Palasiya, Indore

Sub:



has bluffed me to establish Physical relationship complainant-Reg.

Respected Madam,

That I complainant xxxxxxxxxxxxxx and I am Indian National. I request you the following:-

1. That in February 2022 in Ireland, National University of Ireland I was the student studying Masters in Clinical Research Post-Graduation Course also I was doing waiter job as part time in Galemant Hotel. Here I met [REDACTED] he himself was in National University of Ireland doing Masters in International Management as student. He also was doing part time job in Galemont Hotel as Waiter.

2 I am married and mother of one child, I am 5 years elder to [REDACTED]. I am living away from my husband, for this [REDACTED] did not have any objection. I was residing with 3 women at this address 186, Tere lane, Hightra H91KNN2. After meeting [REDACTED] in March 2022 he told that he will marry me and established physical relations. In December 2022 [REDACTED] shifted in our house. He started living with me in my room. In June 2023 [REDACTED] use to say that anyhow after marriage we are going to live together. Therefore you leave your women friends and start to reside with me. He assured that very soon we will marry, like this I got into his trap. I agreed with [REDACTED] and started to reside in 14 Fairgreen House Fargreen Road 4910x29 Ireland. There [REDACTED] many times established physical relations with me. He again assured about marrying her.

3. Afterwards [REDACTED] pressured me take Divorce from my husband so that he can talk with his family members. In May 2022 I filed a Divorce case with mutual consent. This fact was known to [REDACTED]

4. When I continuously asking when you will marry me his reply was that once I obtain Decree then I will talk to my family members, I use to tell about marriage [REDACTED] use to say that very soon we will marry. Even after telling many times [REDACTED] did not talk with his family members.

5. While staying with [REDACTED] in Ireland in the month of March 2024 he used to fight for minor things and started shouting. He did not allow me to meet friends. He assaulted me.

6. On 02-08-2024 when I asked [REDACTED] about marriage [REDACTED] said that on 8-8-2024 he is going to India. After going there I will talk with my parents.

7. On 8-8-2024 when he was going to India then I asked for his phone for making a call then saw a message in the message box a girl by name Isha. He was telling not to worry I will talk in home about you, you are also coming to India after 4-5 days you can come to my house there we will talk with my parents.

8. When I arrived in India [REDACTED] never responded to my phone calls. Afterwards I with my mother and 2 friends came to Surathkal to meet [REDACTED]. On 18-8-2024 at address Chirag 06/66-2(1), behind Kudwas, Grandur Chiranthana Ashram, Surathkal, Mangalore, Karnataka and we stayed in Durga Hotel. at 12.30PM we went to his house and told his mother that we are staying in Durga Lodge, at about 3 p.m I, my mother and two friends went to Padmja Temple there [REDACTED] came and established physical relations and went away. At 3.30 p.m we went to his house we told his father about our relationship. He told that [REDACTED] is going to marry [REDACTED] named girl. He does not have any intention to marry you. He misbehaved with us and asked to go out of house when we were about to go then [REDACTED] came. He told us that he cannot marry me, you can do whatever want to do.

9. [REDACTED] bluffed me and established physical relationship. He did wrong act.

Therefore sir, it is requested that take to trouble for proper legal action.

Sd/-
Complainant
xxxxxxx"
(Emphasis added)

It is narrated that all the incidents of sexual escapades between the two have happened in Ireland on the alleged assurance of marriage. In May 2022 even before the relationship between the two could blossom, the complainant had filed for divorce on mutual consent from her husband. Therefore, the allegation in the complaint that the relationship between the petitioner and the complainant, led the complainant to file a divorce petition, is contrary to the facts. Divorce is granted later by the concerned Court on mutual consent would not mean that the petitioner is the reason for filing of the divorce petition. The petitioner first comes to India on 08-08-2024 and the complainant on 18-08-2024. The complainant is said to have contacted the petitioner only to receive pale replies or even no reply. The complainant further narrates that she indicated the relationship to the parents of the petitioner. Even then, nothing turned around. Therefore, the complaint comes to be registered. The complaint is lucid and vivid. The relationship between the two from December 2022, till the month of June, 2024 was on consensus at Ireland and never on the shores of this nation. Therefore, all that happened in Ireland between the two, which is

ostensibly on consensus is complained of, before the jurisdictional Police Station in Mangalore.

10. The complaint read in its entirety does not narrate coercion, deception at inception or force. It speaks of companionship, cohabitation, shared domesticity and consensual intimacy extending over 2 years. The complainant's marriage had already reached the point of legal dissolution before the live-in arrangement deepened. The intimacy occurred in Ireland, the cohabitation occurred in Ireland, the shared life occurred in Ireland. What has followed is not an allegation of violence, but an allegation of betrayal. Therefore, it is not a case of having sexual intercourse on deceit from the inception, it is trite that **"the law does not criminalize heart break"**.

11. **Time and again, the Apex Court has clarified that consensual relationships between adults cannot be retroactively criminalized, because one party withdraws from the relationship. A promise of marriage becomes "false" in law only when it is shown that the promise was a mere ruse, deceitful stratagem, never intended to be**

honoured. A subsequent change of mind, emotional incompatibility, familial opposition or mere reluctance does not transmute into criminal intent at inception. Jurisprudence is replete with the Apex Court consistently holding that consensual physical intimacy between adults, even if premised on expectation of marriage, does not become rape or its statutory equivalent unless, the promise was demonstrably false from the beginning.

JUDICIAL LANDSCAPE:

11.1. The Apex Court in the case of **DR. DHURUVARAM MURLIDHAR SONAR v. THE STATE OF MAHARASHTRA**¹ has held as follows:

"....

11. In *State of Karnataka v. M. Devendrappa* [*State of Karnataka v. M. Devendrappa*, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , it was held that while exercising powers under Section 482 CrPC, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It was further held as under : (SCC p. 94, para 6)

"6. ... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the

¹ (2019) 18 SCC 191

powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

... ..

23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get

their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. **They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."**

11.2. Later, the Apex Court in the case of **SHAMBHU KHARWAR v. STATE OF UTTAR PRADESH**² has held as follows:

"....

9. In *Pramod Suryabhan Pawar v. State of Maharashtra* [*Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] a two-Judge Bench

² (2022) SCC OnLine SC 1032

of this Court of which one of us was a part (D.Y. Chandrachud, J.), held in *Sonu v. State of U.P.* [*Sonu v. State of U.P.*, (2021) 18 SCC 517] observed that: (*Pramod Suryabhan Pawar case* [*Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC pp. 616-18 & 620, paras 12, 14, 16 & 18)

"12. This Court has repeatedly held that consent with respect to Section 375 IPC 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. ...

14. ... Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. ...

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. ...*

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.*"

(emphasis supplied)

...

...

...

11. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

12. The High Court, in the course of its judgment, has merely observed that the dispute raises a question of fact which cannot be considered in an application under Section 482CrPC. As demonstrated in the above analysis, the facts as they stand, which are not in dispute, would indicate that the ingredients of the offence under Section 376IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482CrPC on a completely misconceived basis."

11.3. In **XXXX v. STATE OF MADHYA PRADESH**³ the Apex Court holds as follows:

“ ”

9. While getting her statement recorded under Section 164CrPC, she admitted that she knew the appellant since 2017. On account of dispute with her husband, she was living with her parents. As she got acquainted with the appellant, they fell in love. In 2018, the appellant went to Maharashtra for job. However, he used to visit her home and take care of the complainant as well as her daughter. In 2019, the appellant assured the complainant that he will marry her in case she takes divorce from her husband who used to harass and beat her. For this reason, she divorced her husband and solemnised marriage with the appellant in a temple in January 2019. Thereafter, they started living together with her daughter born from the previous marriage. Despite assurance, the appellant did not solemnise court marriage. After marriage was solemnised in temple, treating the appellant as her husband, they both started leading a married life having physical relations from January 2019 till June 2020. The appellant treated the complainant as his wife. Thereafter, the appellant refused to respond to her calls and even marry her.

... ..

11. Further, in the FIR the complainant stated that she got divorce from her earlier husband on 10-12-2018. In the statement under Section 164CrPC, she stated that marriage between the appellant and the complainant was solemnised in a temple in January 2019. However, the date of divorce as claimed by the complainant is belied from the copy of the decree annexed with the appeal as Annexure P-9, where divorce by mutual consent was granted to the complainant and her husband vide judgment dated 13-1-2021. The aforesaid fact could not be disputed. Meaning thereby, the complainant besides the facts in the FIR and also in the statement under Section 164CrPC regarding her divorce from the earlier marriage, sought to claim that she had remarried with the appellant during subsistence of her earlier marriage.

³ (2024) 3 SCC 496

12. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10-12-2018. However, the fact remains that decree of divorce was passed only on 13-1-2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of Rs 1,00,000 to the prosecutrix through banking channel which was not returned back."

11.4. In **JASPAL SINGH KAURAL v. STATE OF NCT OF DELHI**⁴ the Apex Court has held as follows:

"....

13. At the outset, we refer to the ratio in *Naim Ahamed v. State (NCT of Delhi)* [*Naim Ahamed v. State (NCT of Delhi)*, (2023) 15 SCC 385] whereby this Hon'ble Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the appellant-accused, upon an assurance to marry. The prosecutrix, who was herself a married woman having three children, had continued to

⁴ (2025) 5 SCC 756

have such relationship with the appellant-accused, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, this Court had observed as under : (SCC pp. 398-99, paras 21-22)

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. *The prosecutrix being a married woman and the mother of three children was*

mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375IPC."

(emphasis supplied)

14. The decision in *Naim Ahamed v. State (NCT of Delhi)*, (2023) 15 SCC 385] is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon'ble Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section

375IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [Mahesh DamuKhare v. State of Maharashtra, (2024) 11 SCC 398 : 2024 SCC OnLine SC 3471]

15. Upon a bare perusal of the FIR and the charge-sheet, the following facts are clearly established:

15.1. The physical relationship between the appellant and Respondent 2 was consensual from the very beginning and cannot be said to be against the will or without the consent of the prosecutrix. Even if the case of the prosecutrix is accepted, there is no material on record to show that there was any dishonest inducement, or incitement on part of the appellant."

15.2. There is also no material on record, to establish an offence of criminal intimidation under Section 506IPC against the appellant. In fact, it is apparent from the conduct of the appellant, that he was acting in furtherance of the promise to marry. It is the own observation of the High Court, that the appellant had made a promise to marry Respondent 2 and was acting accordingly. The *mangalsutra* being prepared with the initials of the name of Respondent 2 complainant does reflect his intention and promise to marry. However, in the eventuality of a fall out or split between the parties, it cannot be said that the promise to marry was false, and the corresponding conduct dishonest.

15.3. There is also no element of criminality that can be accrued to the appellant, insofar as it is the own case of the prosecutrix, that she was in a relationship with the appellant, while being in a subsisting marriage. It is also hard to believe that the prosecutrix could have sustained a physical relationship for a prolonged period of five years [*Prashant v. State (NCT of Delhi)*, (2025) 5 SCC 764] , while being in a subsisting marriage, and even subsequently obtaining divorce to sustain the relationship. The prolonged period of the relationship,

during which the sexual relations continued between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship. [*Mahesh Damu Khare v. State of Maharashtra*, (2024) 11 SCC 398 : 2024 SCC OnLine SC 3471] The prosecutrix was thus, conscious and cognizant of the consequences of her actions, and had given her consent after an active and reasoned deliberation. [*Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903]”

11.5. In **SAMADHAN v. STATE OF MAHARASHTRA**⁵ the Apex Court has held as follows:

“....

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

⁵ 2025 SCC OnLine SC 2528

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.

...

....

...

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.

xxx

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 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)

"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)"

11.6. In **BATLANKI KESHAV (KESAVA) KUMAR ANURAG**

v. STATE OF TELANGANA⁶ the Apex Court has held as follows:

"... .."

25. In the chats which have been placed on record along with the additional documents, the *de-facto* complainant, who is referred to by the name 'Muffin', has admitted that she was manipulative and was trying to "get a green card holder". At one point of time, she also stated that it would not be difficult for her to trap the next one. In the very same breath, she mentions that she would not waste time with the accused appellant and needs to "invest on the next victim". She also mentions that she would irritate her victims to the extent that they dump her, and she could happily start with the next one. She also stated that she was using the accused appellant.

26. These chats depict the stark reality about the behavioral pattern of the *de-facto* complainant who appears to be having manipulative and vindictive tendency.

⁶ 2025 SCC OnLine SC 1258

27. Thus, in our opinion, the accused appellant was absolutely justified in panicking and backing out from the proposed marriage upon coming to know of the aggressive sexual behaviour and the obsessive nature of the *de-facto* complainant.

28. Hence, even assuming that the accused appellant retracted from his promise to marry the complainant, it cannot be said that he indulged in sexual intercourse with the *de-facto* complainant under a false promise of marriage or that the offence was committed by him with the *de-facto* complainant on the ground that she belonged to the Scheduled Castes/Scheduled Tribes community.

29. It is also relevant to mention here that in FIR No. 751 of 2021, the *de-facto* complainant has not even made a whisper about the accused appellant dumping her on the ground of her caste. Thus, apparently this allegation which has been set out in the subsequent FIR No. 103 of 2022 lodged almost after seven months is nothing but a sheer exaggeration which must be discarded.

30. Having considered the entirety of facts and circumstances as available on record, we are of the firm opinion that allowing prosecution of the accused appellant to continue in the impugned FIR No. 103 of 2022 would be nothing short of a travesty of justice in addition to being a gross abuse of the process of Court. The impugned FIR No. 103 of 2022 is nothing but a bundle of lies full of fabricated and malicious unsubstantiated allegations levelled by the complainant. The facts on record clearly establish the vindictive and manipulative tendencies of the complainant and these aspects have a great bearing on the controversy."

11.7. Again, in the case of **AMOL BHAGWAN NEHUL v. STATE OF MAHARASHTRA**⁷ the Apex Court has held as follows:

"... .."

8. Having heard both sides in this case and after carefully considering the material on record, the following attributes come to the fore:

- (a) Even if the allegations in the FIR are taken as a true and correct depiction of circumstances, it does not appear from the record that the consent of the Complainant/Respondent no. 2 was obtained against her will and merely on an assurance to marry. The Appellant and the Complainant/Respondent no. 2 were acquainted since 08.06.2022, and she herself admits that they interacted frequently and fell in love. The Complainant/Respondent no. 2 engaged in a physical relationship alleging that the Appellant had done so without her consent, however she not only sustained her relationship for over 12 months, but continued to visit him in lodges on two separate occasions. The narrative of the Complainant/Respondent no. 2 does not corroborate with her conduct.
- (b) **The consent of the Complainant/Respondent no. 2 as defined under section 90 IPC also cannot be said to have been obtained under a misconception of fact. There is no material to substantiate "inducement or misrepresentation" on the part of the Appellant to secure consent for sexual relations without having any intention of fulfilling said promise. Investigation has also revealed that the *Khulanama*, was executed on 29.12.2022 which the Complainant/Respondent no. 2 had obtained from her ex-husband. During this time, the parties were already in a relationship and the alleged incident had already taken place. It is inconceivable that the Complainant had engaged in a physical**

⁷ 2025 SCC OnLine SC 1230

relationship with the Appellant, on the assurance of marriage, while she was already married to someone else. Even otherwise, such promise to begin with was illegal and unenforceable *qua* the Appellant.

- (c) There is no evidence of coercion or threat of injury to the Complainant/Respondent no. 2, to attract an offence under section 506 IPC. It is improbable that there was any threat caused to the Complainant/Respondent no. 2 by the Appellant when all along the relationship was cordial, and it was only when the Appellant graduated and left for his hometown to Ahmednagar, the Complainant/Respondent no. 2 became agitated. We also cannot ignore the conduct of the Complainant/Respondent no. 2 in visiting the native village of the Appellant without any intimation, which is also unacceptable and reflects the agitated and unnerved state of mind of the Complainant/Respondent no. 2. For the same reason, the criminal prosecution against the Appellant herein is probably with an underlying motive and disgruntled state of mind.
- (d) There is also no reasonable possibility that the Complainant/Respondent no. 2 or any woman being married before and having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly³ to treat each breach of promise

to marry as a false promise and prosecute a person for an offence under section 376 IPC."

12.1. The Apex Court, in the case of **Dr. DHARUVARAM MURLIDHAR SONAR** *supra*, draws with unmistakable clarity, **the doctrinal line that separates rape from consensual intimacy, where two adults of their own volition, engage in consensual sexual relation over a sustained period, the subsequent refusal of the man to marry the woman, howsoever regrettable, does not, ipso facto, transmute such intimacy into the offence of rape as punishable under Section 376 of the IPC.**

12.2. The principle is reaffirmed in **SHAMBHU KHARWAR** *supra* where the Apex Court interdicted the **criminal process at the threshold holding that the relationship between the parties was purely consensual and accordingly quashed the crime as well as the charge sheet.**

12.3. In **SAMADHAN** *supra* the Apex Court **sounded a note of stern caution against the disquieting tendency of coloring**

failed relationships, with the hue of heinous crimes. The Apex Court holds that mere breakdown of a relationship between the consenting adults, cannot constitute rape nor can the criminal law be set into motion as a retaliatory instrument, merely because the relationship did not ultimately culminate in marriage.

12.4. Further, in **AMOL BHAGWAN NEHUL**, the Apex Court observes that **where the complainant is already married, the allegation of physical intimacy induced by promise of marriage stands on infirm grounds, for a promise which is ex-facie unenforceable, cannot in those circumstances, be elevated into a foundation of imputing criminality.**

12.5. In **BATLANKI KESHAV (KESAVA) KUMAR ANURAG** *supra* the **Apex Court** goes even further, on a perusal of contemporaneous chats, it found that the complainant had exhibited manipulative and vindictive tendencies and held that man backing out of marriage, even assuming such promise existed, cannot automatically attract the offence of

rape. Holding the prosecution to be malicious and fabricated, the Apex Court obliterates the proceedings against the accused.

12.6. In the light of the overwhelming majority of such decisions, the Apex Court has exercised its Constitutional and **inherent jurisdiction to arrest the criminal process, even at the stage of registration of the crime, where the allegation taken to their highest, disclose nothing beyond a consensual relationship subsequently turning sore.**

13. If the law elucidated by the Apex Court, is considered *qua* facts obtaining in the case at hand, what would unmistakably emerge is that, the investigation even, in such cases, must not be permitted to commence or continue, as the complaint herein, even if it is accepted in its entirety, does not *prima facie* disclose such fraudulent intention at inception, for it to become a crime under Section 69 of the BNS. The Apex Court, in all the afore-quoted judgments, was considering the offence punishable under Section 376(2)(n) – rape, being laid on the breach of promise of marriage.

The observations therein would clearly become applicable to the ingredients of Section 69 of the BNS as well – the offence alleged in the case at hand.

14. Additional materials placed before this Court indicate that the complainant has moved forward in life and entered into another relationship. While such developments are not determinative of guilt or innocence, they underscore the central reality that the subject case is a relationship that ran its course and ended. **The criminal law is not designed to be invoked as a salve for emotional rupture.** It is apposite to notice the postulates laid down by the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**⁸ wherein it is held as follows:

"....

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

⁸ **1992 Supp.(1) SCC 335**

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) **Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis supplied at each instance)

The Apex Court permits quashing at the stage of FIR where the allegations even if taken at face value, do not constitute an offence; the criminal proceeding is manifestly attended with *mala fides* and the continuation of proceedings would amount to abuse of process. The case at hand squarely falls within those categories. **If every broken relationship were to be clothed in the garb of criminality, the Courts would transform into forum of personal vendetta, rather than forums of justice.**

15. The criminal justice system an instrument of State power, it cannot be permitted to become a weapon in private disputes arising out of failed relationships. The facts, even if accepted in toto, disclose nothing beyond a relationship that did not culminate into matrimony. To permit investigation in

such circumstances would not advance justice, it would distort it.

16. Therefore, upon anxious consideration of facts, the complaint and the governing principle of law, this Court is of the considered view, that continuation of investigation even in Crime No.106 of 2024 would amount to an abuse of the process of the law and would occasion miscarriage of justice.

17. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is ***allowed.***
- (ii) FIR in Crime No.106 of 2024 registered against the petitioner before Mangalore Women Police Station, Mangalore and pending before the III JMFC Court, Mangalore stands quashed.

Pending application if any, also stand disposed, as a consequence.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:MJ