

Mahesh Damu Khare
v.
The State of Maharashtra & Anr.
(Criminal Appeal No. 4882 of 2024)
26 November 2024
**[B.V. Nagarathna and
Nongmeikapam Kotiswar Singh,* JJ.]**

Issue for Consideration

The High Court dismissed the petition filed u/s.482 of CrPC for quashing FIR registered u/ss.376, 420, 504 and 506 IPC holding, *inter alia*, that the offence under Section 376 of IPC is an offence against the society which would require further investigation into the matter and does not warrant interference.

Headnotes[†]

Penal Code, 1860 – s.376, 420, 504 and 506 – Complainant filed a complaint alleging that the appellant had cheated on her by forcibly engaging in sexual intercourse without her consent in his house and in the rented rooms from 2008 to 2017 by giving false promises of marriage, depositing fixed amount in her bank account and also promising to purchase a house for her – FIR was registered – Appellant sought to quash the said FIR, however, the petition was dismissed by the High Court:

Held: In the instant case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant – Making an allegation of non-fulfilment of promise to marry without undue delay by the promissee would, on the other hand, be an indicator of a false promise being made from the initial stage – In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false promises to marry her on the basis of which she also

*Author

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continued to have physical relationship with him – The longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact – The criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years – Such a prolonged continuation of physical relationship without demurral or remonstration by the female partner, in effect takes out the sting of criminal culpability and neutralises it – It appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years – In light of the aforesaid facts and circumstances, in the present case no *prima facie* case has been made out about commission of an offence of rape punishable under Section 376 IPC – Further, on perusal of the FIR it is also noted that no allegations of cheating have been made against the appellant to fall within the scope of Section 420 IPC nor of any of the offences under Sections 504 and 506 of the IPC – Therefore, under the circumstances, the appellant is entitled to the relief claimed for quashing the complaint/FIR. [Paras 25, 27, 28, 30, 34, 35]

Case Law Cited

State of Haryana and Ors. v. Bhajan Lal and Ors. [\[1992\] Supp. 3 SCR 735](#) : (1992) Supp 1 SCC 335; *Neeharika Infrastructure Private Limited v. State of Maharashtra & Ors.* [\[2021\] 4 SCR 1044](#) : (2021) 19 SCC 401; *Shambhu Kharwar v. State of Uttar Pradesh and Anr.* [\[2022\] 7 SCR 156](#) : 2022 SCC OnLine SC 1032; *Niam Ahmed v. State (NCT of Delhi)* [\[2023\] 1 SCR 1061](#) : 2023 SCC OnLine SC 89; *Deepak Gulati v. State of Haryana* [\[2013\] 6 SCR 544](#) : (2013) 7 SCC 675 – relied on.

R.P. Kapur v. State of Punjab [\[1999\] Supp. 1 SCR 121](#) : AIR 1960 SC 866 – referred to.

List of Acts

Protection of Children from Sexual Offences Act, 2012; Penal Code, 1860.

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False promise of marriage; Forcible sexual intercourse; Consent; Long consensual relationship; Misconception of fact; Quashing of FIR; Rape; Cheating; Harassment.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 4882 of 2024

From the Judgment and Order dated 12.02.2018 of the High Court of Judicature at Bombay in CRWP No. 5190 of 2017

Appearances for Parties

Ms. Mrunal Dattatraya Buva, Dhairyashil Salunkhe, Gunnam Venkateswara Rao, Advs. for the Appellant.

Ms. Yugandhara Pawar Jha, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Ms. Preet S. Phanse, Adarsh Dubey, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Nongmeikapam Kotiswar Singh, J.

Leave granted.

2. The present appeal has been filed challenging the order dated 12.02.2018 passed by the Bombay High Court in Criminal Writ Petition (CRWP) No. 5190 of 2017 by which the High Court dismissed the petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short "CrPC") by the present appellant seeking quashing of the FIR being CR No. 302 of 2017 dated 15.08.2017 filed by the complainant (Respondent no. 2 herein) registered with Kharghar Police Station, Navi Mumbai for offences punishable under Sections 376, 420, 504 and 506 of the Indian Penal Code, 1860 (in short "IPC") holding, *inter alia*, that the offence under Section 376 of IPC is an offence against the society which would require further investigation into the matter and does not warrant interference.

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3. The brief facts leading to the filing of the said Writ Petition as culled from the records may be stated as follows:
 - 3.1 The appellant claims to be a social worker since 1985 and is engaged in various socio-political activities, who provides help and assistance to the needy whenever sought. It was contended that in 2012 the appellant was approached by the complainant (Respondent no. 2) seeking help in resolving the issue of kidnapping of her elder daughter which he successfully accomplished. Thereafter, the complainant started visiting the office of the appellant and was regularly assisting in the socio-political works of the appellant. The appellant also on her request used to extend financial help for support and education of the children of the complainant. The complainant, however, continued to seek more financial assistance from the appellant which he could not afford any longer and accordingly, helped her to find employment.
 - 3.2 It is the case of the appellant that the complainant continued to seek more attention and financial help from the appellant, because of which the appellant tried to ignore her, to which she became aggressive and started issuing threats not only to the appellant but also to his family members to extort more money from the appellant which led to filing of several complaints against the complainant (Respondent no. 2) by the wife of the appellant. In all, five complaints were lodged with Nerul Police Station by the appellant, his wife and his office staff against the harassment tactics of the complainant for extorting money from the appellant. However, the complainant continued her aggressive, abusive behaviour towards the appellant and family members.
4. The appellant, to his shock, learnt later that a complaint was filed by Respondent no. 2 as a counter blast which was registered as FIR No. 302 of 2017 dated 15.08.2017 under Sections 376, 420, 504 and 506 of the IPC stating, *inter alia*, as follows:-
 - (i) The complainant was married in 1994 by performing Christian rituals out of which two daughters were born. Her husband died in the year 2003. Thereafter, she came to reside at Sarsole in Navi Mumbai and was looking for a job as she had no means of livelihood. While looking for a job she was introduced to the appellant who was also in need of a helper to look after his ailing wife.

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- (ii) Accordingly, she met the appellant in 2008. The appellant told the complainant that his wife had skin disease, thyroid problem and paralytic stroke and the complainant has to look after his wife at his own residence at Kharghar Sector 12, behind HDFC ATM.
- (iii) Accordingly, on the next day in the morning she went to the house of the appellant along with her daughter. It was alleged that the appellant was with his second wife Kalpana at home and the wife asked her daughter to sit with her and sent the complainant to the bedroom to massage the feet of the appellant and while massaging the appellant citing reasons of illness of both his wives, told her that he would marry her and thereafter, had sexual intercourse with her forcibly without her consent. Thereafter, the appellant continued to exploit her sexually many times again and again by giving false promises of marriage.
- (iv) According to the complainant, she worked in the house of the appellant for two months and thereafter, left the job since she got a private job at Belapur and as the wife of the appellant suspected a relationship between the appellant and the complainant. It was alleged that since the appellant did not want to lose her, the appellant arranged a rented room for the complainant at Sector 2, LIG Colony, Nerul and the appellant used to come every day to her house. After staying for about a year, the appellant arranged another rented room for the complainant at Shrivane, Nerul Sector 1, Navi Mumbai in December 2010, where the complainant was residing with her daughters. It was alleged that the appellant used to come to the complainant's house every day and had sexual intercourse with the complainant forcibly and without her consent by giving false promise of marriage.
- (v) It was also alleged that whenever the complainant asked him to marry her, he avoided the same on one pretext or other. Thereafter, the appellant avoided visiting her since March 2017 and he used to abuse and beat her when she asked for money for her daily needs. According to the complainant, he ended the relationship with her by informing her to do whatever she wanted and to forget the promise of marriage. Thereafter, she made several calls to the appellant as to why he was not coming, but the appellant did not receive her calls.

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- (vi) It was also alleged that on 05.07.2017, the first wife of the appellant named Kavita abused and bullied the complainant by making calls over her mobile phone and told her to earn her livelihood by making her daughter do business as her elder daughter did who had love marriage and ran away.
- (vii) Accordingly, the complainant (Respondent no. 2) filed the said complaint alleging that the appellant had cheated on her by forcibly engaging in sexual intercourse without her consent in his house at Kharghar Sector-12 and also in the rented rooms at Nerul Sector-2 and at Shirvane, Nerul from year 2008 to 2017 by giving false promises of marriage, depositing fixed amount in her bank account and also promising to purchase a house for her at Navi Mumbai.
5. Consequently, an FIR case was registered against the appellant who then moved the Session Court seeking anticipatory bail in CR No. 302 of 2017 in which he was granted an interim protection vide order dated 16.08.2017 and was ultimately granted anticipatory bail vide order dated 12.09.2017 by observing, *inter alia*, that the very fact that the complainant had indulged in sexual relations for a long period of 10 years goes to show that the sexual relation was not forcible but was consensual.
6. According to the appellant, the complainant being aggrieved by the grant of anticipatory bail to the appellant, lodged another FIR by making false allegations being FIR No. 319/2017 dated 05.10.2017 with Nerul Police Station against the appellant under Sections 354, 506 of the IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 alleging that the appellant had molested her daughter at her home on 30.12.2016 and on 25.01.2017 at 8 pm.
7. As against the aforesaid second FIR, the appellant again approached the Sessions Court, Thane to secure anticipatory bail in CR No. 319 of 2017 which was granted vide order dated 23.10.2017, in which the Sessions Court Judge observed that the complainant did not raise any complaint against the appellant immediately after the first or second incident and after 10 to 11 years she lodged the FIR and the second FIR was in respect of outraging the modesty of the complainant's daughter which occurred in December 2016 or January 2017 which could have been mentioned in the first FIR dated 15.08.2017.

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8. After the appellant was granted anticipatory bail in both the FIRs by the competent courts primarily on the ground that these allegations have been made belatedly, thus throwing doubt on the credibility of these allegations as it appears to be a case of consensual relationship, the appellant approached the Bombay High Court seeking quashing of the FIR being CR No. 302 of 2017 registered with Kharghar Police Station by filing Writ Petition No. 5190 of 2017 which, however, was dismissed by the High Court against which the present appeal has been preferred.
9. While dismissing the petition seeking quashing of the FIR, the High Court noted that:

"The petitioner herein denies having any relationship with the Respondent No.2 and it is the case of the petitioner that he has been roped in a false case by the Respondent No.2. In our view, those would be the aspects in respect of the investigation that would be carried out and the offence being one under Section 376 of the Indian Penal Code which is considered to be an offence against the society, we do not deem it appropriate to interfere in our writ jurisdiction. The reliance placed on the order passed by a Division Bench of this Court sitting at Nagpur does not further the case of the petitioner as the facts involved in the said case stand apart from the facts involved in the present case, as in the said case it appears that the accused had approached the Court on the ground that the relationship between the parties was consensual, such are not the facts in the instant case. The above Writ Petition is accordingly dismissed."

10. Ms. Mrunal Dattatraya Buva, learned counsel for the appellant submits that the High Court made an error in declining to quash the FIR by ignoring the aspect of consensual sex between the parties which is clearly evident from the factual matrix of the case which would take out the sting of criminal culpability attached to the offence of rape. It was submitted that if the above allegations made in the FIR were examined in the proper context, it would clearly indicate that the sexual relationship between the appellant and the complainant was on the basis of consent, and would not amount to forcible sexual act perpetrated by the appellant as alleged.

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According to the appellant, the complainant herself admits that she was in a relationship with the appellant since they met for the first time in 2008 which continued till 2017. Though it was alleged that the appellant had sexual relationship with her against her consent, it would be inconceivable that the appellant would force himself upon her for so many years without there being any protest or complaint from the side of complainant (Respondent no. 2). This behaviour of the complainant clearly shows that it was a consensual relationship and the allegation of rape was concocted only after the appellant refused to provide any further financial assistance to her or succumb to her demand of marrying her.

11. Though notice was served on complainant (Respondent no. 2), no one appeared on her behalf and only the State-respondent appeared and contested without filing any counter affidavit.
12. It was contended on behalf of the State-respondent that whether the said relationship was consensual or not is a matter of fact which will come out during the course of investigation and trial and it is not a fit case where this Court should intervene with the criminal process initiated against the appellant and consequently, the decision of the Bombay High Court in refusing to quash the FIR does not warrant interference.
13. In order to appreciate the rival contentions of the parties, it would be necessary to revisit the relevant laws.

As far as the scope of Section 482 of CrPC which has been invoked by the appellant for quashing the FIR is concerned, it is a saving clause which deals with the inherent powers of the High Court to pass any order as may be necessary to give effect to any order under the CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

14. Law relating to quashing of FIRs has already been well-settled as reiterated by this Court in the *State of Haryana and Ors. vs. Bhajan Lal and Ors.*¹ in which this Court held as below:

“**102. (1)** Where the allegations made in the first information report or the complaint, even if they are taken at their

1 [1992] Supp. 3 SCR 735 : (1992) Supp. 1 SCC 335

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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).

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(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.

15. It is to be noted that while considering these aspects, the Court does not have to go in detail by way of minute examination about the correctness or otherwise of the facts alleged and the Court has to examine the same by taking a *prima facie* view of the matter based on the materials on record and if on consideration of the factual matrix of the allegations, no *prima facie* case is made out of commission of any offence of which cognizance can be taken, the High Court would be within its power to intervene and quash any such complaint or FIR in exercise of the inherent power under Section 482 CrPC.

In this regard, one may also refer to the decision of this Court in *R.P. Kapur v. State of Punjab*,² wherein this Court while dealing with Section 561-A, the counterpart provision of Section 482 in the erstwhile Code, observed that the High Courts should be cautious in interfering with a criminal proceeding at the stage of investigation. However, there are certain cases where the court, to prevent the abuse of the process of any court or otherwise to secure the ends of justice can quash the criminal proceedings. The said cases of exceptions have been reiterated in the case of *Neeharika Infrastructure Private Limited v. State of Maharashtra & Ors.*,³ by stating as below:

2 [1999] Supp. 1 SCR 121 : AIR 1960 SC 866

3 [2021] 4 SCR 1044 : (2021) 19 SCC 401

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- "(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
- (ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.
- (iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

(emphasis supplied)

16. Having underscored the power of the High Court to exercise inherent power under Section 482 CrPC for quashing of FIR, we need to understand the scope of the offence under Section 375 IPC which deals with rape, punishable under Section 376 IPC. While the said

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Section 375 deals with various aspects of rape, in the present case, the allegation against the appellant is that the appellant had forced himself on Respondent No. 2 without her consent and engaged in sexual intercourse. What amounts to rape without a consent has been mentioned under Section 375 as follows:-

"375. Rape.—A man is said to commit "rape" if he—

- (a) *penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- (b) *inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- (c) *manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
- (d) *applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*

under the circumstances falling under any of the following seven descriptions—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another

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of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.”

17. In this regard, one may also refer to Section 90 of the IPC which deals with consent given either under fear or misconception. Section 90 provides that a consent is not a consent under the IPC if such a 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.

Section 90 IPC reads as follows:

“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...”

18. It is the case of the complainant that the appellant had engaged in sexual intercourse without her consent. She mentioned that there was a promise made by the appellant that he would be marrying her. Thus, the contention of the complainant was that she consented to have physical relationship with the appellant on the misconception of fact that he would marry her because of the promise made by the appellant that he would ultimately marry her.
19. Section 375 of the IPC clearly postulates that a person is said to have committed rape if he performs any of the sexual acts mentioned under sub-clauses (a), (b), (c) and (d) without the consent of the woman. As mentioned above, in terms of Section 90 of the IPC, if the consent is given under a misconception of fact, such a consent is no consent in the eyes of law and cannot be considered to be wilful and voluntary consent.

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20. Keeping this aspect in mind as to what amounts to consent with reference to Section 375 of the IPC, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in the case of ***Shambhu Kharwar v. State of Uttar Pradesh and Anr.***⁴ as follows:-

“11. In Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608, a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in Sonu @ Subhash Kumar v. State of Uttar Pradesh (2021) 18 SCC 517, observed that:

“12. This Court has repeatedly held that consent with respect to Section 375 of the 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

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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)

21. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in Niam Ahmed v. State (NCT of Delhi),⁵

“20. 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 law and the case

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fell under the Clause - Secondly of Section 375 IPC. 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 fulfill 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."

22. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.
23. 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 90 of IPC, 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

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consent. In this regard we may refer to the case of “[Deepak Gulati v. State of Haryana](#)”,⁶ in which it was held as follows:

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

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep

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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)

24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.
25. In the present case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant. Making an allegation of non-fulfilment of promise to marry without undue delay by the promissee would, on the other hand, be an indicator of a false promise being made from the initial stage. In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false promises to marry her on the basis of which she also continued to have physical relationship with him.
26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:
 - (i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

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- (ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.
- (iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.
- (iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.
- (v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.
27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.
- In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.
28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would

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marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstration by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.
30. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.
31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.
32. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.

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33. We, however, make it clear that our decision in this case and observations made are to be understood in the factual matrix before this Court. Every case must be decided on its own facts and circumstances, for we are dealing with human relationships and psychology which are dynamic and permeated with an array of unpredictable human emotions and sensitivities and hence, every decision relating to human relationships must be based on the peculiar facts and circumstances obtaining in the particular case.
34. In light of the aforesaid facts and circumstances and for the reasons discussed above, we are of the opinion that in the present case no *prima facie* case has been made out about commission of an offence of rape punishable under Section 376 IPC. Further, on perusal of the FIR it is also noted that no allegations of cheating have been made against the appellant to fall within the scope of Section 420 IPC nor of any of the offences under Sections 504 and 506 of the IPC.
35. In our opinion, allowing the criminal proceeding against the appellant in the facts and circumstances to continue, where no criminal liability can be attached, would amount to abuse of the process of court. Therefore, under the circumstances, we are satisfied that the appellant is entitled to the relief claimed for quashing the complaint/ FIR.
36. Consequently, the appeal is allowed and the impugned judgement and order dated 12.02.2018 passed by the Bombay High Court in Criminal Writ Petition (CRWP) No. 5190 of 2017 is set aside. Resultantly, the FIR being CR No. 302 of 2017 dated 15.08.2017 registered against the appellant with the Kharghar Police Station, Navi Mumbai under Sections 376, 420, 504 and 506 of the Indian Penal Code is quashed.
37. We also make it clear that quashing the FIR against the appellant will not be a bar to respondent no. 2 to seek any other remedy available under the law.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Ankit Gyan