

Sri Saurabh Kant vs The State Of Karnataka on 18 June, 2025

Author: S.R.Krishna Kumar

Bench: S.R.Krishna Kumar

- 1 -

NC: 2025:KHC:21007
CRL.P No. 12224 of 2024

HC - KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR
CRIMINAL PETITION NO. 12224 OF 2024 (482(Cr.PC) / 528(BNSS))

BETWEEN:

1. SRI. SAURABH KANT
S/O SRI. RAMAKANT SINGH
AGED ABOUT 31 YEARS
OCCUPATION: SENIOR QUALITY
ENGINEER IN
SIEMENS HEALTHINEERS
BANGALORE
R/AT FLAT NO.401,
BKVS SRI. GURU KRUPA
ANAND REDDY LAYOUT
BESIDE SRI. LAKSHMI SRINIVASA
P G FOR LADIES, 5TH CROSS
ELECTRONIC CITY PHASE 2
BENGALURU, KARNATAKA-560 100.

Digitally
signed by
GEETHA P G
Location:
HIGH
COURT OF
KARNATAKA

(BY SRI. NACHIKET JOSHI, ADVOCATE)

...PETITIONER

AND:

1. THE STATE OF KARNATAKA
SOUTH EAST WOMEN POLICE STATION
MADIVALA SUB-DIVISION
ADUGODI POLICE QUARTERS, ADUGODI

BENGALURU, KARNATAKA 560 030.
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA

-2-

NC: 2025:KHC:21007
CRL.P No. 12224 of 2024

HC-KAR

HIGH COURT BUILDING
BENGALURU-560 001.

2. MS. SHREEPARNA
D/O SRI. SHYAMAL DEY
AGED ABOUT 30 YEARS
R/AT 202, 8TH MAIN ROAD
ELECTRONIC CITY PHASE-2
BENGALURU, KARNATAKA 560 100.

...RESPONDENTS

(BY SRI. CHANNAPPA ERAPPA, HCGP FOR R1;
NOTICE TO R2 IS HELD SUFFICIENT VIDE ORDER DATED
11.03.2025)

THIS CRIMINAL PETITION FILED U/S 482 CR.P.C. (FILED U/S
528 OF THE BHARATHIYA NAGARIK SURAKSHA SAMHITHA (BNSS))
PRAYING TO QUASH THE FIR IN CR.NO.80/2024 (ANNEXURE-B)
REGISTERED BY RESPONDENT NO.1 I.E., SOUTH EAST WOMEN
POLICE STATION, BENGALURU WHICH IS PENDING ON THE FILE
OF THE LEARNED HON'BLE XXXIX ADDL. CMM COURT,
NRUPATUNGA ROAD AT BANGALORE, FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 417 AND 376 OF IPC, 1860
AGAINST THE PETITIONER, IN THE ENDS OF JUSTICE AND TO
PREVENT THE ABUSE OF THE PROCESS OF THE COURT.

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

-3-

NC: 2025:KHC:21007

HC - KAR

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, the petitioner has sought for the following relief:

"WHEREFORE it is prayed that, this Hon'ble court kindly be pleased to:

a. This Hon'ble Court may be pleased to quash the FIR in Crime No.0080/2024 (Annexure-B) registered by the Respondent No.1 i.e., South East Women Police Station, Bengaluru which is pending on the file of the Learned HON'BLE XXXIX ADDL. CMM COURT, NRUPATUNGA ROAD AT BANGALORE, for the offences punishable U/s.417, 376 of the Indian Penal Code, 1860 against the Petitioner, in the ends of justice and to prevent the abuse of the process of the court. b. Grant such other and further reliefs as this Hon'ble court deems fit considering the facts and circumstances of the case to meet the ends of justice."

2. Heard the learned counsel for the petitioner, learned HCGP for respondent No.1 and perused the material on record.

Respondent No.2/Defacto-complainant has remained absent and has not contested the petition.

NC: 2025:KHC:21007 HC-KAR

3. A perusal of the material on record will indicate that respondent No.2/defacto-complainant filed the instant complaint on 10.10.2024 which was registered against the petitioner/sole accused for offences punishable under Sections 376 and 417 IPC.

In the complaint, it is specifically contended that the petitioner had sexual intercourse with respondent No.2 on the false pretext/promise of marriage and subsequently did not marry her and thereby committed the aforesaid offences against respondent No.2. In this context, a perusal of the impugned complaint will indicate the same reads as under:

"Date: 16-10-2024 To, Sub Inspector of police, South East Women Police station, Adugodi, Bangalore-560030 From, Shreeparna, D/o Shyamal Dey, 30 years/ Kayasthe by Caste 202, 8th main, Electronic city-phase-2 Bangalore- Ph:9304617615 Sub: Complaint against Mr. Saurabh on cheating, fraud, tortured and false promises about marriage.

Respected Sir, NC: 2025:KHC:21007 HC-KAR Thanks for making me feel comfortable and giving me strength.

Myself Sriparna from basically from Asansol, Burdwan, West Bengal, I came to Bangalore in 2019 to work in an IT company Named Mphasis, Mahadevpura. I have mother, father and a brother. My mother Name Is Pratima, Father's Is shyamal, Brother is Subhojeet.

I am the elder one. This is to inform you that I have been into a relationship from 2018 with a guy named Saurabh Kant, when I was studying MCA in TI, we met through common friends in Kolkata. He was working in TCS, Kolkata. We fall in love, we really liked each other and we were serious about each other. He has assured me and committed to marriage from starting only and specifically in the month of Dec 2023. He told we both love each other and anyway we are going to be together (In fact I told him that we should do it after marriage) I feel he will definitely marry with me and so willingly we got intimated. His brother and sister in law met my family members as well. First time we got intimated in year April 2023 in Ananda Reddy layout with a commitment to marriage, he did it. Last time we got intimated was July/August 2023. So I too have a confidence on him. I was asking him to make me talk to his family, he said his father is ill (he is suffering from blood cancer) and his mother is not considering for marriage though I am trying my best. In Fact I told him, to do registry marriage as well, he mentioned that his father will get heart attack if someday he came to know that. He was on my feet one day sating that its better if my parents would have died earlier, I NC: 2025:KHC:21007 HC-KAR won't not have to face these consequences. After seeing him going through all this, I gave him time, to convince his family. I went to my hometown by August 2023, I was doing WFH. (Work From Home) Till Nov we were in contact, he sends me gifts, wishes me Diwali and all. When I continuously started forcing him to talk make his parents talk to me, he started pointing out finger on my character, on my parents finances and said that his father has certain demands to get fulfil in marriage. He humiliated me to that extend that I drop him a message stating that you are not in the mood of solving things between us and get married. After seeing my message he again called me and talk and told me I am going to my hometown will talk to my family, and will solve everything. Infact he told me that I am so much irritated from my family that think I should have make you pregnant so that my family don't left with an option and made me marry you.

After going to his hometown he completely stop talking to me I dropped messages, called him, no reply came. Suddenly one day(Feb 2024) I came to know he is engaged. Immediately I called him he said he has taken the decision, when I asked him what you were doing with me, are you with me to fulfil your desire, he again started pointing out fingers on my character. I asked my mother to call him he mentioned I have to do this for my family, because of my father, when my mother questioning him, he again started doing the same. I was into depression, anxiety, not

able to sleep properly, work, not sure what to do where to go.

NC: 2025:KHC:21007 HC-KAR I called him text him multiple times, he blocked me from everywhere. Finally when my father called him in the month of May, and asked him for his fiancée's family contacts, he said I will not give to whatever you want to do. Sir, with a lot of hope and expectations I came here, in seek of justice. I have messages. photographs further I will submit that to you. Please help me, my life and my happiness is in your hand sir. I have full faith on you.

Request you to keep my identity confidential, as it can hamper my future and my family.

Yours faithfully, Sriparna Dey Saurabh's Details:-

Saurabh S/o Ramkant Singh, Age: 32 Address: 401, BKVS Sri Guru Krupa, Ananda Reddy layout, Electronic city, Phase: 2, Bangalore Contact: 9946141431/6299020247 His Mother (Anitha Singh) Number-7004676099 Residential address: Flat no 303, Shivam Vihar Apartment, Kankarbagh, main Road, Opposite SBI, Shekpura, Patna.

Company Name: Seimens Healthineers Electronic City Phase 2 Team Name: AT Manager's Name: Anurag Sinha/Sumit Bhatnagar ¢£ÁAPÀ: 10.10.2024 gÀAzÀÄ 19.30 UÀAmÉUÉ |üAiÀiÁðzÀÄzÁgÀgÀÄ ¢ÄrzÀ zÀÆgÀ£ÄÄß ¥ÀqÉzÀÄ oÁuÁ ¢ÉÆ.£ÄA:80/2024 PÀ®A:417, 376 L|¹ CrAiÄÄ°è ¥ÄæPÀgÀt zÁR°¹zÉ."

4. As can be seen from the aforesaid complaint, respondent No.2 specifically contended that the petitioner is guilty NC: 2025:KHC:21007 HC-KAR of offences punishable under Sections 376 and 417 IPC inasmuch as he had consensual sexual relationship with her for a long time under the pretext / false promise of marriage during the period 2018 to 2024. Under identical circumstances, the Apex Court and this Court in several judgments have come to the conclusion that the breach of promise of marriage and having consensual sexual relationship pursuance to the same would not amount to commission of the aforesaid offences as held hereunder:

Amol Bhagwan Nehul Vs. The State of Maharashtra and Another (SLP(Crl.)No.10044/2024) "1. Leave granted.

2. This Appeal by special leave is directed against the Impugned Order dt. 28.06.2024 passed by the High Court of Judicature at Bombay in Crl. W.P. No. 3181 of 2023 whereby the Petition u/s 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of the Criminal Case C.R.No.490/2023 dt. 31.07.2023 for offences punishable u/s 376, 376(2)(n), 377, 504 & 506 of the Indian Penal Code (hereinafter "IPC") registered at Karad Taluka Police Station, Satara qua the Appellant was dismissed.

Vide an amendment to the Petition, the Appellant also challenged the chargesheet filed on 26.09.2023 and the proceedings in RCC no. 378/2023 pending before the Additional Sessions Judge, Karad.

3. The Criminal Case C.R. No. 490/2023 dt. 31.07.2023 at Police Station Karad Taluka, Dist. Satara was registered at the behest of a Complaint NC: 2025:KHC:21007 HC-KAR filed by the Complainant/Respondent no. 2 alleging that during the period 08.06.2022 till 08.07.2023, the Appellant forcibly had sexual intercourse with her on the false assurance of marriage. The Complainant/Respondent no. 2 who had been previously married, had obtained Khulanama from her ex-husband and had been residing with her 4- year-old son at her parental home in Kalegaon, Karkad Dist since 2021; while the Appellant, a 23- year-old student of Bachelor of Science (Agriculture) at Krishna College of Agriculture, Rethre BK, Taluka Karad District, Satara was residing as a tenant next door, with three other men since 25.05.2022. The sequence of events as recorded in the FIR 490/2023 dt. 31.07.2023 are as under:

3.1 The parties became acquainted on 08.06.2022, which turned into a friendship and they soon began interacting more frequently. The relationship blossomed into love, but it is stated that the Complainant/Respondent no. 2 repeatedly denied to make physical relations with the Appellant.

3.2 It is alleged the case of the Complainant that in July 2022, the Appellant had entered the house of the Complainant/Respondent no. 2 at night, and said that once she obtains divorce from her husband, the Appellant would instantly marry her and on this pretext had sexual intercourse with her, despite her denial. It is stated that since then, the parties continued meeting outside and having meals together; however later on 21.09.2022 on the occasion of the Appellant's birthday, when the Complainant/Respondent had visited the Rajyog Lounge, Varunji Phata, Airport Karad, the Appellant again had sexual intercourse with her on the assurance of marriage.

Thereafter, the Appellant allegedly borrowed money from the Complainant/Respondent no.2 on

- 10 -

NC: 2025:KHC:21007 HC-KAR various occasions & used her car, Hyundai Verna No. MH-12-HZ-9559 for his personal use.

3.3 In January 2023, the parties visited Pushkar Lodge, Ogalewadi, Karad, where the Appellant told the Complainant that he had not informed his family about their relationship, however, he would marry her once her divorce was finalized. Allegedly, despite her objection, the Appellant on this assurance of marriage, again had sexual intercourse with the Complainant/Respondent no. 2 and there is a specific allegation that he committed unnatural sex with her. It is alleged that soon thereafter, the Appellant had reduced his interactions with the Complainant/Respondent no. 2, did not answer her phone calls and left for his hometown at Ahmednagar.

3.4 On 08.07.2023, the Complainant/Respondent no. 2 visited his native village in Ahmednagar and met his parents and other relatives, who refused to marry the Appellant with Complainant/Respondent no. 2 as they belonged to different religions. Allegedly, when the Complainant refused to leave, the parents of the Appellant, his brother and his uncle pushed her aside by beating and abusing her. The Complaint dt. 31.07.2023 was registered after 23 days of the alleged incident at PS Taluka Karad, Dist. Satara.

4. The Appellant on the other hand, has narrated the sequence differently, stating that during the alleged period of incidence, when he had been assigned a program at Village Kalegaon, Tq. Karad. Dist. Satara for five months, he became acquainted with the Complainant/Respondent no. 2 as his neighbor. The Appellant has denied the allegations of having forced sexual intercourse with the Complainant/Respondent no. 2 on the assurance of marriage, and stated that it was in-fact the

- 11 -

NC: 2025:KHC:21007 HC-KAR Complainant/Respondent no. 2 who had approached him with proposals and would regularly visit his college, which even led to grievances raised with the college faculty. Vide a written Complaint dt. 24.07.2023 with the Police Inspector, Karad Taluka PS Satara, the father of the Appellant has alleged that the Complainant/Respondent no. 2 had been harassing his son & had taken him to different lodges against his will and had threatened to implicate him in false rape cases, if he refused to marry her. A Non-Cognizable Offence Information Report (NCR) dt. 24.07.2023 had been registered pursuant to a threatening phone call received on 22.07.2023 at 10:30 pm in the night, on the Appellant's mobile number from another mobile, allegedly threatening that she will beat him by entering his house and destroy his family.

5. Pursuant thereto that the FIR had been maliciously registered against him and that no prima-facie case u/s 376, 376(2)(n), 377, 504 & 506 IPC could be made out against him, the Appellant sought anticipatory bail from the Additional Sessions Judge, Karad, which was granted vide Order dt. 23.08.2023. The Additional Sessions Judge, while granting bail to the Appellant made the following remarks:

"9. In this backdrop the point cannot be side lined that the victim is matured to understand the significance and morality to which she is consenting. The prosecutrix who is major lady gives consent even on any of the aforesaid assumption and she had sexual intercourse with applicant/accused, she will be under all circumstances and in all respect considered to be a consenting party. This coupled with the fact that day after day, week after week and month after month, this arrangement continued until the day of reckoning when she complained that promise of marriage is not fulfill or that all this while she was

- 12 -

NC: 2025:KHC:21007 HC-KAR being fed up of this false assurance. Whatever be the worth of promise or assurance, in law informant is deemed to have given consent on

her own accord as far as sexual intercourse is concerned. When two young male and female having attained the age of discretion get attracted to each other and due to emotional and passionate attachment succumbed to temptation of sexual relationship then such mental and voluntary participation does not come in the way of granting bail. Hence, accused is entitled for pre-arrest bail. The apprehension shown by prosecution will be safeguarded by imposing conditions....."

6. The Appellant then preferred Crl. W.P. No. 3181 of 2023 seeking quashing of the C.R. No. 490/2023 dt. 31.07.2023 & the proceedings emanating therefrom before the High Court of Judicature at Bombay, and in the meanwhile, the investigation culminated into a charge-sheet 26.09.2023 before the Additional Sessions Judge, Karad.

7. The learned counsel for the Appellant contends that the High Court has erred in dismissing the Petition u/s 482 CrPC insofar as the criminal proceedings in the present case constitute an abuse of process of law, and is well within the categories as contemplated by this Court in State of Haryana Vs Bhajan Lal. It is argued that the allegations of forcible sexual assault and unnatural sex are highly improbable as there is no medical evidence to adduce that forcible sexual assault and unnatural sex had been committed upon the Complainant/Respondent no. 2 and that allegations of rape are unsustainable as the relationship between the parties being two mature adults was purely consensual in nature. It is argued that the captioned FIR is registered after a delay of 13 months from the date of the alleged incident, which is considerable to cast doubt on the veracity of the

- 13 -

NC: 2025:KHC:21007 HC-KAR allegations made by the Complainant/Respondent no. 2, especially when she sustained her relationship with the Appellant since the alleged incident.

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 1992 Supp (1) SCC 335 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

- 14 -

NC: 2025:KHC:21007 HC-KAR taken place. It is inconceivable that the Complainant had engaged in a physical 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

- 15 -

NC: 2025:KHC:21007 HC-KAR 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 folly to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.

10. As demonstrated hereinabove, the ingredients of the offence under Sections 376 (2)(n) or 506 IPC are not established. The present case squarely falls under categories enumerated in Para 102(5) & 102(7) as identified by this Court in State of Haryana Vs Bhajan Lal (supra) for the exercise of

powers u/s 482 CrPC by the High Court so as to prevent the abuse of process of law. Para 102 reads as under:

"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 have given 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 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.

- 16 -

NC: 2025:KHC:21007 HC-KAR (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

- 17 -

NC: 2025:KHC:21007 HC-KAR wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. Taking into consideration that the Appellant is just 25 years of age, and has a lifetime ahead of him, it would be in the interest of justice that he does not suffer an impending trial and, therefore, the proceedings emanating from C.R. No. 490/2023 dt. 31.07.2023 are quashed at this stage itself.

12. Consequently, the Appeal is allowed and the Impugned Order dt. 28.06.2024 passed by the High Court of Judicature at Bombay in Crl. W.P. No. 3181 of 2023 is set aside. Accordingly, C.R. No. 490/2023 dt. 31.07.2023 registered at Karad Taluka Police Station, Satara and proceedings emanating therefrom in RCC no. 378/2023 pending before the Additional Sessions Judge, Karad are quashed, and Appellant is discharged. Bail bonds, if any, also stand cancelled.

13. Pending applications, if any, stand disposed of."

Shivadhanush & Ors. Vs. State of Karnataka & Anr. (NC:2024:KHC:44797) The petitioners are before this Court calling in question the crime registered in Crime No.140 of 2023 and charge sheet bearing No.13 of 2024 for offences punishable under Sections 376, 417 and 504 of the IPC.

2. Facts in brief, germane, are as follows:

Before embarking upon consideration of the issue on its merit, I deem it appropriate to notice the relationship between the protagonists in the alleged episode of crime. The 1st petitioner and the 2nd respondent are said to be in a relationship.

- 18 -

NC: 2025:KHC:21007 HC-KAR Petitioners 2, 3, 4, 5, and 6 are accused 2 to 6, they are the family members of the 1st petitioner/accused No.1. The 2nd respondent is the complainant. The 1st petitioner is an employee working in the office of the sub-registrar at Indiranagar, Bangalore. He gets embroiled in a crime in Crime No.140 of 2023 for it having been registered by the 2nd respondent. The gist of the complaint is that, the 1st petitioner and the complainant were known to each other for 7 years and they were also said to be in love. The friendship blossomed into relationship and the relationship led to engagement of the 1st petitioner with the 2nd respondent/complainant on 28-11-2021. Before and after the engagement, it is the averment in the complaint that they have had physical relationship as well. The engagement did not result in marriage.

3. On the score that the 1st petitioner has had physical relationship with the complainant on the promise of marriage and the relationship was for over 7 years, the 1st petitioner has breached the promise of marriage, as the engagement did not result in marriage, crime comes to be registered for

offence of rape and cheating in Crime No.140 of 2023. The police, after investigation, file a charge sheet against all the petitioners, the 1st petitioner and other members of the family. They are arraigned as accused Nos.1 to 6. Filing of the charge sheet is what has driven these petitioners to this Court in the subject petition.

4. Heard Smt Sadhana S Desai, learned counsel appearing for petitioners, Sri B N Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Avishkar, learned counsel appearing for respondent No.2.

5. The learned counsel for the petitioner would vehemently contend that the relationship between

- 19 -

NC: 2025:KHC:21007 HC-KAR the 1st petitioner and the 2nd respondent was consensual, it was not for one year, but they knew each other for 7 years, got engaged on 28-11-2021 and due to skirmishes between the members of the family of the complainant and the 1st petitioner, the engagement broke. But between the date of engagement and its break, the complainant and the petitioner have gone around to several places and have had physical relationship. Therefore, the learned counsel would submit that the consent of the complainant for a consensual act is implicit throughout. It is her submission that the consent cannot be dubbed as, misconception of fact or forcibly taken. She would contend that such acts would not amount to an offence of rape and the offence of cheating also cannot be laid on breach of promise of marriage. She has placed reliance upon several judgments of the Apex Court and that of High Court of Kerala, all of which would bear consideration qua their relevance in the course of the order.

6. Per-contra, the learned counsel appearing for the 1st respondent/State and the 2nd respondent/complainant in unison would contend that consent is taken of the complainant to have physical relationship on promise of marriage, which was never the intention of the 1st petitioner. Therefore, the two would submit that it is a false promise of marriage and would submit that the charge sheet is filed after investigation and it is for the petitioners to come out clean in a full blown trial.

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

8. The afore-narrated facts are not in dispute. The 1st petitioner and the 2nd respondent are admittedly known to each other since 2017 i.e., 7 years prior to the registration of the crime. The relationship having gone wrong on alleged breach of

- 20 -

NC: 2025:KHC:21007 HC-KAR promise of marriage, the complainant registers a complaint. Since the entire issue has now triggered from the complaint, I deem it appropriate to notice the gist of the complaint, as found in column No.10 of the FIR, it reads as follows:

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What is discernible from the complaint is that the complainant and the 1st petitioner are known for 7 years. They were in love. The love blossomed into relationship; relationship blossomed into betrothal; betrothal blossoms into a ceremony on 28-11-2021- a betrothal ceremony. After the ceremony bouts of physical relationship takes place, marriage is breached on account of both the families not agreeing on several terms and conditions. The complainant then leaves the 1st petitioner and makes effort to get married to someone else. The marriage of the complainant did not fructify and therefore, a complaint comes to be registered that the 1st petitioner and his family members have cheated the complainant, for having denied consent to marriage and insofar as the 1st petitioner is concerned, the allegation is that, he has had sexual relationship on the score of

promise of marriage and has breached it, therefore, it amounts to ingredients of Section 375 of the IPC, for it to become an offence under Section 376 of the IPC - rape. The police, after investigation, have filed a charge sheet. Summary of the charge sheet, as obtaining in column No.17, reads as follows:

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- 22 -

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- 23 -

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What would unmistakably emerge from the reading of the complaint and the charge sheet in juxtaposition would be, that consensual acts between the two, leads to a betrothal ceremony, the engagement breaks and crime emerges, all of which on consensual acts of both the 1st petitioner and

the complainant who are said to have known to each other and in a relationship for 7 years. Whether this would become a crime for the afore-quoted offences or the consent was on a misconception of fact or the promise of marriage was false, need not detain this Court for long or delve deep into the matter. The consent of a woman on a promise to marry is always an enigma, apt it would be to refer, to a judgment of a Division Bench of the High Court of Kerala in the case of RAMACHANDRAN V. STATE OF KERALA. The Division Bench has held as follows:

" "

Understanding the 'consent' of a woman on a promise to marry:

6. The consent of a woman on a promise to marry is an enigma for the prosecution to prove.

Consent refers to the state of mind of both parties in an act. In a sexual act, if both have understood the nature of the sexual relationship, consent is implicit in such a relationship. While considering the relationship, the Court will have to weigh the position of the accused to control the woman. It is to be remembered that the statutory provisions of the offence of rape as understood in the Penal Code, 1860, is not gender neutral. A woman, on a false promise of marrying and having sexual relationship with a man, with the consent of the latter obtained on such false promise, cannot be punished for rape. However, a man on a false promise of marrying a woman and having sexual relationship with the woman would lead to the prosecution's case of rape. The law, therefore, creates a fictitious assumption that

- 24 -

NC: 2025:KHC:21007 HC-KAR the man is always in a position to dominate the will of the woman. The understanding of consent therefore, has to be related to the dominant and subordinate relationship in a sexual act.

7. Section 375 of the IPC states that a man is said to commit rape if he has had any form of sexual intercourse without the consent of a woman. Explanation 2 to Section 375 refers to the form of expression of 'consent'. It is appropriate to refer to explanation 2 which reads thus:

"Explanation 2 : Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity."

8. There cannot be any room for doubt in this case as to the consent of PW1 for having sexual intercourse with the accused. PW1 referred to three incidents of sexual intercourse. First of such incidents happened in a lodge. She did not raise any complaint immediately thereafter. Again, she

had sexual intercourse at the residence of the accused. The third incident happened at her own house where also, she did not raise any complaint. According to her, she was promised by the accused that he would marry her. She also deposed about proposing the marriage at the Manarcaud Temple. But no ceremonies were conducted to establish legal marriage. She approached the Chief Judicial Magistrate, Kottayam, with a complaint. This was forwarded to the police for investigation. The police registered an FIR on 18/11/2014.

Consent on misconception of fact:

- 25 -

NC: 2025:KHC:21007 HC-KAR

9. Section 90 of IPC refers to a consent as not consent intended by any provisions of the Penal Code, 1860. Section 90 reads thus:

"90. Consent known to be given under fear or misconception.--A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.--if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.--unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

10. We shall now advert to some of the precedents before considering the point of guilt of the accused in this case. In Pramod Suryabhan Pawar v. State of Maharashtra [(2019) 9 SCC 608], the Apex Court distinguished sexual relationship based on false promise to marry and a breach of promise to marry. The Apex Court held that the offence of rape is not constituted when it was only a breach of promise to marry. The false promise of marriage is explained as a promise not given in good faith, with no intention of being adhered to at the time it was given. In Anurag Soni v. State of Chhattisgarh [(2019) 13 SCC 1] on a similar line, the Apex Court, noting that the accused had no intention to marry the prosecutrix, held that engaging in a physical relationship on the pretext of marriage, fell in the category of rape. In Deepak Gulati v. State of Haryana [(2013) 7 SCC 675] the Hon'ble Supreme Court distinguished rape and consensual sex and held that "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

- 26 -

NC: 2025:KHC:21007 HC-KAR fide motives and made a false promise to this effect only to satisfy his lust. As the latter falls within the ambit of cheating or deception." In Dhruvaram Murlidhar Sonar (Dr.) v. State of Maharashtra [2019 (1) KHC 403], the Apex Court held that if the accused had

not made a promise with the sole intention to seduce the prosecutrix to indulge in sexual act, such an act would not amount to rape. In *State of Uttar Pradesh v. Naushad* [(2013) 16 SCC 651] again the Hon'ble Supreme Court held that the consent of the victim obtained by the accused by giving false promise of marrying her would amount to committing rape.

11. The false promise of marriage refers to the state of mind of the accused. The point of guilt is relatable to the state of mind of the accused at the time of committing the act of sex. If the accused had no real intention to marry, it can be easily concluded that the consent of the victim is a misconception of fact. The accused might have had intention to marry but he was not sure whether the marriage would take place or not. If the accused had not disclosed full information to the prosecutrix regarding the factors which would hamper or hinder the impending marriage with her, can the Court hold that sexual autonomy had been violated or not? Had the accused disclosed information about the chances of marriage, would she have consented? If there was no full disclosure of factors that could have a bearing on the consent of the woman, can we hold that such cases fall in the category of breach of promise? We need to discuss this in detail."

(Emphasis supplied) The Division Bench of the High Court of Kerala was following the judgments rendered by the Apex Court, on the issue, rendered from time to time and holds that such acts on consensus would not amount to an offence of rape.

- 27 -

NC: 2025:KHC:21007 HC-KAR

9. It now becomes germane to notice the judgments of the Apex Court. The Apex Court has delineated the inter-play between the offence of rape and a consensual sexual relationship, both on the false promise of marriage, and promise of marriage. Therefore, a deeper delving into the issue becomes unnecessary, suffice to quote the judgments of the Apex Court rendered over the years. The Apex Court in the case of *PRAMOD SURYABHAN PAWAR v. STATE OF MAHARASHTRA* has drawn distinction between rape and consensual sexual relationships. While delineating inter-play between promise of marriage and allegation of rape, the Apex Court has held as follows:

"....

14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. 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. In *Anurag Soni v. State of Chhattisgarh* [*Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509], this Court held:

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix

gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

- 28 -

NC: 2025:KHC:21007 HC-KAR Similar observations were made by this Court in Deepak Gulati v. State of Haryana (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (Deepak Gulati):

"21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;"

15. In Yedla Srinivasa Rao v. State of A.P. (2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] the accused forcibly established sexual relations with the complainant. When she asked the accused why he had spoiled her life, he promised to marry her. On this premise, the accused repeatedly had sexual intercourse with the complainant. When the complainant became pregnant, the accused refused to marry her. When the matter was brought to the panchayat, the accused admitted to having had sexual intercourse with the complainant but subsequently absconded. Given this factual background, the Court observed:

"10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs 1, 2 and 3 and before the panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfill the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent."

- 29 -

NC: 2025:KHC:21007 HC-KAR

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24) "21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

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

- 30 -

NC: 2025:KHC:21007 HC-KAR uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(emphasis supplied)

17. In Uday v. State of Karnataka, (2003) 4 SCC 46: 2003 SCC (Cri) 775] the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors : (SCC p.58, para 25) "25. There is yet another difficulty which faces the prosecution in

this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from

- 31 -

NC: 2025:KHC:21007 HC-KAR members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married."

(emphasis supplied)

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

10. The Apex Court, a little later in the case of DHARUVARAM MURLIDHAR SONAR (supra), while

- 32 -

NC: 2025:KHC:21007 HC-KAR following the earlier judgment of the Apex Court in the case of UDAY v. STATE OF KARNATAKA reported in (2003) 4 SCC 46 and DEELIP SINGH v. STATE OF BIHAR reported in (2005) 1 SCC 88, has held as follows:

"18. In Uday v. State of Karnataka (2003) 4 SCC 46 : 2003 SCC (Cri) 775, this Court was considering a case where the prosecutrix, aged about 19 years, had given consent

to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus : (SCC pp. 56-57, paras 21 & 23) "21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

- 33 -

NC: 2025:KHC:21007 HC-KAR ***

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

19. In *Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253], the Court framed the following two questions relating to consent : (SCC p. 104, para 30) (1) Is it a case of passive

submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in? (2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February 1988, the accused forcibly

- 34 -

NC: 2025:KHC:21007 HC-KAR raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.

20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus: (Deelip Singh v. State of Bihar, (2005) 1 SCC 8 : 2005 SCC (Cri) 253], SCC p. 106, para 35) "35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father

- 35 -

NC: 2025:KHC:21007 HC-KAR and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] at para 24 come to the aid of the appellant."

21. In *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The

- 36 -

NC: 2025:KHC:21007 HC-KAR Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

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

- 37 -

NC: 2025:KHC:21007 HC-KAR 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."

(Emphasis supplied) The Apex Court, in the afore-quoted judgment, has considered the entire spectrum of the law on the issue while following the judgment in the case of DR.DHRUVARAM MURALIDHAR SONAR V. STATE OF MAHARASHTRA reported in (2019)18 SCC 191 and had obliterated the proceedings qua the accused.

10. Later to the judgment so rendered by the Apex Court in the case of PRAMOD SURYABHAN PAWAR , the Apex Court in the case of SHAMBHU

- 38 -

NC: 2025:KHC:21007 HC-KAR KHARWAR v. STATE OF UTTARPRADESH has held as follows:

"....

7. The parameters governing the exercise of the jurisdiction of Section 482 of CrPC are well-settled and have been reiterated in a consistent line of decisions of this Court. In Neeharika Infrastructure v. State of Maharashtra, a three Judge Bench of this Court which one of us was a part of (D.Y. Chandrachud J.), reiterated the parameters laid down in R.P. Kapur v. State of Punjab and State of Haryana v. Bhajan Lal and held that while the Courts ought to be cautious in exercising powers under Section 482, they do have the power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence. The Court does not enter into the merits of the allegations or trench upon the power of the investigating agency to investigate into allegations

involving the commission of a cognizable offence.

8. In Bhajan Lal (supra) this Court formulated the parameters in terms of which the powers in Section 482 of CrPC may be exercised. While it is not necessary to revisit all these parameters again, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

"102.(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).

[...] (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the

- 39 -

NC: 2025:KHC:21007 HC-KAR 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."

9. In Dhruvaram Murlidhar Sonar v. State of Maharashtra, a two Judge Bench of this Court while dealing with similar facts as the present case reiterated the parameters laid down in Bhajan Lal (supra) held that:

"13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

(emphasis supplied)

10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

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

-

[...] under the circumstances falling under any of the following seven descriptions
Firstly ...

Secondly. - Without her consent. [...] Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

- 40 -

NC: 2025:KHC:21007 HC-KAR Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxx

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

11. In *Pramod Suryabhan Pawar v. State of Maharashtra*,⁷ 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*,⁸ 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

- 41 -

NC: 2025:KHC:21007 HC-KAR 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)

12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the

- 42 -

NC: 2025:KHC:21007 HC-KAR marriage and after the grant of divorce by mutual consent.

13. 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 376 IPC. 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 375 IPC 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.

14. 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 482 of CrPC. 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 376 IPC were not established. The High Court has, therefore, proceeded to dismiss the application under Section 482 of CrPC on a completely misconceived basis.

15. We, accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 5 October 2018 in application u/s 482 No 33999 of 2018. The application under Section 482 of CrPC shall accordingly stand allowed. The Case Crime No 11 of 2018 registered

- 43 -

NC: 2025:KHC:21007 HC-KAR at Police Station Rasra, District Ballia, charge- sheet dated 23 April 2018 in the aforementioned case and the order dated 24 May 2018 in Criminal Case No 785 of 2018 in the Court of the Addl. Chief Judicial Magistrate (First), Ballia taking cognizance of the charge-sheet shall accordingly stand quashed."

(Emphasis supplied)

11. In yet another judgment, the Apex Court in the case of MANDAR DEEPAK PAWAR V. STATE OF MAHARASHTRA, has held as follows:

"

3. The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.

4. The facts are so glaring as set out aforesaid by us that we have no hesitation in quashing the FIR dated 16.12.2016 and bringing the proceedings to a close. Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself.

5. We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled "Pramod Suryabhan Pawar v. State of Maharashtra & another" where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the

- 44 -

NC: 2025:KHC:21007 HC-KAR context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.

(Emphasis supplied)

12. Further, the Apex Court, again in the case of *NAIM AHAMED v. STATE (NCT OF DELHI)*, delineating what would be false promise of marriage and a promise of marriage, has held as follows:

"....

10. It would be germane to note that the basic principles of criminal jurisprudence warrant that the prosecution has to prove the guilt of the accused beyond reasonable doubt by leading cogent evidence, however, considering the ethos and culture of the Indian Society, and considering the rising graph of the commission of the social crime - 'Rape', the courts have been permitted to raise a legal presumption as contained in Section 114A of the Indian Evidence Act. As per Section 114A, a presumption could be raised as to the absence of consent in certain cases pertaining to Rape. As per the said provision, if sexual intercourse by the accused is proved and the question arises as to whether it was without the consent of the woman alleged to have been raped, and if she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

11. It cannot be gainsaid that a consent given by a person would not be a consent as intended by any Section of the Penal Code, 1860, if such consent was given by the person under the fear of injury, or under a misconception of fact as contemplated in Section 90 IPC. Further, Section 375 also describes certain acts which if committed by the accused under the circumstances mentioned therein, as the commission of 'Rape', even though committed with the consent of the prosecutrix. In our opinion, the expression "misconception of fact"

contained in Section 90 IPC is also required

- 45 -

NC: 2025:KHC:21007 HC-KAR to be appreciated in the light of the Clauses - contained in Section 375 IPC, more particularly the Clauses - Thirdly, Fourthly and Fifthly thereof, when the accused is charged for the offence of 'rape'. The circumstances described in the said three Clauses are wider than the expression "misconception of fact", as contemplated in Section 90 of IPC. Section 375 describes seven circumstances under which the 'rape' could be said to have been committed. As per the Clause - Thirdly, a rape could be said to have been committed, even with her consent, when the consent of the prosecutrix is obtained by putting her or any person in whom she is interested in fear of death or of hurt. As per the Clause - 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; and as per the Clause - Fifthly, with her consent when at the time of giving the consent, the prosecutrix by reason of unsoundness of mind or intoxication or the administration of stupefying or unwholesome substance by the accused or through another, she is unable to understand the nature and consequences of that to which she gives consent. Thus,

apart from the prosecutrix being under the misconception of fact as contemplated in Section 90, her consent would be treated as 'no consent' if she had given her consent under any of the circumstances mentioned in Section 375 of IPC.

12. The exposition of law in this regard is discernible in various decisions of this Court, however the application of such law or of such decisions would depend upon the proved facts in each case, known as legal evidence. The ratio laid down in the judgments or the law declared by this Court do provide the guidelines to the judicial

- 46 -

NC: 2025:KHC:21007 HC-KAR mind of the courts to decide the cases on hand, but the courts while applying the law also have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused.

13. A reference of some of the decisions of this Court dealing with the different dimensions and angles of the word 'consent' in the context of Section 90 and Section 375 would be beneficial for deciding this appeal.

14. In Uday v. State of Karnataka⁴, the prosecutrix aged about 19 years had given her consent for having a sexual intercourse with the accused with whom she was deeply in love, and it was alleged by the prosecution that the prosecutrix continued to meet the accused as the accused had given her a promise to marry her on a later date. The prosecutrix became pregnant and the complaint was lodged on failure of the accused to marry her. This Court while holding that under the circumstances, the consent could not be said to have been given under a misconception of fact under section 90 of IPC, held in para 21 and 23 as under:--

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but

- 47 -

NC: 2025:KHC:21007 HC-KAR the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It

must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

22. -xxx- xx -

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

- 48 -

NC: 2025:KHC:21007 HC-KAR

15. In *Deelip Singh alias Dilip Kumar v. State of Bihar* (supra), this Court after discussing various earlier decisions of this Court and other High Courts, further explained the observations made in *Uday* case (supra) and observed as under:--

"28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of *Jayanti Rani Panda* [1984 Cri LJ 1535 : (1983) 2 CHN 290 (Cal)] which was approvingly referred to in *Uday* case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329]. The Calcutta High Court rightly qualified

the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) -- "unless the court can be assured that from the very inception the accused never really intended to marry her". (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a

- 49 -

NC: 2025:KHC:21007 HC-KAR misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case [ILR (1913) 36 Mad 453 : 15 Cri LJ 24] (vide passage quoted supra). By making the solitary observation that "a false promise is not a fact within the meaning of the Code", it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."

16. In Deepak Gulati v. State of Haryana⁵, this Court gave one more dimension of the word 'consent' by distinguishing 'Rape' and 'consensual sex' and observed as under:

"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

- 50 -

NC: 2025:KHC:21007 HC-KAR 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.

22. XXXXX

23. XXXXX

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

- 51 -

NC: 2025:KHC:21007 HC-KAR 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".

17. Again in *Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra* (supra), this Court interpreting the Section 90 and the Clause - Secondly in Section 375 of IPC, observed as under:--

"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

- 52 -

NC: 2025:KHC:21007 HC-KAR 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."

18. Now, in the instant case, having regard to the statutory provisions and their interpretations by this Court in various judgments, one may be tempted to hold the appellant-accused guilty of the offence under Section 376 IPC as has been done by the Sessions Court and the High Court, however, on the closer scrutiny of the evidence on record, we find that it was fallacy on the part of the courts below to hold the appellant guilty under Section 376 IPC.

19. After duly examining the record in the light of the submissions made by the learned counsels for the parties, following facts have emerged:--

(i) Prosecutrix was a married woman having three children.

(ii) Accused was staying in a tenanted premises situated in front of the house of the prosecutrix.

(iii) Though initially hesitant, the prosecutrix developed liking for the accused, and both started having sexual relationship with each other.

(iv) The prosecutrix delivered a male child on 28/10/2011 from the loin of the accused.

(v) The prosecutrix went to the native place of the accused in 2012 and came to know that he was a married man having children.

- 53 -

NC: 2025:KHC:21007 HC-KAR

(vi) The prosecutrix still continued to live with the accused in separate premises.

(vii) The prosecutrix and her husband took divorce by mutual consent in 2014 and thereafter prosecutrix permanently left her three children with her husband.

(viii) The prosecutrix lodged the complaint on 21st March, 2015 alleging that she had consented for sexual relationship with the accused as the accused had promised her to marry and subsequently did not marry.

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 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

- 54 -

NC: 2025:KHC:21007 HC-KAR Section 376. As stated earlier, each case would depend upon its proved facts before the court."

(Emphasis supplied)

13. The Apex Court, subsequently, in the case of Ms. X V. Mr. A, has held as follows:

"....

12. This Court, in the facts of the said case, set aside the judgment of the High Court which refused to exercise its jurisdiction under Section 482 of Cr. P.C. to quash the proceedings. The Court found that this was a fit case wherein the High Court ought to have invoked its jurisdiction under Section 482 of Cr. P.C. to quash the proceedings.

13. In the present case also, the facts are almost similar. Even as per the version of the complainant, the following facts have been emerged:

(i) 4 years prior to the FIR being lodged on 1st October 2020, accused No. 1 followed the prosecutrix and told her that he loved her and she should also love him;

(ii) After a period of 2 years, she agreed to love him and both were intimate with each other;

(iii) One year prior to the date of the incident, accused No. 1 took the prosecutrix to his aunty's house in Chitradurga and they stayed there. On that day at about 09.00 am, in his aunty's house, by giving trust and belief that he would marry her, accused No. 1 forcibly made sexual contact with the prosecutrix;

(iv) Thereafter, accused No. 1 took the prosecutrix to various places including his own house and committed sexual intercourse with her; and

(v) As per the version of the prosecutrix, the first incident has taken place in the year 2019. As per Karnataka Secondary Education Examination Board Certificate, her date of birth is 12th September 1998. Even if it is assumed that the incident has taken place in January 2019, she would have been over the age of 18.

14. After the prosecutrix became pregnant, accused No. 1 caused her abortion on 17th August

- 55 -

NC: 2025:KHC:21007 HC-KAR 2020. Though her initial version was that she was admitted in the hospital for two days, it is falsified by the statement of the doctor/Head of Krishna Nursing Home. After this incident, she discussed the matter with her elders in the family and decided to lodge the complaint.

15. We find that, in the present case also like the case of Pramod Suryabhan Pawar (supra), the allegations in the FIR so also in the restatement (Annexure P-6) made before the Dy. S.P., Challakere, do not, on their face, indicate that the promise by accused No. 1 was false or that the complainant engaged in the sexual relationship on the basis of such false promise. This apart from the fact that the prosecutrix has changed her version. The version of events given by the prosecutrix in the restatement (Annexure P-6) made before the Dy. S.P., Challakere is totally contrary to the one given in the FIR.

16. Similar facts arose for consideration before this Court in the case of Shambhu Kharwar (supra). In the said case, the prosecutrix had filed a complaint that there was love affair between her and the accused for a period of three years. The accused had given an assurance to her regarding solemnization of marriage. They started living under the same roof and also made sexual relationship. Thereafter, the accused entered into a ring ceremony with someone else. In this background, the prosecutrix had lodged the complaint that the accused had forcible sexual intercourse with her on the false promise of marriage. After considering the material placed on record, the Court observed thus:

"13.Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC 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

- 56 -

NC: 2025:KHC:21007 HC-KAR marriage and after the second respondent was granted a divorce by mutual consent."

17. This Court, in the case of State of Haryana v. Bhajan Lal, has observed thus:

"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 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

- 57 -

NC: 2025:KHC:21007 HC-KAR 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."

18. We find that the present case would squarely fall under categories (1), (3) and (5) as reproduced hereinabove for the reasons which we have already recorded in the earlier paragraphs. No doubt, that the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it is also equally settled that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. However, in the present case, even if the allegations made in the FIR and the material on which the prosecution relies, are taken at its face value, we find that there are no sufficient grounds for proceeding against the accused. We find that no error has been committed by the learned Single Judge of the High Court by holding that permitting further proceedings to continue would be an abuse of process of law and result in miscarriage of justice. The High Court has correctly applied the law on the issue and come to a just finding warranting no interference."

(Emphasis supplied)

- 58 -

NC: 2025:KHC:21007 HC-KAR

14. The Apex Court, further in the case of SHIV PRATAP SINGH RANA V.STATE OF MADHYA PRADESH, has held as follows:

"....

26. We have carefully gone through the definition of "rape" provided under Section 375IPC. We have also gone through the provisions of Section 376(2)(n)IPC, which deals with the offence of rape committed repeatedly on the same woman. Section 375IPC defines "rape" by a man if he does any of the acts in terms of clauses (a) to (d) under the seven descriptions mentioned therein. As per the second description, a man commits rape if he does any of the acts as mentioned in clauses (a) to (d) without the consent of the woman. Consent has been defined in Explanation 2 to mean an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. However, the proviso thereto clarifies that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

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

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

"90. Consent known to be given under fear or misconception.--A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under

- 59 -

NC: 2025:KHC:21007 HC-KAR fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.--if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.--unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

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

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

31. This Court also examined the interplay between Section 375IPC and Section 90IPC in the context of consent in *Pramod Suryabhan Pawar v. State of Maharashtra* [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3

- 60 -

NC: 2025:KHC:21007 HC-KAR SCC (Cri) 903], and held that consent with respect to Section 375IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action (or inaction), consents to such action. After deliberating upon the various case laws, this Court summed up the legal position as under : (SCC p. 620, para 18) "18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate

relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

32. The learned counsel for the respondents had relied heavily on the expression "misconception of fact". However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting on having a relationship with the prosecutrix, the later had turned down the same on the ground that the appellant was the friend of her younger brother and a distant relative of her jijaji. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that the appellant had surreptitiously taken photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from

- 61 -

NC: 2025:KHC:21007 HC-KAR the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that the appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra along with the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged.

33. As already pointed out above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The alleged cheque of the prosecutrix's mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire substratum of the prosecutrix's case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, the Court is of the view that compelling the appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the court, result of the trial being a foregone conclusion.

34. From the factual matrix of the case, the following relevant features can be culled out:

- (i) the relationship between the appellant and the prosecutrix was of a consensual nature;
- (ii) the parties were in a relationship for a period of almost two years; and
- (iii) though there were talks between the parties and their family members regarding

- 62 -

NC: 2025:KHC:21007 HC-KAR marriage, the same did not fructify leading to lodging of FIR.

35. That being the position and having regard to the facts and circumstances of the case, we are of the view that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, impugned order of the High Court dated 3-10-2019 [Shivpratap Singh Rana v. State of M.P., 2019 SCC OnLine MP 5836] and the order of the Sessions Judge dated 24-4-2019 are hereby set aside and quashed.

36. Resultantly, proceedings in Sessions Trial No. 505 of 2018, pending before the 10th Additional Sessions Judge, Gwalior, are hereby quashed."

(Emphasis supplied)

15. The Apex Court, in its recent judgment, in the case of LALU YADAV V. STATE OF UTTAR PRADESH has held as follows:

"

13. The decision in "XXXX" v. State of Madhya Pradesh⁶, also assumes relevance in the contextual situation. This court took into consideration an earlier decision of this Court in Naim Ahamed v. State (NCT of Delhi)⁷, where the allegation was one of alleged rape on false promise of marriage, made five years after the complainant and the accused started having relations and even got pregnant from the accused, of course when she was having a subsisting marriage, the Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. Having considered the said decision and finding identity in facts, this court in the decision reported in (2024) 3 SCC 496 reversed the order impugned therein dismissing the petition filed under Section 482, Cr. P.C. for quashment of FIR and allowed the appeal by setting aside the impugned order and quashing the subject FIR.

- 63 -

NC: 2025:KHC:21007 HC-KAR

14. Now, having bestowed our anxious consideration to the decisions referred supra with reference to the factual situations obtained in the case at hand, we are of the considered view that the High Court has palpably gone wrong in not considering the question whether the allegations in the complaint reveals prima facie case that the complainant had given her consent for the sexual relationship with the appellant under misconception of fact, as alleged, or whether it reveals a case of consensual sex. Firstly, it is to be noted that the subject FIR itself would reveal that there occurred a delay of more than 5 years for registering the FIR; secondly, the very case of the complainant, as revealed from the FIR, would go to show that they lived for a long period as man and wife and thirdly, the facts and circumstances obtained from the subject FIR and other materials on record

would reveal absence of a prima facie case that the complainant viz., respondent No. 4 had given her consent for sexual relationship with the appellant under misconception of fact. At any rate, the allegations in the FIR would not constitute a prima facie case of false promise to marry from the inception with a view to establish sexual relationship and instead they would reveal a prima facie case of long consensual physical relationship, during which the complainant addressed the appellant as her husband. Moreover, it is also the case of the complainant, revealed from the subject FIR and the other materials on record that she went along with the appellant to Varanasi with the knowledge of her family and stayed with him in hotels during such visits. The subsequent refusal to marry the complainant would not be sufficient, in view of the facts and circumstances obtained in the case at hand, by any stretch of imagination to draw existence of a prima facie case that the complainant had given consent for the sexual relationship with the appellant under misconception of fact, so as to accuse the

- 64 -

NC: 2025:KHC:21007 HC-KAR appellant guilty of having committed rape within the meaning of Section 375, IPC.

15. The long and short of the above discussion is that the case at hand is a befitting case where the High Court should have exercised the power available under Section 482, Cr. P.C. to prevent abuse of the process of the Court. Now that the allegation of offence under Section 313, IPC is omitted, there is absolutely no prima facie case for proceeding further against the appellant on the allegation of commission of offence punishable under Section 376, IPC. We are of the considered view that the High Court should have exercised its inherent power."

(Emphasis supplied) The Apex Court, in the afore-quoted judgments, have considered the interplay between consensual acts and rape, as also, the interplay between promise of marriage and its breach qua cheating and has delineated that, such acts would neither become rape nor cheating, as obtaining under Sections 376, 417 and 420 of the IPC.

16. Insofar as the judgment that the learned counsel appearing for the 2nd respondent/complainant seeks to place reliance upon, in the case of ANURAG SONI V. STATE OF CHATTISGARH - (2019)13 SCC 1, the same has been considered and the law has further been elucidated by the Apex Court in the subsequent judgments quoted hereinabove. Therefore, what would become binding are the judgments that are quoted in the course of the order. Wherefore, the armory that has emerged from the arsenal of the learned counsel for the petitioners, Smt. Sadhana S Desai, are undoubtedly overwhelming to what is projected by the learned counsel Sri Avishkar, nd appearing for the 2 respondent/complainant .

- 65 -

NC: 2025:KHC:21007 HC-KAR

17. In the light of the afore-quoted judgments and the observations made during the course of the order, if further proceedings against the petitioners are not obliterated and the trial is continued, it would, on the face of it, become an abuse of the process of law and result in miscarriage of injustice.

18. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) FIR registered in Crime No.140 of 2023 and charge sheet No.13 of 2024 pending on the file of Principal Civil Judge (Jr.Dn.) & JMFC, Channapatna, Ramanagara District stands quashed qua the petitioners."

5. A perusal of the material on record bearing in mind the principles enunciated in the aforesaid judgments and the allegations made in the complaint are sufficient to come to the conclusion that the petitioner cannot be incriminated for the aforesaid offences especially when the necessary ingredients in this regard are conspicuously absent coupled with the fact that having consensual sexual relationship for a long time on the false pretext / promise of marriage cannot be construed or treated as petitioner having committed the aforesaid offences. Under these circumstances, I am of the view that continuation of the impugned proceedings for the petitioner would amount to abuse of process of

- 66 -

NC: 2025:KHC:21007 HC-KAR law warranting interference in the present petition. In the result, the following:

ORDER

(i) Petition is hereby allowed.

(ii) The impugned proceedings in Crime No.80/2024 (Annexure-B) registered by respondent No.1-South East Women Police Station, Bengaluru which is pending on the file of XXXIX Addl. CMM Court, Bengaluru for the offences punishable under Sections 417 and 376 of IPC are hereby quashed.

Sd/-

(S.R.KRISHNA KUMAR) JUDGE PGG