



2025:DHC:371



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 24<sup>th</sup> October, 2024**

**Pronounced on: 24<sup>th</sup> January, 2025**

+ **CRL.M.C. 4228/2023 & CRL.M.A. 15854/2023**

**DIVYANSH BAJPAI**

..... Petitioner

Through: **Mr. Jatan Singh, Advocate.**  
versus

**THE STATE (GOVT. OF NCT OF DELHI) AND ANR .Respondents**

Through: **Mr. Satish Kumar, APP for State,**  
**Mr. Anand Verdhan Maitriya,**  
**Advocate for Respondent No. 2**

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

**CHANDRA DHARI SINGH, J**

1. The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] seeking quashing of FIR No. 200/2023 dated 12<sup>th</sup> February, 2023, registered at Police Station – Maurya Enclave, Delhi for the offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter "IPC") and the consequential proceedings emanating therefrom.

### **FACTUAL MATRIX**

2. As per the contents of the instant FIR, the petitioner and respondent no. 2/prosecutrix have known each other since the year 2009 and share a



distant familial relation. Over the years, they maintained regular contact and developed a close relationship.

3. In 2019, the petitioner relocated from Pune to Gurugram for professional reasons and was working as a Data Engineer with Worldwide Technology in Gurugram. During this period, both the petitioner and the prosecutrix were frequently meeting each other, with the prosecutrix visiting the petitioner's residence in Gurugram and the petitioner visiting the prosecutrix's residence in Pitampura, Delhi.

4. Thereafter, on multiple occasions, the petitioner allegedly promised to marry respondent no. 2 and based on the said assurances, she had given her consent to engage in physical relations with him, which allegedly occurred at the petitioner's residence in Gurugram, prosecutrix's residence in Pitampura, Delhi and during their stays at various hotels.

5. On 4<sup>th</sup> November, 2022, on petitioner's invitation, respondent no. 2 left her residence intending to solemnize her marriage with the petitioner. However, the petitioner allegedly dropped her at her sister's house in Gandhi Nagar, Delhi, on the pretext of seeking familial approval for the marriage and subsequently changed his phone number and started to avoid calls, messages and emails of respondent no. 2

6. On 12<sup>th</sup> February, 2023, respondent no. 2 lodged FIR No. 200/2023 at Police Station - Maurya Enclave, Delhi under Section 376 of the IPC, alleging that the petitioner has committed rape on her on the pretext of false promise of marriage, thereby inducing her to give consent to the petitioner for establishing physical relations with her.



7. Thereafter, the petitioner was arrested on 14<sup>th</sup> February, 2023 and subsequently, the petitioner was granted regular bail on 20<sup>th</sup> February, 2023 by the learned Additional Sessions Judge, North West District, Rohini on the grounds that no previous involvement of the petitioner in any criminal activities has been shown and the custodial interrogation of the accused is not being sought by the investigating authority, hence, no fruitful purpose would be served with the continued detention of the petitioner. Upon completion of the investigation in the instant matter, the police filed a chargesheet against the petitioner for the offence under Section 376 of the IPC.

8. Aggrieved by the instant FIR and the consequential proceedings emanating therefrom, the petitioner filed the present petition seeking the quashing of the same as no offence under Section 376 of the IPC is made out against the petitioner.

### **PLEADINGS BEFORE THIS COURT**

9. The instant petition has been filed on behalf of the petitioner seeking the quashing of the FIR and all the consequential proceedings based on the following grounds:

*“A. That the present case is a perfect example of abuse of process of law as prosecution machinery is set in motion by the Respondent No.2 by making false and frivolous allegations against the Petitioner. The continuation of the prosecution against the Petitioner would amount to an abuse of the process of law and principles of natural justice.*



*B. That the allegations in the FIR do not in any manner fall within the ambit of Section 90 IPC as the consent of the Respondent No.2 has not been obtained under fear of injury or under a misconception of fact. In the present case every act of the Respondent No.2 alleging rape, if any, is consensual/with the consent of the Respondent No.2. The allegations in FIR and Chargesheet do not infer that the promise by Petitioner was false or that Respondent No. 2 engaged in sexual relations on the basis of this promise or that the promise was made in bad faith in order to cheat her. The Respondent No.2 herself has admitted that the Petitioner is a distant relative of her. The Petitioner is son of the brother-in-law (saala) of the father of the Respondent No.2 and it is a matter of common parlance that a marriage cannot happen between two relatives. In view of the said relation between the families, at no point of time any promise was made by the Petitioner to marry the Respondent No.2.*

*C. That the Hon'ble Supreme Court of India in **Pramod Suryabhan Pawar Vs. The State of Maharashtra & Anr. Crl. Appeal No. 1165/2019 @ SLP (Crl.) No. 2712/2019**, while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:*

*“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".*

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*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.”*



*D. That the Hon'ble Supreme Court had categorically distinguished between rape and consensual sex, as well as the distinction between the mere breach of a promise, and not fulfilling a false promise in **Deepak Gulati v. State of Haryana, (2013) 7 SCC 675**. It had been stated as follows:*

*“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side.*

*\*\*\**

*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.”*

*E. That there is an inordinate delay in registration of the subject FIR. The last alleged incident of establishing physical relations with the Respondent No. 2 by the Petitioner, as per the FIR, occurred in the month of June 2019 and the present FIR was lodged by the Respondent No. 2 in the month of February 2023, after a lapse of around 45 months. The said delay has nowhere been explained by the Respondent No. 2 in the Chargesheet. The Respondent No.2 has leveled the allegation that the relations were made on the promise of marriage, on a perceptible legal advice, only to add weight to her allegations.*

*F. That there is no medical or scientific evidence to corroborate the version of the Respondent No. 2. The Respondent No.2 did not get herself internally examined at the time of her medical examination.*

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*Copy of MLC of the Respondent No.2 is annexed herewith as ANNEXURE-D.*



*G. That all the Hotel Bookings where the Respondent No.2 and the Petitioner went together, were made by the Respondent No.2 herself. The screenshots of said hotel bookings were given the Respondent No.2 to the Investigating Officer during investigation in the subject FIR. Copies of screenshots of the Hotel Bookings made by the Respondent No.2 are annexed herewith as ANNEXURE-E.*

*H. That the Respondent No. 2 has stated in her supplementary statement recorded U/s 161 CrPC that she does not want her father and sister to be involved in the present case, as her father does not know anything, though her sister knows everything about the Petitioner and requested that they may not be enquired from.*

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*A detailed and thorough enquiry from the said witnesses would have unearthed the actual chain of events which would not have supported the manipulated version of the Respondent No. 2, hence she very ingeniously requested the Investigating Agency to not to examine the said witnesses.*

*I. That the owner of the flat No. 401, G-506, Near MKM Market, Sec 57, Gurugram, Haryana, where the Petitioner resided, was examined by the Investigating Officer and his statement was recorded U/s 161 CrPC wherein the said witness stated that in the month of April, 2022, the Petitioner and Respondent No.2 representing themselves as husband-wife came to his flat and told that they will stay there for 5-6 days and if they like the flat, they would continue their stay. He has further stated that they left thereafter and took his flat on rent in June and stayed there till November. He has further stated that the Respondent No. 2 used to come there on weekends and stay for 2-3 days and he was informed by his cleaning boy that*



*the Petitioner and Respondent No. 2 used to quarrel a lot. The said statement of an independent witness is totally in contrast with the version of the Respondent No.2.*

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*K. That in view of the aforesaid reasons, there is no justification to proceed with the criminal proceedings instituted by the Respondent against the Petitioner as any further proceeding with the case would be proved as futile exercise without there being any believable allegation against the Petitioner. Therefore, for the purpose of securing the ends of justice the indulgence of this Hon'ble Court is absolutely necessary to quash the proceedings.*

*L. That the indulgence of this Hon'ble Court becomes necessary to quash the present FIR for the purpose of securing the ends of justice.”*

10. The petitioner has also filed the written submissions dated 7<sup>th</sup> November, 2024, relevant portion of which is hereunder:

*“a. That the allegations in the FIR do not in any manner fall within the ambit of Section 90 IPC as the consent of the respondent no.2 has not been obtained under fear of injury or under a misconception of fact. In the present case every act of the respondent no.2 alleging rape, if any, is consensual/with the consent of the Respondent no.2. The allegations in F.I.R. and chargesheet do not infer that the promise by Petitioner was false or that Respondent no. 2 engaged in sexual relations on the basis of this promise or that promise was made in bad faith in order to cheat her.*

*b. The respondent no.2 herself has admitted that the petitioner is a distant relative of her. The petitioner is son of the brother-in-law (saala) of the father of the Respondent no.2 (jija) and it is a matter of common parlance that a marriage cannot happen*



*between two relatives as per section 5 of the Hindu Marriage Act, 2005 which states that a marriage between the two Hindus is not valid if both the parties are within the degrees of prohibited relationship.*

*c. That there is inordinate delay in registration of the FIR. The last alleged incident of establishing physical relations with the respondent no.2 by the petitioner, as per the FIR, occurred in the month of 2019 and the present FIR was lodged by the Respondent no.2 in the month of February 2023, after the lapse of around 45 months (3.5 years). The said delay has nowhere been explained by the Respondent no.2 in the chargesheet.*

*d. That there is no medical or scientific evidence to corroborate the version of the Respondent no.2. The respondent no.2 did not get herself internally examined at the time of her medical examination. She had herself refused the local examination of Gentials and no external injuries were found on the respondent no.2. Moreover, as the incident was old, no samples were collected by the doctor conducting the medical examination of the respondent no.2.*

*e. All the hotel bookings where the respondent no.2 and the petitioner went together, were made by the respondent no.2 herself...That the screenshots of the hotel bookings were given to the Investigating officer and also annexed with the present quashing petition as Annexure – E.*

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*h. That a detailed and thorough enquiry from the said witnesses would have unearthed the actual chain of events which would not have supported the manipulated version of the Respondent no.2, hence she very ingeniously requested the Investigating Agency to not to examined the said witnesses.”*

11. Rebutting the instant petition, the respondent no. 2 has filed her written submissions, and the relevant extracts are as follows:



*“2. That the charge sheet submitted by the concerned police officials is deficient and lacks in properly invoking the other different provisions of IPC and other penal laws as chargesheet has been filed only under section 376 IPC.*

*3. It is respectfully submitted that the investigating officer has failed to take into account in accusation levelled against the Petitioner/accused person by the respondent no. 2 comprehensively and has submitted the charge sheet in conventional and archaic manner.*

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*7. That even after the arrest of the petitioner/accused and granting of Bail, family member of the petitioner/accused and relatives were continuously creating pressure upon the respondent no. 2/Complainant and her father to settle the matter and take her complaint back and this information has been given to the IO by the victim but IO has completely ignored the said fact and even refused to submit in this respect at the time of argument on bail.*

*8. That father and other relative of the Petitioner/accused Divyansh Bajpai, who assured the respondent no. 2 /victim that after getting regular bail from Hon'ble court, accused will marry the respondent no. 2/victim but after releasing from the jail, Petitioner/accused and his family member have changed their mind and never marry with the respondent no. 2/victim and further making false accusation upon the respondent no. 2/victim herself and this aspect has been completely ignored by the I.O and did not even mention in the charge-sheet.*

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*12. That there are some videos which respondent no. 2/victim begged to delete from the mobile phone of the Petitioner/accused but Petitioner/accused never deleted the same and those obscene, naked photos and videos may still be in the mobile phone of the Petitioner/accused and he used to click and keep the same with him on the pretext so that he can call the respondent no. 2/victim at any time for satisfying his lust.*



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14. That petitioner/accused always used to feed I-pill to the respondent no. 2/victim after every sexual intercourse so that respondent no. 2/victim never got pregnant but those pills miserably affected the health and body of the respondent no. 2/victim. It is further submitted that sometimes those I-pills were order from 1 MG online site and other phrama site and some times he brings from the his own from any medical shop and those order are still existed in the mobile phone of the Petitioner I accused but I.O has neither investigated the matter in this respect nor seized the mobile phone of the Petitioner I accused to help the petitioner/accused.

15. That Petitioner/accused teach how to make booking Hotel and thereafter always used to asked the victim to book the Hotel and later on used to give money for the same but IO has never investigation the matter in this regards.

16. That on various occasion, petitioner /accused used to demand money from the respondent no. 2/victim and accused always used to extort money in the name love and respondent no. 2/victim used to transfer the said amount in the account of petitioner/accused.

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24. That petitioner/ accused always treated the respondent no. 2/victim like his wife and always portraits her like his wife before every one but I.O did not bother to even investigate the matter in this respect and also did not file any documents in the charge-sheet while respondent no. 2/victim had everything with her.

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28. That IO of the present case was very herry in filling the charge-sheet and when respondent no. 2/victim used to inform the same to the I.O, I.O never bother to take it seriously and file the charge-sheet mechanically in a casual manner without investigating the case properly.”



## SUBMISSIONS

*(on behalf of the petitioner)*

12. Learned counsel appearing on behalf of the petitioner submitted that the instant FIR and subsequent proceedings are a gross misuse of process as the same was registered with the sole intention of coercing the petitioner to enter into marriage with the respondent no. 2. It is further submitted that the allegations, even if accepted in their entirety, fail to disclose any offence under Section 376 of the IPC against the petitioner.

13. It is submitted that the respondent no. 2 willingly entered into physical relation with the petitioner and the said relation between them was consensual in nature, and based on mutual affection and understanding and therefore, her consent to establish physical relations with her was neither induced nor obtained through deceit or coercion.

14. It is submitted that the petitioner made the promise of marriage in good faith and with genuine intent to marry respondent no.2 but was unable to do so due to unforeseen familial and personal circumstances. It is further submitted that the inability of the petitioner to marry the respondent no. 2 cannot cause the criminal proceedings to be set in motion against him under Section 376 of the IPC.

15. It is submitted that there is a significant delay in lodging the instant FIR as the alleged incidents, as per the FIR, date back to June, 2019, whereas the FIR was filed in February, 2023, which is almost four years after the said alleged incidents took place. It is further submitted that the



unexplained delay casts serious doubt on the veracity of the said allegations, which suggests that the FIR may have been filed with ulterior motives.

16. It is submitted that respondent no. 2's own admission of hotel bookings and visits to petitioner's residence corroborates the consensual nature of the relationship between them and that the same was not predicated on any coercion or deceit but entered into voluntarily.

17. Learned counsel for the petitioner relies upon judgments of the Hon'ble Supreme Court in *Pramod Suryabhan Pawar v. State of Maharashtra*<sup>1</sup> and *Deepak Gulati v. State of Haryana*<sup>2</sup>, to submit that there exists a distinction between a false promise of marriage and a breach of promise. It is further submitted that the facts, at best, constitute a breach of promise, which is a civil matter and does not attract criminal liability under Section 376 of the IPC.

18. It is submitted that there is no medical evidence to substantiate the allegations made by the respondent no. 2 as she refused to undergo an internal medical examination during the preparation of her MLC.

19. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

***(on behalf of Respondent No. 2/prosecutrix)***

20. Learned counsel appearing on behalf of respondent no. 2 vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

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<sup>1</sup> AIR 2013 SC 2071

<sup>2</sup> (2013) 7 SCC 675



21. It is submitted that the allegations made by respondent no. 2 disclose a *prima facie* case under Section 376 of the IPC. It is submitted that the petitioner obtained her consent for establishing physical relations with her by making a false promise of marriage with no intention of fulfilling the same.

22. It is submitted that the consent of respondent no. 2 to establish physical relations was vitiated by deception, as it was predicated solely on the petitioner's assurances of marriage. It is further submitted that such consent, obtained under a misconception of fact, is invalid under Section 90 of the IPC.

23. It is submitted that the petitioner's subsequent conduct, including abruptly cutting off all communication with the respondent no. 2, changing his phone number, and avoiding contact with her, demonstrates his *mala fide* intent and shows that the promise of marriage was false, and was made only with an intent to induce respondent no. 2 to give her consent for establishing physical relations with her.

24. It is submitted that the allegations in the FIR clearly indicate that the last instance of establishment of a physical relationship between the petitioner and the respondent no. 2 allegedly occurred on 31<sup>st</sup> October, 2022. It is further submitted that on the night of 4-5<sup>th</sup> November, 2022, the petitioner left respondent no. 2 at her sister's house and traveled to Lucknow, subsequently ceasing all communication with her.

25. It is submitted that the petitioner's reliance on hotel stays and visits to his residence as evidence of a consensual relationship does not negate the



element of deceit on the petitioner's part. It is further submitted that the said physical relationship was established solely based on the false assurance of marriage, and such consent cannot be considered valid in the absence of genuine intent from the petitioner to fulfill his promise.

26. It is submitted that the petitioner's defence of familial disapproval and cultural impracticalities of marriage is irrelevant, as the promise of marriage was legally and socially permissible.

27. It is submitted that the seriousness of the offence as well as the allegations made against the petitioner, including the supporting evidence therein warrant for a trial to ascertain the truth. In view of the aforesaid submission, it is prayed that the instant petition, being devoid of any merit, may be dismissed.

### **ANALYSIS AND FINDINGS**

28. Heard learned counsel for the parties and perused the material placed on record.

29. It is the case of the petitioner that the allegations under Section 376 of the IPC are not made out against him, as the physical relationship between the parties was based on mutual consent. The petitioner contends that no false promise of marriage was ever made to respondent no. 2, and therefore, her consent to the relationship was not obtained through deception or misrepresentation. It is also contended that the significant and unexplained delay of 45 months in filing the FIR, asserting that this delay raises serious doubts about the credibility of the allegations. Furthermore, the petitioner



points to the absence of medical or forensic evidence, along with the respondent's own acknowledgement in the MLC that the relationship lacked coercion or assault, as factors that weaken the respondent's case. The petitioner contends that allowing the criminal proceedings to continue would result in undue harassment and misuse of the legal process, and prays for the quashing of the present FIR.

30. In rival submissions, respondent no. 2 contends that she entered into a physical relationship with the petitioner solely based on his promise of marriage, which he never intended to fulfill. It has been submitted that in absence of such a promise, she would not have consented to the relationship. Therefore, her consent was vitiated under Section 90 of the IPC, amounting to the offence of rape under Section 376 of the IPC. Respondent No. 2 has explained that the FIR was filed promptly after the petitioner ceased all communication with her in November, 2022, and therefore, the time of filing of the complaint cannot be considered delayed. Additionally, it has been contended that police investigation was inadequate, necessitating further inquiry to ensure a fair trial.

31. Based on these submissions, respondent no. 2 argues that the allegations are substantial and warrant a full-fledged trial. Respondent no. 2 opposes the quashing of the FIR, asserting that preemptive interference by this court would deny her the opportunity to establish the truth and seek justice through due process.

32. Section 482 of the CrPC embodies the inherent powers of the High Court to ensure that there is no miscarriage of justice. These powers,



however, must be exercised sparingly, with great caution and only in circumstances where judicial interference is imperative to secure the ends of justice. The provision functions as a safeguard to rectify exceptional situations where procedural or substantive justice would otherwise be compromised.

33. The High Courts possess extraordinary powers under Section 482 of the CrPC to quash an FIR or any proceedings arising from it to ensure justice is upheld and the misuse of legal process is prevented. The parameters of the said powers under Section 482 of the CrPC have been extensively discussed by the Hon'ble Supreme Court in the landmark case of **Rajiv Thapar v. Madan Lal Kapoor**,<sup>3</sup> wherein the Hon'ble Court observed as follows:

*“22. ...To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable*

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<sup>3</sup> 2013 (3) SCC 330



*quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”*

34. Therefore, this Court is duty bound to satisfy itself whether the allegations in the FIR *prima facie* disclose the commission of the offence in question by the accused.

35. The primary issue that arises for determination in the present case is **whether the allegations in the FIR disclose a *prima facie* case under Section 376 of the IPC against the petitioner.**

36. As per the contents of the FIR, it is the contention of respondent no. 2 that the petitioner repeatedly promised to marry her and based on the said assurances, induced her to enter into a sexual relationship with him. However, despite making the said promise to her, the petitioner failed to fulfill it and ceased all communication by changing his phone number after 4<sup>th</sup> November, 2022. The relevant portion of the said FIR is as under:

*“Divyansh had promised to marry me and on the promise of marriage, he made physical relation with me several times at his Flat No. 401, G-506, Near MKM Market, Sec-57, Gurugram, Haryana. In June 2019, Divyansh Bajpai came 2-3 times in my house at LP-11/F, Pitampura, where Divyansh Bajpai made physical relations with me with the false assurance of marriage.*

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*On 04.11.2022, Divyansh left me to the house of my sister Chetali at Gandhi Nagar with the assurance that he will bring his father by convincing him for this marriage. After 04.11.2022 Divyansh changed his number and left talking me. Now Divyansh has been lingering on the matter of marry me. Divyansh Bajpai S/o Kaushal Kumar Bajpai R/o B-57, Jail Road, Sector-J, Rail Nagar Aashiayana LDA Colony, Lucknow, UP has made physical relations with me by giving me false assurance of marriage. Stern legal action may kindly be taken against him.”*

37. However, it is the contention of the petitioner that no *prima facie* case for the commission of the offence under Section 376 of the IPC is made out against the petitioner as both the parties entered into physical relationship with mutual consent and the same does not stand vitiated under Section 90 of the IPC. It is pertinent to note that in order to constitute an offence under Section 376 of the IPC, the ingredients of the offence of rape as provided for under Section 375 of the IPC must be satisfied. Section 375 of the IPC reads as under:

**“375. Rape.**—*A man is said to commit “rape” if he—*  
*(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*  
*(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*  
*(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person;*  
*or*



*(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: —*

*First. —Against her will.*

*Secondly. —Without her consent.*

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

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

*Fifthly. —With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

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

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

*Explanation 1. —For the purposes of this section, “vagina” shall also include labia majora.*

*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.*

*Exception 1. —A medical procedure or intervention shall not constitute rape.*



*Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.*

38. A plain reading of the provision makes it clear that any sexual act committed under clauses (a), (b), (c) and (d) without consent constitutes the offence of rape. Section 90 of the IPC specifies that if the consent is given under a misconception of fact, such consent is not valid consent, and hence, it cannot be considered as willful and voluntary on the part of the prosecutrix. Section 90 reads as under:

***“90. Consent known to be given under fear or misconception.***  
***— A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception...***”

39. Section 90 of the IPC provides that consent given under a misconception of fact is not a valid consent and it requires that the person inducing such consent either knows or has reason to believe that the consent was given as a result of the misconception. This provision, when read in conjunction with Section 375 of the IPC, establishes that sexual intercourse under misconception of fact does not constitute valid consent, and hence, the offence of rape would be made out.

40. In this context, it is deemed appropriate by this court to refer to the decision of the Hon’ble Supreme Court in *Shambhu Kharwar v. State of*



*U.P*<sup>4</sup>. In this case, while quashing an FIR under Section 376 of the IPC, where the accused was alleged to have committed rape on the false pretext of marriage, the Hon'ble Supreme Court made the following observations:

*“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:*

*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*

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<sup>4</sup> 2022 SCC OnLine SC 1032



*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**, 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**, observed that:

*“12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...*

*[...]*

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

*[...]*

16. *Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should 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.**”*

41. As held in *Pramod Suryabhan Pawar v. State of Maharashtra (supra)*, this Court must evaluate: *firstly*, whether the accused harbored an honest intention to marry at the time of making the promise, and *secondly*, whether the said promise, made deceitfully, had a direct nexus with the prosecutrix’s decision to consent to the physical relationship.

42. Similarly, in *Deepak Gulati v. State of Haryana (supra)*, relevant portion is herein as below:

*“18. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the*



*victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.*

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*21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the*



*fact that from the very beginning, the accused had never really intended to marry her.”*

43. As evident from the above precedents, for a false promise to vitiate consent, it must be shown that *firstly*, the promise was made in bad faith with the sole intent of deceitfully inducing the prosecutrix to enter into a physical relationship and *secondly*, the false promise must have been of immediate relevance such that it directly influenced the victim’s decision to engage in the said sexual act with the accused.

44. In the present case, the allegations made by respondent no. 2 disclose that the petitioner induced her to enter into a physical relationship on the false promise of marriage. Further, her consent was vitiated under Section 90 of the IPC as the petitioner never intended to fulfill the promise, and the said consent was given by her under a ‘misconception of fact’ regarding their marriage.

45. Based on the evidence collected, including the complainant’s detailed statements, hotel booking records, and witness testimonies, the investigating officer concluded that a *prima facie* case under Section 376 of the IPC was made out against the petitioner. The chargesheet was accordingly filed before the competent court, and the accused is presently enlarged on bail. The relevant portion of the chargesheet is reproduced as under:

*“SI Sangeeta enquired from the complainant and the counselling of complainant got done by CIC Counsellor. Thereafter SI Sangeeta sent the victim alongwith W/Ct. Jyoti NO.2137INW with counsellor of DCW sent to BSA Hospital*



*and got done her medical examination vide MLC No .50/2023, dt. 12.02.2023. Complainant refused to get her internal examination conducted and as the incident was old, hence the doctor has not given any exhibits and the doctor opined on MLC as UPT-NEGATIVE. Thereafter SI Sangeeta after enquiry recorded the statement of the complainant, which is as follows:*

*\*\*\**

*“From the perusal of the statement, MLC and circumstances, the offence punishable u/s 376 IPC was found to made out, hence the case was registered under the above mentioned section and conducted the investigation.”*

*\*\*\**

*“Thereafter in the night of 13.02 .2023, SI Sangeeta alongwith HC Sunil NO.8091NW & Ct. Dharmender No. 2299/NW after obtaining the permission from the senior officers in the case reached to the house of alleged at B-57, Rail Nagar, Sector-J, Lucknow, UP, where alleged Divyansh Bajpai S/o Kaushal Kumar Bajpai met, who was interrogated by SI Sangeeta and he was apprehended and after giving information in the concerned police station, he was brought alongwith staff in Delhi and after detail interrogation of the abovenamed accused, having belief on the collected evidences, accused was arrested in the above noted case and information about the arrest of accused was given to the uncle of accused namely Anil Kumar.”*

*\*\*\**

*“During investigation, SI Sangeeta got conducted the potency test of accused Divyansh Bajpai from BSA Hospital vide clinical examination NO.2012023 dated 14.02.2023, on which the doctor opined that "There is nothing to suggest that the person examined is incapable of performing sexual intercourse.*



*If required, further opinion may be give after receipt of abovementioned investigation". Potency test report of accused is annexed to the case file."*

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*"Thereafter SI Sangeeta got recorded the statement of victim U/s 164 Cr.P.C. before the Hon'ble Court, which are as follows, "A boy namely Divyansh Baijpai, who is my relative. Since 2009, there started talking between us. Since 2009 to 2019, we used to talk on phone and used to meet in the family function. We were in long distance relationship. In the year 2019, Divyansh shifted to Gurugram. He had switched his job. Then Divyansh used to come from Gurugram to Pitampura to meet. Whenever Divyansh used to come to meet, he kept on touching me. I told Divyansh for commitment. In June 2019, Divyansh committed me that he will marry me. Thereafter there started making physical relations between Divyansh and me. He every time promised to marry me and intimate kept continuing. Due to covind period, Divyansh went to his house. During that period also, we were committed on video call or chats. On 01 December 2020, my mother had passed away, this time also Divyansh promised me that I will marry you."*

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*"Whenever I asked him for marriage, then Divyansh always assured me that "TUM JO BHI RISHTE AA RAHE RAIN UMNE MANA KAR DO AUR MEREPAAS JO AYENGE UNHE MAIN MANA KAR DUNGA." When our family members would not get any suitable match for us, then our family members will get solemnized our marriage. On 04 November 2022, one marriage proposal came for me but I refused for the same. On the same day, I made phone call to Divyansh and requested him that now I have tired and when you marry me? Divyansh told*



*me that you come, we will go to marry. Thereafter he booked cab for me and I went to Gurugram. Thereafter Divyansh did not allow me to come to his home and he met me outside and kept on wondering me. Then Divyansh told that “AGAR TUM CHAHE HO KI HAMARI SAMAJIK SHADI HO TO TUM GHAR CHALI JAO MAIN LUCKNOW JAKAR PAPA KO MANA KE AATA HOON.” He also told me that it will take some time, please don't call me. Thereafter I stayed in the house of my sister.” Copy of the same is annexed, to the case file. The complainant in it fully supported her complaint.”*

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*“During investigation, SI made Mr. Shubham Bishnoi \*\*\* owner of Flat N.401 ,G-506, Near MKM Market, Sec-57, Gurugram, Haryana and he was interrogated and whichever told by him, his statement U/s 161 Cr.P.C. was recorded separately, which is as follows:- “It is stated that I reside at the above mentioned address with my family and engage in the business of renting out the property by taking on lease, which is annexed to the case file. Flat N.401, 0-506, Near MKM Market, Sec-57, Gurugram, Haryana is of mine flat. Divyansh Bajpai and “K” came to see my flat in April 2022 and they made phone call to me on my contact number mentioned outside. And they told me that we will check after staying here for some time and if we like it, then we will stay here. At that time, they both stayed at my flat for 5-6 days. Divyansh told that “K” is his wife. Thereafter they went back. Then Divyansh Bajpai & “K” came in June and they took my flat on rent. They stayed here till November. K came to the flat of Divyansh on weekend and stayed for 2-3 days. I came to know from the cleaning boy of my flat that they used to quarrel a lot with each other. At that time,*



*the people stayed here on rent, they had left by vacating the flat.”*

\*\*\*

*“The investigation till date, ample evidences i.e. complaint of victim, statement U/s 164 Cr.P.C., statements U/s 161 Cr.P.C. and interrogation of accused, have been collected against accused Divyansh Bajpai, challan U/s 376 IPC was prepared against accused Divyansh Bajpai S/o Sh. Kaushal Kumar Bajpai. Now accused Divyansh is on court bail. The accused through notice and the witnesses through summon be served.”*

46. During the course of the investigation, the petitioner was arrested pursuant to which, his interrogation and potency tests were conducted, confirming his capability to engage in sexual intercourse. The complainant's statements under Sections 161 and 164 CrPC were recorded, wherein she consistently reiterated that she engaged in physical relations with the petitioner due to his assurances of marriage, which were not fulfilled.

47. The investigating officer recorded statements from the witnesses and collected documentary evidence, including hotel booking records provided by the respondent. Statements of witnesses, particularly the landlord of the petitioner's Gurugram residence, confirmed that the respondent no. 2 frequently visited the premises and that both parties presented themselves as a married couple.

48. This Court has carefully perused records and finds the following facts relevant for consideration:



A. The respondent no. 2 alleges that the petitioner made repeated promises of marriage to her, which formed the basis of their relationship.

B. Acting on these assurances, it is alleged that the respondent no. 2 consented to a physical relationship with the petitioner on multiple occasions.

C. The said physical relation was established at various locations, including the petitioner's flat in Gurugram and the respondent's residence in Pitampura, Delhi.

D. The FIR alleges that the last instance of a physical relationship occurred on 31<sup>st</sup> October, 2022.

E. On the night of 4<sup>th</sup> November, 2022, the petitioner allegedly left the respondent at her sister's house and traveled to Lucknow on the pretext of getting his father's approval for marriage.

F. Following his travel to Lucknow, the petitioner ceased all communication with the respondent and changed his phone number.

G. It is alleged that the petitioner's assurances of marriage were false and made with a deceitful intent to induce her into entering a physical relationship.

H. Respondent no. 2 lodged the present FIR in February, 2023.

49. It is well-established that there exists a difference between a breach of promise due to unforeseen circumstances and a false promise made with fraudulent intent. While a mere failure to fulfill a promise does not constitute



a criminal offence, a promise made without any intention to fulfill it from the beginning may vitiate consent under Section 90 of the IPC.

50. The intention of the petitioner at the time of making the alleged promise remains a matter of dispute and cannot be conclusively determined at this stage. It is a factual question that requires evidence to be tested during trial. While the allegations raise a *prima facie* case warranting further judicial scrutiny, the Court, at this juncture, cannot definitively conclude that the petitioner acted with *mala fide* intent.

51. It is the petitioner's case that the respondent no. 2 herself admitted that the petitioner is a distant relative, specifically the son of the brother-in-law of the respondent's father. The petitioner argues that as a matter of common understanding, a marriage between such relatives is legally impossible. In view of this familial relation, the petitioner denies ever making any promise of marriage to the respondent.

52. It is the case of the respondent no. 2 that the petitioner does not fall within the prohibited degrees of relationship under the Hindu law or Sapinda relations. The respondent no. 2 contends that the petitioner is a distant relative from the maternal side and does not have a direct relationship that would render their marriage impossible. Furthermore, the respondent no. 2 submits that whatever consent she provided for the relationship was under a misconception created by the petitioner regarding their marriage.

53. The nature of the relationship between the parties is a crucial factor in determining whether any promise of marriage was made and whether the respondent's consent was vitiated by a misconception of fact. The



petitioner's assertion that marriage between them was impossible may hold relevance, but it does not conclusively negate the possibility of an implied or explicit promise of marriage. It is also pertinent to note that the petitioner, being a major and of sound mind, was fully aware of the familial relationship between him and the respondent, and yet he proceeded to engage in physical relation with her. This conscious decision raises questions regarding the petitioner's intent and understanding of the consequences of his actions.

54. It is submitted by the petitioner that the alleged incidents date back to 2019, whereas the FIR was filed in February 2023, almost four years later. It is further submitted that the unexplained delay casts serious doubt on the veracity of the allegations, suggesting the FIR may have been filed with ulterior motives. However, upon perusal of the statement of the prosecutrix recorded under Section 164 of the CrPC, it is clear that she has provided a convincing explanation for the delay in filing of her complaint. It is stated in her statement that after the petitioner left her at her sister's house on the night of November 4-5<sup>th</sup>, 2022, he ceased all communication, switched off his phone, and did not respond to calls from her or their common relatives. It is further stated that due to their long-standing relationship of 12 years, she believed that the petitioner would ultimately return and therefore, she refrained from taking immediate legal action. It was only upon learning in early February 2023 that the petitioner was scheduled to marry another woman on February 16, 2023, that she felt deceived and subsequently lodged the FIR against the petitioner.



55. It is a well-established principle of law that a delay in lodging an FIR, particularly in cases involving allegations of sexual offenses, cannot automatically render the allegations false. The courts have consistently held that the explanation for such delay must be assessed in light of the specific circumstances of the case. In the present matter, while the petitioner has argued that the alleged incidents date back to 2019, the respondent no. 2 has explained that the delay was influenced by her belief in the sincerity of their 12-year relationship and her hope that the petitioner would return. It was only upon discovering in February 2023 that the petitioner was planning to marry another woman that she felt deceived and promptly lodged the FIR. This explanation is plausible and warrants careful consideration during trial. The delay, under these circumstances, cannot serve as a ground to dismiss the allegations at this stage. Each case must be evaluated on its own merits to ensure that justice is not undermined by procedural technicalities.

56. Further, this court observes that there is no compelling material or evidence placed on record to establish that the continuation of criminal proceedings in the present case amounts to an abuse of the process of law. The allegations made by the respondent, while requiring scrutiny at trial, disclose a *prima facie* case against the petitioner under Section 376 of the IPC that merits judicial consideration.

### **CONCLUSION**

57. This Court is of the view that the allegations made in the FIR and the statement made by respondent no. 2 under Section 164 of the CrPC, when



taken at face value, disclose a *prima facie* case under Section 376 of the IPC against the petitioner regarding the establishment of physical relations based on the alleged false promise of marriage.

58. Therefore, in view of the foregoing facts and circumstances, this Court finds that the allegations made by the respondent disclose a *prima facie* case against the petitioner under Section 376 of the IPC, warranting further judicial inquiry through trial. It is reiterated that the inherent powers of this court under Section 482 of the CrPC are to be exercised sparingly and only in exceptional cases and this Court does not find it a fit case to invoke the said powers to quash the instant FIR and the consequential proceedings emanating therefrom.

59. Accordingly, the instant petition is dismissed along with the pending applications, if any.

60. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case.

61. This judgment to be uploaded on the website forthwith

**CHANDRA DHARI SINGH, J.**

**JANUARY 24, 2025**

**rk/mk/st**

*Click here to check corrigendum, if any*