



2026:AHC:127913

Reserved on 06.05.2026

Delivered on 18.06.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 752 of 2022

Sanjay Saroj @ Sanjay Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Amit Daga, Ramesh Chandra
Counsel for Opposite Party(s) : Arvind Kumar Bhardwaj, G.A.

Court No. - 45

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Shri Amit Daga, learned Senior Counsel assisted by Shri Ramesh Chandra, learned counsel for the applicant, Shri Arvind Kumar Bhardwaj, learned counsel for the opposite party no.2 and Shri Rabindra Kumar Singh, learned AGA for the State of UP.

2. Present application U/S 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") has been filed to quash the chargesheet dated 08.01.2020 and cognizance order/summoning order dated 04.09.2021 as well as the entire proceedings of the Case No.793 of 2021 (CNR NO.UPAD040449212020) (State vs. Sanjay Saroj), arising out of Case Crime No.640 of 2019, under Sections 376, 323, 504 and 506 of the Indian Penal Code, 1860 (in short 'IPC'), Police Station Colonelganj, District Prayagraj, pending in the court of Special Chief Judicial Magistrate, Allahabad. Further prayer is to stay the entire proceedings of the aforesaid case.

3. Brief facts of the case are to the effect that a first information report was lodged by the opposite party no.2/prosecutrix 'K' of the present case, which was registered on 10.08.2019 at 15.01 hours as Case Crime No.640 of 2019, under Section 376, 323, 504 and 506 IPC at Police Station Colonelganj, District Prayagraj. It is alleged in the FIR that prosecutrix 'K' is a permanent resident of District Pratapgarh and she came to Prayagraj in the year 2014 for the purpose of preparing for competitive

examinations. The applicant, who was a distant relative of the prosecutrix, helped her in getting admission and thereafter they remained in contact with each other. It is also alleged that physical relations were established by the applicant in the year 2014 on the false promise of marriage. It is alleged that whenever the prosecutrix requested the applicant to fulfill his promise of marriage, the applicant assaulted her. On 10.08.2019 when the prosecutrix again asked the applicant to marry her, he assaulted her and extended threat to her life.

4. The investigating officer started the investigation and recorded the statement of the victim under section 161 Cr.P.C. on 12.08.2019, wherein she reiterated her earlier version made in the FIR and stated that the applicant helped the prosecutrix when she came to Prayagraj for the preparation of competitive examinations, and he used to stay in her rented room. She further alleged that a false promise of marriage was made by the applicant and rape was committed upon her. Ten days earlier, the victim was called by the applicant to his room, and when the issue of marriage between the applicant and the victim was discussed, the applicant assaulted and abused her. No marriage was solemnized between the applicant and the victim, therefore, the victim lodged the first information report against the applicant.

5. The medical examination report of the victim was prepared, however, no internal or external injury was noticed on the body of the victim. The applicant filed a Criminal Misc. Writ Petition No.22979 of 2019, which was vehemently opposed by the informant with a contention that though the marriage was solemnized between the applicant and the prosecutrix but the petitioner/applicant was not treating the prosecutrix as his wife and was not providing her due respect as ought to be provided to a married wife and therefore, it appears that the marriage was just a sham to escape legal consequences of the first information report. After hearing both the parties, the Division Bench of this Court vide order dated 19.11.2019, granted protection to the petitioner/applicant and his arrest was stayed till submission of police report under Section 173(2) Cr.P.C.

6. During course of investigation, the informant/prosecutrix was produced before the court of learned magistrate for recording her statement under

Section 164 Cr.P.C. and the same was recorded before the learned magistrate on 27.11.2019. The prosecutrix deposed in her statement recorded under Section 164 Cr.P.C. that the applicant who was a distant relative of the victim, established a physical relationship with her on the false promise of marriage and an obscene video was also made by the applicant and she was being blackmailed on account of that obscene video. It is also admitted by the victim that a sham marriage was solemnized in the presence of relatives of the applicant. The signature of the victim's father was also obtained on a paper by the applicant. After getting married to her, the applicant left her. After recording statement of the victim under Section 164 Cr.P.C., the Investigating Officer recorded subsequent statement of the victim under Section 161 Cr.P.C. on 22.12.2019, wherein she claimed that a false marriage was solemnized. The investigating officer recorded the statement of the victim's father and submitted chargesheet in this case against the applicant only on 08.01.2020 under Section 376, 323, 504 and 506 IPC. The learned magistrate took cognizance of offence vide order dated 04.09.2021.

7. The contention of Shri Amit Daga, learned Senior Counsel for the applicant-accused is that a false and frivolous FIR was lodged by the prosecutrix, wherein she claimed that she was subjected to rape on the false promise of marriage. It is the admitted case of the victim that she had been in touch with the applicant for the last five years, which substantiates that the FIR is a result of a broken relationship. The FIR was lodged when things did not work out between them. There is no mention of the date, time, and place of the incident in the FIR where the alleged offence of rape was committed for the first time. The version of the victim kept changing in the averments made in the FIR and in her statements given to the Investigating Officer under Section 161 Cr.P.C. and to the magistrate while recording her statement under Section 164 Cr.P.C.

8. Further submission was made by the learned Senior Counsel for the applicant that the Investigating Officer has not taken into consideration that the statements are bereft of particulars. No external injury was seen on the body of the victim, and she was in a consensual relationship for a period of five years. The prosecutrix was a major girl, about 29 years of age as she mentioned in the FIR that her date of birth was 15.07.1990. The applicant

was a post graduate and was preparing for competitive examination when he came in contact with the prosecutrix. The applicant and the victim developed mutual liking and fondness for each other, and thereafter enjoyed each other's company and remained in contact. The applicant could not secure a job and, therefore, failed to marry the prosecutrix. After a period of more than five years, the prosecutrix exerted undue pressure upon the applicant to marry her. On the said issue, a dispute arose between them and the prosecutrix got annoyed and lodged a false first information report against the applicant. It is further submitted by the learned Senior Counsel that subsequent to registration of aforesaid FIR, the marriage of applicant and the prosecutrix was solemnized on 27.08.2019 in Arya Samaj Mandir, Krishna Nagar, Prayagraj in the presence of parents and other relatives of both sides and this marriage has not been denied by the prosecutrix in her counter affidavit. The photographs and certificate of marriage have been appended alongwith the application. The prosecutrix is not ready to join the matrimonial home despite several requests made by the applicant and she did not discharge matrimonial obligations rather she pursued her FIR, lodged against the applicant.

9. It is further submitted by the learned Senior Counsel that the records reveal that the prosecutrix 'K' had been in a relationship with the applicant since 2014. However, prior to the registration of the FIR, she never lodged any complaint against the applicant, despite alleging that the first incident of rape had occurred in the year 2014 when the victim was about 24 years of age. She lodged the first information report on 10.08.2019 when the relationship between them turned sour. No explanation of delay in lodging the first information report was given by the prosecutrix. It is also submitted that marriage between the applicant and the prosecutrix was solemnized on 27.08.2019. Thus by no stretch of imagination can it be said that the promise of marriage made by the applicant was false or based on fraud or the applicant had never intended to keep his promise from inception of relationship. The prosecutrix is a highly educated and mature lady and holds a degree of M.A., LL.B. and B.Ed. It is beyond imagination that prosecutrix maintained relations with the applicant on account of the false promise of marriage or she was forced by the applicant to maintain physical relations, thus no offence, whatsoever,

punishable under Section 376 IPC is made out against the applicant. It is nowhere alleged by the prosecutrix that the applicant had any fraudulent intention from the very inception of alleged relations with prosecutrix, Therefore, no offence under Section 376 IPC is made out against the applicant.

10. Further submission was made by Shri Amit Daga, learned Senior Counsel that it is a case of no injury. There is no substantial evidence on record which suggest that the prosecutrix was ever harassed, tortured or beaten by the applicant on any issue at any point of time. As such the allegations are absolutely false, appears to be a concocted and does not inspire much confidence. The basic ingredients which requires to constitute an offence punishable under Section 504 and 506 IPC are also missing in the body of the FIR as well as the statements of the witnesses including the prosecutrix. Moreso, the said sections are ornamental in nature. Since the basic ingredients, which require to constitute an offence punishable under Section 376, 323, 504 and 506 IPC are missing in the body of the FIR as well as statements of witnesses, including the prosecutrix, thus the final conclusion drawn by the investigating officer in the shape of chargesheet is not tenable in the eye of law. Therefore, continuation of criminal proceedings against the applicant would tantamount to a miscarriage of justice.

11. Shri Arvind Kumar Bhardwaj, learned counsel for the opposite party no.2 and Shri Rabindra Kumar Singh, learned AGA for the State of UP. opposed the prayer and submitted that the applicant had continuously exploited the victim for the last five years. The applicant in order to save himself, assured the victim of marriage, which was a false assurance from the very beginning. After solemnization of marriage on 27.08.2019, the applicant did not allow the prosecutrix to join her matrimonial home. On the basis of this false promise of marriage, the victim was continuously subjected to rape for the last five years. The FIR was lodged by the victim when she came to know that the applicant would not solemnize marriage with her. The applicant has ruined the life of the victim and committed rape on the false promise of marriage. When the victim approached the applicant, she was physically abused and threatened with dire consequences. The Investigating Officer has found sufficient material against the applicant for

submission of the charge sheet and a *prima facie* offence is made out from the perusal of the FIR and statements of the victim recorded under Sections 161 and 164 Cr.P.C. Therefore, the present application lacks merit and deserves to be dismissed.

12. I have heard the rival submissions of the parties and perused the record.

13. The point for consideration in the present application is whether the material on record collected by the Investigating Officer during investigation, including the statements of the victim makes out a *prima facie* case of rape against the applicant, or whether continuation of the proceedings would tantamount to an abuse of the process of law.

14. The perusal of the FIR reveals that the victim lodged the first information report when she was about 29 years of age and alleged therein that she came in contact with the applicant in the year 2014. Both developed mutual liking and fondness for each other and thereafter they stayed in contact. The FIR is silent regarding the date, time and place of occurrences where the victim was continuously being raped on the false promise of marriage. It is not the case where the victim was of an immature age, who could not foresee her welfare and take right decisions. She was mature and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her relations. This Court finds that, by no stretch of imagination, it can be said that the prosecutrix had given her consent for sexual relations under any misconception. The victim and the applicant remained in a close relationship for the past five years and during this time they established sexual relations multiple time between year 2014 to year 2019 but no complaint whatsoever, was ever made by the victim when the first alleged act of rape was committed on her. Therefore, the only logical inference that emerges, is that the victim, on her own volition, visited and met the applicant-accused on each occasion. Throughout the prolonged period of five years, the victim kept completely quiet about the sexual abuse meted out to her by the accused until she learnt that the applicant-accused was not going to marry her. Additionally, the long gap of five years between the first alleged act of sexual intercourse and the continued relationship for five years until the filing of the first information report, convinces this Court that it is a clear case of a love relationship

turned sour.

15. First, this Court will examine whether the charge sheet can be quashed by this Court under Section 528 of the BNSS or Section 482 Cr.P.C., as the case may be.

16. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C./ 528 B.N.S.S. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal**, the Hon'ble Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. Guidelines are as follows:-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

(Emphasis Supplied)

17. In the case of *R. Kalyani v. Janak C. Mehta and Others* reported in 2009 (1) SCC 516, the Hon'ble Apex Court has held as under:-

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

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

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

(Emphasis Supplied)

19. In Vineet Kumar v. State of U.P., (2017) 13 SCC 369, the Apex Court has held as under:

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. ... Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding. ... the

present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.

(Emphasis Supplied)

20. The Hon'ble Supreme Court has held that the powers of the High Court invoking under Section 482 Cr.P.C. or 528 B.N.S.S. are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power does not confer arbitrary jurisdiction to act accordingly to whims and caprices and is used to prevent the abuse of process of law and for securing the ends of justice.

21. To ascertain, whether the present case falls within the category of rarest of rare cases, it would be expedient to consider the facts of the present case as well as judgments of Hon'ble Supreme Court on this issue.

22. In the case of **Mahesh Damu Khare Versus State of Maharashtra and Another, (2024) 11 Supreme Court Cases 398**, the Hon'ble Supreme Court has made observation that where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise of marriage. A woman may have reasons to have physical relationship other than the promise of marriage like, personal liking for the male partner. The relevant paragraphs of **Mahesh Damu Khare (supra)** are reproduced hereunder:-

"27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the

alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact."

23. In case of **Prashant Versus State of NCT of Delhi, (2025) 5 Supreme Court Cases 764**, the Hon'ble Supreme Court has observed that it is inconceivable that the complainant would continue to meet the accused or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. The relevant paragraphs of **Prashant (supra)** are being reproduced hereunder:-

"18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself.

19. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

20. In our view, taking the allegations in the FIR and the charge- sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n) IPC are absent. A review of the FIR and the complainant's statement under 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in

nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."

24. Furthermore, the Hon'ble Supreme Court in the case of **Samadhan Versus State of Maharashtra and Another, 2025 SCC OnLine SC 2528** observed that on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation. The relevant paragraphs of **Samadhan (supra)** are being reproduced hereunder:-

"28. We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of

criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation."

25. The Hon'ble Supreme Court in **Rajnish Singh @ Soni Vs. State of U.P. And Another, 2025 (4) SCC 197** held that where a woman willingly engages in a long-term relationship with a man, fully aware of its nature, and there is no cogent evidence to show that such relationship was induced by a misconception of fact or a false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portions of the judgment are extracted as under:?

"33. There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Center, Lalitpur on 23rd March, 2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live

together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Center wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

36. Further, on the perusal of the statement made by the complainant under Section 161 CrPC, it is evident that she came to know about the relations between the appellant and Namrata in the year 2020-2021. Thus, once the complainant was aware that the appellant had broken the ties with her and was involved in a relationship with another woman, there was no reason for her to hold back from filing the FIR.

.....

39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

26. The Hon'ble Supreme Court in case of **Shiv Shanker Vs. State of Karnataka, (2019) 18 SCC 204** had quashed criminal proceedings on the ground that it is difficult to hold sexual intercourse in the course of a relationship, which continued for eight years, as "rape" especially when the complainant therein had alleged that they lived together as husband and wife. The relevant extract of Shiv Shanker (supra) is reproduced hereinbelow:-

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as 'rape' especially in the face of the complainant's own allegation that they lived together as man and wife."

(emphasis supplied)

27. The Hon'ble Supreme Court in the case of **Naim Ahamed Vs. State (NCT Of Delhi), (2023) 15 Supreme Court Cases 385** has held that the prosecutrix had also given consent for a sexual relationship with the accused therein, upon an assurance to marry. The prosecutrix, who was herself a married women having three children had continued to have such a relationship with the accused, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, the Hon'ble Supreme Court observed as under:-

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of 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 Section 376. As stated earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the

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

28. In the case of **Pramod Kumar Navratna Versus State of Chhattisgarh and Others, 2026 SCC OnLine SC 154**, the Hon'ble Supreme Court held that the Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence. Such genuine cases must be clearly demarcated from the

litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. The relevant paragraphs of **Pramod Kumar Navratna (supra)** are reproduced hereunder:-

18. It has been time and again settled by this Court, that the mere fact that the parties indulged in physical relations pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 of the IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. The issue for consideration is whether, given the facts and circumstances of the case and after examining the FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the accused-appellant arising out of FIR No.213/2025 dated 06.02.2025 and the Chargesheet No.269/2025.

22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2) (n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No.1-State and the complainant-respondent No.3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No.3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it

cannot be, by any stretch imagination said that the consent of the complainant-respondent No.3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant."

29. The Hon'ble Supreme Court in the case of **Ravish Singh Rana Versus State of Uttarakhand & Anr., 2025 SCC OnLine SC 1055** has made observation that the two able minded adults, if maintained a long term physical relations, then the presumption would arise that they have voluntarily chose the consensual relationship and subsequent non-fulfillment of promise of marriage would not attract any offence. The relevant paragraphs of **Ravish Singh Rana (supra)** are reproduced hereunder:-

"10. An overview of the facts makes it clear that relationship between the appellant and the second respondent (the informant) had been there since 2021. This relationship was not merely of knowing each other but of living together as a couple under one roof in a rented accommodation. The FIR does not allege that physical relationship was established only because there was a promise of marriage. Besides, physical relationship continued for over two years without a complaint in between. In such circumstances, a presumption would arise of there being a valid consent for initiating and maintaining the physical relationship that spanned over two years.

14. In the instant case also, we find that the relationship between the appellant and the second respondent (the informant) was spread over two years. Further, they not only admit of having physical relations with each other but also of living together in a rented accommodation as a live-in couple. In our view, if two able-minded adults reside together as a live-in couple for more than a couple of years and cohabit with each other, a presumption would arise that they voluntarily chose that kind of a relationship fully aware of its consequences. Therefore, the allegation that such relationship was entered because there was a promise of marriage is in the circumstances unworthy of acceptance, particularly, when there is no allegation that such physical relationship would not have been established had there been no promise to marry.

15. Moreover, in a long drawn live-in relationship, occasions may arise

where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that expression of desire, or wish, by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships might not have been common. But now more and more women are financially independent and have the capacity to take conscious decision of charting their life on their own terms. This financial freedom, inter alia, has led to proliferation of such live-in relationships. Therefore, when a matter of this nature comes to a court, it must not adopt a pedantic approach rather the Court may, based on the length of such relationship and conduct of the parties, presume implied consent of the parties to be in such a relationship regardless of their desire or a wish to convert it into a marital bond."

30. The Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar Versus State of Maharashtra And Another, (2019) 9** Supreme Court Cases 608 held that 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 so as to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". However, mere breach of a promise cannot be said to be a false promise. Therefore, to establish a false promise, it would have to be demonstrated that the maker of the promise had no intention of upholding his word at the time of making the promise. The relevant paragraph of **Pramod Suryabhan Pawar (supra)** is reproduced hereunder:-

"16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed:

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

.....

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(Emphasis supplied)

31. In Uday Vs. State of Karnataka, (2003) 4 SCC 46, the complainant

was a college going girl when the accused promised to marry her. The victim was aware that there would be significant opposition from both families to the proposed marriage. Even then she engaged in sexual intercourse with the accused. The Hon'ble Supreme Court observed that in these circumstances, the accused's promise to marry the victim was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors. The relevant paragraph of **Uday (supra)** is reproduced hereunder:-

"25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married....."

(Emphasis supplied)

32. In Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Another, (2021) 18 SCC 517, the Hon'ble Supreme Court quashed the FIR and the proceedings upon noticing that relationship between the accused and the victim was of consensual nature and parties were in relationship for a period of one and a half years, and subsequently the accused had expressed disinclination to marry the prosecutrix which led to registration of FIR.

33. In Deepak Gulati v. State of Haryana, (2013) 7 SCC 675, the Apex Court has held as under:

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

.....

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

fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

34. The Hon'ble Supreme Court in **Dileep Singh Vs. State of Bihar, (2005) 1 SCC 88** acquitted and set aside the conviction of the accused holding that while there was a breach of promise to marry, it was not a case of false promise of marriage. The relevant extract is reproduced hereinunder:-

"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 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 [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] at para 24 come to the aid of the appellant."

(emphasis supplied)

35. The Hon'ble Supreme Court in **Manish Yadav Vs. State of Uttar Pradesh and another, 2025 SCC OnLine SC 363** held that the victim and the accused were competent enough to make rational decisions and their initial physical relations were consensual in nature which had

developed on the basis of mutual attraction and therefore, the same cannot fall within the ambit of a relationship flowing from a promise to marry. In the aforesaid case, the proceedings under Sections 376, 323, 504 and 506 IPC and Sections 3(1)(r), 3(1)(s), 3(2)(5a) and 3(2)(v) of the SC/ST Act were quashed on the ground that consensual relationship has turned sour due to certain intervening events. The relevant paragraphs of **Manish Yadav (supra)** are reproduced hereunder:-

"14. In our opinion, it is clearly discernible that both the appellant and the complainant were major and thus, both were competent enough to make rational decisions. As per the statement of the complainant (supra), their initial physical relations were consensual in nature, and without there being any promise of marriage being offered by the appellant. While it can be said that initially the relationship between the complainant and appellant had developed on the basis of mutual attraction and affection, the same cannot by any stretch of imagination fall within the ambit of a relationship flowing from a promise to marry.

18. Applying the above principle to the case at hand, it is clearly discernible that in the present case, the complainant had agreed to indulge in intimate relations with the appellant on the accord of her own desires and not on the basis of any false promise of marriage made by the appellant. Therefore, while the present case may involve a breach of promise, it does not constitute a case of an inherently false promise to marry. Based on the circumstances, it cannot be concluded that the appellant obtained the complainant's consent to engage in a physical relationship under the pretext of a false promise of marriage.

20. Thus, the theory put forth by the prosecution in the chargesheet that the appellant induced the complainant to indulge in physical relations under a false promise of marriage is neither corroborated nor established by the best evidence available on record, which is in the form of the statement of the complainant recorded under Section 164 CrPC.

22. In view of the above discussion, we are of the opinion that the present case appears to be one where a consensual physical relationship between two adults has turned sour due to certain intervening events. Hence, allowing the prosecution of the appellant for the offences mentioned

above would tantamount to sheer abuse of the process of law and nothing else."

36. In another recent judgment, the Hon'ble Supreme Court in case of **Nitin B. Nikhare Versus The State of Maharashtra & Anr. (arising out of SLP (Crl.) No.1889/2024)**, decided on 21.01.2025 has held that mere fact that physical relations were established pursuant to a promise to marry will not amount to rape unless it is proved that promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling the said promise from the very beginning. The relevant paragraphs of **Nitin B. Nikhare (supra)** are reproduced hereunder:-

"5. On the other hand, the prosecution's case is that the prosecutrix entered into a sexual relationship with the appellant solely for the reason that he had promised to marry her and this relationship continued for some time and was broken when the promise of marriage was not fulfilled. In other words, the main allegation of the prosecutrix is that had it not been for the promise of marriage made by the appellant she would have never entered into a physical relationship with him and considering that this was done by cheating, the same amounts to rape.

6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare v. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that

prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted."

37. Further, in Dhruvaram Murlidhar Sonar Vs. State of Maharashtra, (2019) 18 SCC 191, the Apex Court has held 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 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."

(Emphasis Supplied)

38. In Maheshwar Tigga Vs. State of Jharkhand, (2020) 10 SCC 108, the Apex Court has held that the misconception of the fact about promise to marry has to be in proximity of time to occurrence and cannot be spread over for long period of time. The Apex Court has observed as under:

"13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact

with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under Section 375 IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the eye of the law. In the facts of the present case, we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

.....

18. We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to be solemnised in the church or in a temple and ultimately failed. It is not possible to hold on the evidence available that

the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her."

(Emphasis Supplied)

39. The Hon'ble Supreme Court in a recent judgment in case of **Amal Bhagwan Nehul Vs. The State of Maharashtra, SLP (Crl.) No.10044/2024**, decided on **26.05.2025**, quashed the criminal proceeding arising out of F.I.R., registered under Sections 376, 376(2)(n), 377, 504 & 506 of I.P.C. wherein the parties continued meeting outside and engaged in sexual intercourse for a period of 13 months. The victim, mother of a 4 year son, was a married lady in that case, had not obtained divorce from her husband when she entered into a sexual relationship with the accused. The Hon'ble Supreme Court observed as hereunder:-

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

(a) Even if the allegations in the FIR are taken as a true and correct depiction of circumstances, it does not appear from the record that the consent of the Complainant/Respondent no. 2 was obtained against her will and merely on an assurance to marry. The Appellant and the Complainant/Respondent no. 2 were acquainted since 08.06.2022, and she herself admits that they interacted frequently and fell in love. The Complainant/Respondent no. 2 engaged in a physical relationship alleging that the Appellant had done so without her consent, however she not only sustained her relationship for over 12 months, but continued to visit him in lodges on two separate occasions. The narrative of the Complainant/Respondent no. 2 does not corroborate with her conduct.

(b) The consent of the Complainant/Respondent no. 2 as defined under section 90 IPC also cannot be said to have been obtained under a misconception of fact. There is no

material to substantiate ?inducement or misrepresentation? on the part of the Appellant to secure consent for sexual relations without having any intention of fulfilling said promise. Investigation has also revealed that the Khulanama, was executed on 29.12.2022 which the Complainant/Respondent no. 2 had obtained from her ex-husband. During this time, the parties were already in a relationship and the alleged incident had already taken place. It is inconceivable that the Complainant had engaged in a physical 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. (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.

(c) There is no evidence of coercion or threat of injury to the Complainant/Respondent no. 2, to attract an offence under section 506 IPC. It is improbable that there was any threat caused to the Complainant/Respondent no. 2 by the Appellant when all along the relationship was cordial, and it was only when the Appellant graduated and left for his hometown to Ahmednagar, the Complainant/Respondent no. 2 became agitated. We also cannot ignore the conduct of the Complainant/Respondent no. 2 in visiting the native village of the Appellant without any intimation, which is also unacceptable and reflects the agitated and unnerved state of mind of the Complainant/Respondent no. 2. For the same reason, the criminal prosecution against the Appellant herein is probably with an underlying motive and disgruntled state of mind.

(d) There is also no reasonable possibility that the

Complainant/Respondent no. 2 or any woman being married before and having a child of four years, would continue to be deceived by the Appellant or maintain a prolonged association or physical relationship with an individual who has sexually assaulted and exploited her.

9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly³ to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.

40. The Hon'ble Supreme Court in the case of **Kunal Chatterjee vs. The State of West Bengal & Ors., 2025 7 Supreme 489** quashed the proceedings against accused, wherein the victim claimed herself to be a minor girl and the FIR was lodged by her when she attained the age of majority. It was held that promise to marriage and subsequent physical relationship between two with consent would not amount to rape. The judgment of **Kunal Chatterjee (supra)** is a short one, therefore, the entire judgment is being reproduced hereunder:-

"Leave granted.

The appellant before this Court is an accused in a case under Sections 417, 376, 506 read with Section 34 of the Indian Penal Code and Section 6 of the POCSO Act. The complaint is the prosecutrix, who at the time of lodging of the FIR, was a major, but alleges that she was a minor and was the age of 15 years, i.e. more than three years back, when the appellant and the prosecutrix had a consensual relationship and the complainant agreed to be in relationship after the appellant had promised to marry her. After she became major, the appellant backed out from his promise and the prosecutrix was humiliated by the parents of the present appellant. Thus, the prosecutrix was constrained to file an FIR, not only against the appellant, but also against his father, mother and uncle. This

is the case of the prosecution. The substance of the FIR is that she was admittedly in a relationship at the time she was a minor, and she entered into the relationship on the promise of marriage. Hence, the case of rape is made out, and that too rape of a child.

The accused had invoked the inherent jurisdiction of the Calcutta High Court for quashing of the FIR. As far as father, mother and uncle of the appellant are concerned, the High Court did quash the proceedings under Section 482 Cr.P.C. But the proceedings as against the present appellant were kept alive. Now, the appellant is before this Court praying that proceedings are liable to be quashed qua him as well. The learned counsel appearing for the State and the complainant have vehemently opposed the prayer for quashing of the proceedings.

We have heard learned counsel for the parties at length. Learned counsel appearing for the State has relied upon the definition of 'Rape' and would argue that the consent given by the minor is no consent and it would still be a rape. In our considered opinion, as regarding the rape being committed by the appellant when the prosecutrix was a minor, there is absolutely no evidence, and definitely no forensic evidence with the prosecution. It is only an allegation in the FIR after more than 03 years, in order to make out a case under the POCSO Act that such an act of rape was committed three years back when she was a minor. She also categorically states that she consented to the act as there was a promise of marriage by the appellant. This Court has held in several decisions that promise to marriage and the subsequent physical relationship between the two with consent would not amount to rape and the reasons therein have been assigned (See: Prithivirajan v. State, 2025 SCC OnLine SC 696, Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608, Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108).

Under the present facts and circumstances of the case and the nature of the evidence with the prosecution, particularly the long delay in lodging the FIR itself suggest that the present criminal proceedings lodged against the appellant are nothing but an abuse of the process of law and the High Court ought to have invoked its inherent jurisdiction in the case of the appellant as well as it did while quashing the proceedings for the

remaining accused.

Under these circumstances, we allow this appeal and quash the proceedings against the appellant, as these are nothing but an abuse of the process of law.

Pending interlocutory application(s), if any, is/are disposed of."

41. Therefore, from the aforesaid judgments, it is crystal clear that if the parties were in a long-standing and continuous consensual physical relationship, without any element of cheating from the inception, such a relationship would not amount to rape.

42. This Court has seen in a large number of cases, that there is a growing trend that consensual relationships going on for a prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.

43. Thus, from the perusal of aforesaid judgments, it is apparent that each and every promise of marriage would not be considered as a fact of misconception for the purpose of consensual sexual intercourse unless it is established that such promise of marriage was a false promise of marriage on the part of the accused since the beginning of such a relationship. Unless it is alleged that, from the very beginning of such a relationship, there was some element of cheating on the part of the accused while making such promise, it would not be treated as a false promise of marriage. Once, a promise was made in good faith and, subsequently after change of circumstances when the relationship between the parties went wrong for various other reasons, such breach of promise would not be treated as misconception for the purpose of consent of establishing physical relationship. When a woman of competent age, having sufficient understanding of the physical activities in which she is involved on the basis of a promise of marriage, understands the risks associated with such a physical relationship as there is a significant difference between marriage and a mere promise of marriage.

44. In the present case, the victim has not alleged that the applicant had no intention to marry right from the beginning. Therefore, the basic

ingredients constituting an offence of rape are not made out. The promise of marriage as alleged in the instant case was of no consequence to prove the charges against the applicant. The prosecutrix cannot blame the applicant for breach of promise as the promise itself was non-est at the time of beginning of the relationship between the applicant and the prosecutrix.

45. At the same time, it cannot be overlooked that an adult, and especially an educated and independent adult who voluntarily enters into a romantic relationship, after exercising free and conscious choice, must be aware of the inherent uncertainties attached to such relationships. It is neither inevitable nor assured that every romantic relationship will result in marriage. Relationships may end for a variety of personal, practical, or circumstantial reasons, including incompatibility or change in individual priorities.

46. While many individuals are able to accept the breakdown of a relationship with maturity, there may be cases where emotional distress, disappointment, or wounded feelings influence subsequent actions. In such situations, allegations may sometimes arise which are rooted more in personal grievance than in the commission of a criminal offence. Courts are therefore required to exercise caution and discernment while examining such allegations, particularly where the material on record reflects a consensual relationship between adults.

47. An educated and independent adult, upon entering into a consensual relationship, must also recognise that the law cannot be invoked to criminalise the mere failure of a relationship. The dissolution of a relationship, by itself, does not give rise to criminal liability. Such matters must be approached with sensitivity, restraint, and due respect for the autonomy and choices of both individuals involved.

48. From the record, it is clear that the prosecutrix was a major and qualified girl when she came in contact with the applicant in the year 2014. The prosecutrix admitted in paragraphs no.8 and 9 of her counter affidavit that marriage between her and the applicant was solemnized on 27.08.2019 in the presence of their relatives. She alleged that she consented for the marriage

under pressure. In the light of foregoing circumstances, even upon a bare reading of the material on records, it is manifest that the relationship between the parties was consensual, therefore, no *prima facie* offence is made out against the applicant-accused. It is therefore, clear that the applicant-accused is not liable for the offence of rape if the prosecutrix has fully agreed to maintain sexual relations with the applicant.

49. Therefore, this Court is of the opinion that in the instant case, no offence of rape is made out against the applicant herein and the instant FIR was lodged by the prosecutrix as she was annoyed by the behavior of the applicant. The victim after lodgement of the FIR, got married to the applicant on 27.08.2019 which again goes to show that the FIR was lodged in order to exert pressure upon the applicant so that marriage between the applicant and the victim could be solemnized.

50. The facts of the case discussed here-in-above including the legal propositions, this Court finds that the present case stands on the footing of rarest of rare case to invoke the inherent jurisdiction for quashing the criminal proceedings, as continuing with the criminal proceedings would be in futility and gross misuse of criminal jurisdiction. The present case squarely falls under categories enumerated in guidelines (1), (5) & (7) as identified by Hon'ble Supreme Court in **Bhajan Lal case (supra)**. The other allegations of physical assault, filthy abuses and threat have not been supported by any material particulars. Hence, the application under Section 528 B.N.S.S. has merit and liable to be allowed.

51. Accordingly, the instant application is allowed and the entire proceedings of the Case No.793 of 2021 (CNR NO.UPAD040449212020) (State vs. Sanjay Saroj), arising out of Case Crime No.640 of 2019, under Sections 376, 323, 504 and 506 of the Indian Penal Code, 1860 (in short 'IPC'), Police Station Colonelganj, District Prayagraj, pending in the court of Special Chief Judicial Magistrate, Allahabad, as well as chargesheet dated 08.01.2020 and cognizance/summoning order dated 04.09.2021, are hereby quashed against the applicant.

(Vivek Kumar Singh,J.)

June 18, 2026

Nitendra