



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). **OF 2025**
(ARISING OUT OF SLP(CRL.) NO(S). 8549 OF 2023)

RAJNISH SINGH @ SONI

....APPELLANT(S)

VERSUS

STATE OF U.P. AND ANOTHER

...RESPONDENT(S)

JUDGMENT

Mehta, J.

1. Heard.
2. Leave granted.
3. The appellant herein has preferred the instant appeal by special leave, assailing the order dated 24th April, 2023, passed by the learned Single Judge of the High Court of Judicature at Allahabad¹ dismissing the petition filed by the appellant, being Application U/S 482 No. 43177 of 2022, for quashment of the proceedings of Criminal Case No. 1246 of 2022 arising out of chargesheet in Case Crime No. 269 of 2022 under Sections 376,

¹ Hereinafter, referred to as 'High Court'.

384, 323, 504, 506 of the Indian Penal Code, 1860² at Police Station Bakewar, District Etawah.

4. Brief facts relevant and essential for the disposal of the present appeal are reproduced hereinbelow.

5. Ms. A, respondent No. 2-complainant³, lodged an FIR in Case Crime No. 269 of 2022 dated 5th July, 2022, against the appellant at Police Station Bakewar, District Etawah alleging, *inter alia*, that she is a resident of village Kudaria and was qualified with degrees in M.Com and B.Ed. and since 2008, she had been serving on the post of Lecturer in AFS Bhemora College in Lucknow.

6. It was alleged that the accused, appellant herein, sometime in the year 2006, sneaked into the house of the complainant in the night and subjected her to forcible sexual intercourse. She was neither able to scream nor could call out for help as the appellant had gagged her mouth due to which her parents, who were also present in the house, were unable to get a wind of the incident. She warned the appellant that she would disclose about the incident to her family members, upon which the appellant apologised profoundly and requested her to remain quiet and gave her an assurance of marriage. The complainant, therefore, neither

² Hereinafter, being referred to as 'IPC'.

³ For short, 'complainant'.

lodged any complaint nor did she take other action in respect of the incident of sexual assault upon her.

7. The appellant initially, was working as a constable in the police department. Later, in 2009, he joined as a Clerk in the State Bank of India in Dhani branch of Maharajganj district. In the intervening period, the intimacy between the appellant and the complainant continued to flourish. The appellant had once called the complainant to Maharajganj, where he made her to consume some intoxicant mixed with ENO, without her knowledge, which made her semi-conscious. Taking advantage, the appellant subjected her to forcible sexual intercourse. He not only video-graphed the offending acts but later, showed it to the complainant when she regained consciousness. The complainant, fearing retribution in society, did not share information about the said incident with anyone. Subsequently, the complainant became pregnant which was confirmed with a pregnancy detection kit. When this information came to the knowledge of the appellant, he mixed some medication in water and made the complainant to drink it in order to cause miscarriage. Since the appellant continuously blackmailed and threatened the complainant using the obscene video, she did not tell anyone about the abortion.

8. The complainant had initially gone to meet the appellant out of her own free will, but the appellant, later on, pressurised her under the threat of making the obscene video/pictures viral. She would therefore, meet him only with the objective of collecting the video from him so that she could delete it. In 2015, the appellant called the complainant to Pratapgarh and threatened her that if she did not accede to his demands, he would make the video viral.

9. Additionally, it was also alleged in the FIR that the appellant forcibly took money from the complainant on a number of occasions. In 2011, the appellant had taken a cheque of Rs.94,000/- from the complainant, however, he did not return a dime to her. As the appellant threatened her by using the obscene video of intimate relations that he possessed, she did not complain to anyone, about the aforesaid criminal acts that had taken place with her between the years 2006 to 2021.

10. In 2021, a woman, named Namrata, entered into the life of the appellant, whereupon the complainant filed a complaint with Lucknow Commissionerate. However, she was advised to go to Etawah Police Station. Thereupon, she lodged a complaint against the appellant at the One Stop Centre, Lalitpur on 23rd March, 2022 which was closed based upon an agreement entered into between

the complainant and the appellant, wherein they both agreed to marry each other. However, on 22nd April, 2022, the appellant resiled from his promise and married Namrata. When the factum of appellant's marriage came to the complainant's knowledge, she immediately shared the information of the illegal acts and incidents of sexual assaults by the appellant with her family members and the people of her community. Later, when she decided to take police action, the appellant along with his brother-Ashwani and father-Rajbahadur made an attempt to cause harm to her parents. On 1st May, 2022, the appellant barged into her house, in the presence of her parents, and threatened that she would be killed if she continued with the legal cases filed by her.

11. Based on the above allegations, an FIR⁴ dated 5th July, 2022, came to be registered against the appellant for the offences punishable under Sections 313, 376, 384, 323, 504 and 506 of IPC and investigation was commenced. Almost similar allegations were set in the statements of the complainant recorded under Sections 161 and 164 of Code of Criminal Procedure, 1973⁵ and in addition, she further stated that upon discovering that the appellant had developed relations with Namrata, she had disclosed everything to

⁴ FIR No. 269 of 2022.

⁵ Hereinafter, referred to as 'CrPC'.

her but in spite thereof, Namrata got married to appellant on 22nd April, 2022.

12. Consequent to the completion of the investigation, the police submitted a report under Section 173(2) CrPC dated 29th September, 2022, against the appellant for the offences punishable under Sections 376, 384, 323, 504 and 506 IPC in the Court of learned Additional Chief Judicial Magistrate, Court No.-04, Etawah. *Vide* order dated 10th November, 2022, the learned Magistrate took cognizance for the above offences and issued summons to the appellant. Aggrieved, the appellant filed a criminal petition under Section 482 CrPC seeking quashing of the proceedings in Criminal Case No. 1246 of 2022 in the High Court. The quashing petition stands rejected *vide* order dated 24th April, 2023, which is assailed in this appeal by special leave.

SUBMISSIONS ON BEHALF OF THE APPELLANT: -

13. Learned counsel for the appellant vehemently and fervently urged that the entire case as set out in the impugned FIR and the chargesheet is false and cooked up. The complainant is a major educated girl, who was fully conscious of the consequences of the intimate relationship which flourished between her and the appellant for a period of almost 16 years. The acts of repeated

intimacy and sexual relations were totally consensual in nature and were not established under any false promise, threat, duress or coercion. The appellant all along intended to marry the complainant. He thus, urged that the case of a prolonged voluntary relationship/love affair between two consenting adults has been given a colour of forcible sexual intercourse with oblique purposes and motive.

14. Learned counsel further submitted that, as a matter of fact, the appellant and the complainant had performed the rituals of marriage with each other during the subsistence of their love affair which extended to over one and a half decade. However, the relationship went sour leading to the strife and culminated into the FIR. In this regard, he placed reliance on the application dated 25th May, 2022, given by the complainant to the Senior Superintendent of Police, Etawah and urged that the said application was filed prior to the lodging of the FIR, wherein the complainant had categorically mentioned her marital status as the wife of the appellant. She had also alleged in the complaint that her husband, *i.e.*, the appellant herein, had refused to keep her with him.

15. Learned counsel urged that it is a case of voluntary sexual relationship between two consenting adults and hence, the

proceedings of the criminal case registered against the appellant for the aforesaid offences, tantamount to a gross abuse of the process of law and therefore, the same deserve to be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS: -

16. *Per contra*, learned counsel for the State and learned counsel appearing for the complainant have vehemently opposed the submissions advanced by the counsel for the appellant. They urged that the appellant won over the confidence of the complainant by giving her false assurances of marriage and based on such promise he sexually exploited her, when in fact, he had no intentions to marry her. After subjecting the complainant to forcible sexual intercourse repeatedly over a period of almost 15 years, the appellant ditched her and married another woman.

17. Learned counsel further contended that the appellant had also recorded intimate videos and pictures of the complainant and blackmailed her under the threat of making them viral. They, urged that the High Court was justified in dismissing the criminal petition filed by the appellant and hence, sought rejection of the present appeal.

ANALYSIS AND CONCLUSION: -

18. We have given our anxious consideration to the submissions advanced at the bar and have carefully gone through the impugned judgment and the material placed on record.

19. The allegation that the appellant spiked the complainant's drink and caused her miscarriage stands refuted as the Investigation Officer has deleted Section 313 IPC while submitting the police report under Section 173(2) CrPC dated 29th September, 2022. Further, Investigation Officer also concluded that the involvement of the other co-accused, *i.e.*, the relatives of the appellant who were arraigned by the complainant in the FIR, was not substantiated by any reliable evidence and thus, the chargesheet was only submitted against the appellant.

20. Therefore, we have to consider whether in the facts and circumstances of the present case, the appellant is liable to be prosecuted for committing rape upon the complainant by giving her a false promise of marriage.

21. There is no dispute that the complainant, a highly qualified female, was major at the time when her relationship with the appellant sprouted. The first act of sexual intercourse between the appellant and the complainant is alleged to have taken place in the

year 2006 and that too in her own house. However, at that time, the complainant did not make any complaint to anyone, including her own family members, that the appellant had established sexual relations with her based on an express promise to marry her in future. It needs to be highlighted that the complainant categorically came out with a case in the FIR that the first act of sexual relation between her and the appellant (*albeit* forcible as per the complainant) took place in her own house where her parents were also present. The very manner in which this incident is said to have taken place, puts the case of the complainant under serious doubt. It is difficult to swallow that the complainant, a well-qualified major girl, was subjected to forcible sexual intercourse by an outsider in her own house where her parents were present and still, they did not get a whiff about the incident. Thus, the complainant's allegations seem to be a well-orchestrated story and nothing beyond that.

22. It was nearly 16 years since the first incident, in a highly belated FIR, that the complainant alleged, for the first time, that the appellant, who was on friendly terms with her, forcibly subjected her to sexual intercourse in the year 2006. Further, she also stated that though she initially protested to this act and

intended to report the matter to the police, she changed her mind trusting the appellant's assurance that he loved her and if she refrained from spilling the beans, he would marry her. Under this guise, the appellant continued to establish sexual relations with the complainant.

23. Admittedly, the appellant got a job in the year 2006 as a Constable in the police department and was posted in a different town. The complainant alleged that whenever the appellant would visit the village Kudaria, he would establish sexual relations with her under the promise of marriage. However, she has not clarified or elaborated when and where these acts of fornication took place. In the year 2008, the complainant came to be appointed as a Lecturer in the Kendriya Vidyalaya whereas, the appellant in the year 2009, got a job as a Clerk in the State Bank of India. As per the complainant, in the year 2009, the appellant called her to his residence in the town Farinda, Anand Nagar, where he mixed certain intoxicating substance in her drink and thereafter, subjected her to sexual assault and while she was in the state of drug induced stupor, he recorded her obscene videos and pictures. He, thereafter, sent offensive messages to the complainant on WhatsApp, threatening that he would make her videos and

pictures viral unless she continued to have sexual relations with him.

24. It does not stand to reason that when the intimate relations were continuing between the parties without any hitch for more than three years, then why would the appellant be impelled to take the trouble of spiking the drink of the complainant in order to establish sexual relations with her.

25. It is hard to believe that the complainant, being a highly qualified and well-placed major woman, kept on bending to the demands of the appellant for a period of nearly 16 years without raising any protest to any quarter that the appellant was exploiting her sexually under the pretext of a false promise of marriage. The prolonged period of 16 years during which the sexual relations continued unabatedly between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship. The complainant and the appellant were posted at different places pursuing their respective jobs. On a few occasions, the appellant would visit the complainant at her place whereas on other occasions, the complainant was called by the appellant to his house where these acts of fornication continued unabatedly till the year 2020/2021. It is almost impossible to swallow the version

of the complainant that for the entire period of 16 years, she unreservedly allowed the appellant to subject her to repeated acts of sexual intercourse under the impression that the accused would on someday act upon his promise of marriage.

26. In the case of ***Mahesh Damu Khare v. State of Maharashtra***⁶, this Court held that to make a man, accused of having sexual relationship by making a false promise of marriage, criminally liable, the physical relationship must be traceable directly to the false promise made and it must not be qualified by other circumstances or consideration. In a situation where the woman knowingly maintains the physical relationship for a prolonged period, it cannot be said with certainty that the said physical relationship was purely because of alleged promise made by the accused to marry her.

27. In conclusion, the Court held that unless it can be shown that the physical relationship was purely because of the promise of marriage and without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact. It was further held that even if it is assumed that a false promise of marriage was made to the

⁶ 2024 SCC OnLine SC 3471.

complainant initially by the accused, the fact that the relationship continued for a period of nine long years would render the plea of the complainant that her consent for all these years was under misconception of the fact that the accused would marry her implausible.

28. In the case of ***Prashant v. State (NCT of Delhi)***⁷, this Court 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.

29. Testing the facts of the case at hand, on the touchstone of the above precedents, it is clear that the complainant, being a highly qualified major woman continued in a consensual intimate sexual relationship with the appellant over a period of 16 years. At some point in time, the relationship went sour leading to the filing of the FIR. No reasonable man would accept the version that the complainant allowed the accused to establish sexual relations with her over a period of 16 years purely under the misconception of marriage.

⁷ 2024 SCC OnLine SC 3375.

30. 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. 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.

31. 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.

32. 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.

33. To the contrary, the complainant has herself set up a case that there was a secret marriage ceremony between her and the appellant. Therefore, in our opinion, even if the allegations made by the complainant are accepted on their face value, it is evident that the appellant and the complainant were in a long-standing live-in relationship during which they even performed marriage rituals *albeit* informal in nature.

34. It is trite that there is a distinction between rape and consensual intercourse. This Court in ***Deepak Gulati v. State of Haryana***,⁸ differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Courts concludes that his intentions are *mala fide* and he has clandestine motives. The relevant extract is reproduced hereinbelow: -

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

24. **Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim.** There may, of

⁸ (2013) 7 SCC 675.

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)

35. 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.

36. This Court in ***Shivashankar v. State of Karnataka***,⁹ 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 man and wife. The relevant extract 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

⁹ (2019) 18 SCC 204.

the complainant's own allegation that they lived together as man and wife.”

(emphasis supplied)

37. Thus, by no stretch of imagination, can this Court be convinced that present is a case wherein the appellant is liable to be prosecuted for having sexually exploited/assaulted the complainant based on a false promise of marriage. The allegations of the complainant are full of material contradictions and are *ex facie* unbelievable. Throughout the prolonged period of 16 years, the complainant kept completely quiet about the alleged sexual abuse, meted out to her by the appellant until she learnt that the appellant had married another woman. Further in complete contradiction to the case setup in the FIR, the complainant has on many occasions portrayed herself to be the wife of the appellant and thus, evidently, they lived together as man and wife. Additionally, the long gap of 16 years between the first alleged act of sexual intercourse, continued relations for one and a half decade till the filing of the FIR convinces us that it is a clear case of a love affair/live in relationship gone sour.

38. In this background, we are of the opinion that allowing the prosecution of the appellant to continue for the offences alleged,

under Sections 376, 384, 323, 504 and 506 IPC would be nothing short of a gross abuse of the process of law.

39. The order dated 24th April, 2023, passed by the High Court of Judicature at Allahabad is quashed and set aside and as a consequence, the impugned FIR No. 269 of 2022 and all the consequent proceedings sought to be taken thereunder against the appellant are also quashed and set aside.

40. The appeal is allowed accordingly.

41. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
MARCH 03, 2025.