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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. 35779 of 2025

Kuldeep Verma .....Applicant(s)

Versus

State of U.P. and Another .....Opposite Party(s)

Counsel for Applicant(s) : Mrityunjay Dwivedi
Counsel for Opposite Party(s) : Akanksha Gaur, G.A.

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. The present application under Section 528 B.N.S.S. has been moved by the accused-applicant to quash the charge sheet dated 08.08.2025, the cognizance order dated 26.08.2025 passed by the Chief Judicial Magistrate, Aligarh and the proceedings in trial of Case No. 2823/2025 (State Vs Kuldeep) arising out of Case Crime No. 521/2025, Police Station- Quarsi, District- Aligarh for the offences in Bhartiya Nyaya Sanhita 2023 under Sections, 69 (Sexual intercourse by employing deceitful means), 115(2) (Voluntarily causing hurt), 352 (Intentional insult with the intent to provoke breach of peace) and 351(3) (Criminal Intimidation).

2. Heard Shri Mritunjay Dwivedi, learned counsel for applicant, Ms. Akansha Gaur, learned counsel for opposite party no. 2 and Shri Raj Baran, learned A.G.A. for State. Perused the record.

3. The opposite party no. 2 (Victim) has lodged the FIR on 20.06.2025 at 23:56 hours against the accused-applicant with the allegation that the victim is residing in the house of accused-applicant and in relations with the accused-applicant since last 11 years, during this period accused-applicant has entered into sexual intercourse with the victim on making false promise of marriage. He also violently hurt her by kicks and fist while entering into sexual intercourse. He also threatened the victim not to open her mouth otherwise he would defame her. The accused-applicant kept the victim as his wife. On 27.05.2025 at about 9:00 p.m., the accused-applicant has beaten the victim due to which she suffered knee injury. She has given a written information at the police station concerned on which the accused-applicant has entered into a written compromise and ready to keep the victim with him but after leaving the police station, he again stated not to keep her with him as she is suffering from '*Rasauli*' *(Uterine Fibroids)* and further threatened to implicate her and her family members in false cases and hurl abuses.

4. With the above allegations the F.I.R. has been registered for the offences under Sections 69, 115(2), 352 and 351(3) of B.N.S.

5. In the statement recorded under Section 180 B.N.S.S., the victim has stated that she is 39 years of age. Since 2014-15 the victim is in relations with the accused-applicant. Many a times the accused-applicant has promised her to marry and entered into sexual intercourse, but whenever she asked to talk to the family, he ignores the talk of marriage on the pretext of ill health of his parents and marriage of his sister. She became mentally disturbed and while she was suffering with '*Rasauli*' the

accused-applicant refused to get her treated in hospital. She has reiterated the incident of 27.05.2025 and the threatening.

6. In her statement under Section 183 B.N.S.S., she has stated that for the first time she was raped by the accused-applicant after she was administered with sedative cold drink, thereafter entered in sexual intercourse on false promise of marriage. She did her Ph.D. while residing alongwith applicant in his house. In the year 2017-18 she has married the applicant at a temple where he put vermilion on her head. Two years back, he has also got her signature on the certificate of marriage of Aarya Samaj Mandir. Further stated that Rs. 15 lakh has been given by her mother to the accused-applicant and has again asked for Rs. 10 lakh. Further stated that once accused-applicant taken the victim to Bateshwar, but while returning he has left her alone on the road. On 18.06.2025, he has filed frivolous case, although on 17.06.2025 they underwent compromise.

7. On these allegations and material the charge sheet is submitted against the accused-applicant.

8. The learned counsel for accused-applicant submits that the relations between the accused-applicant and opposite party no. 2/Victim is consensual in nature as is reflected from the allegation levelled, which continued since the year 2014. The place of incident is alleged to be the house of applicant where according to the victim she is living as wife of the applicant and already married to the applicant. Further submits that the allegation of sexual intercourse on false promise of marriage cannot be sustained or *prima facie* made out because according to the victim she was already married to the applicant at Aarya Samaj Mandir. On the point of accepting the amount of Rs. 15 lakh the learned counsel submits that there is no basis for the said allegation. Hence the allegation is baseless. Further submits that the only injury shown by the victim is knee injury for which she has been referred to Orthopedic for management of knee

injury and except the knee injury there is no other injury found, which could be attributed on accused-applicant that the injury has been inflicted by the accused-applicant. Learned counsel further submits that on 29.08.2018, the victim has moved a complaint and the victim herself has given the statement to the police that she came to know that the accused-applicant is already married, hence, withdrew the complaint. The report of Deputy Superintendent of Police, District- Aligarh is dated 25.09.2018 addressed to Senior Superintendent of Police, District- Aligarh, wherein the enquiry report is submitted that the victim herself withdrew the complaint alleging therein that she does not want to continue with the case, as she is studying. This report is part of the application (Page-79). It is further submitted that on 18.06.2025 the accused-applicant has moved an application under Section 173(4) B.N.S.S. at the court of Judicial Magistrate-1, Aligarh which is registered as Application No. 75/11/2025 (Kuldeep Verma Vs. Pooja Rani and four others), wherein it is stated that the victim is continuously harassing the accused-applicant and his family since the year 2014, when the victim took admission in the college for doing B.Ed. Course at Khair Kanya Mahavidyalaya where the accused-applicant was a private Lecturer. The victim has met the wife of accused applicant and requested his wife to allow him to help her in studies. It is on the insistence of his wife that the accused-applicant has permitted the victim to seek his help in studies but gradually the opposite party no. 2/Victim in-connivance with her family members started blackmailing the applicant and demanded money, which led to the moving of the application. It is thereafter that the present F.I.R. has been lodged by opposite party no. 2 on 20.06.2025. The learned counsel submits that accused-applicant has been falsely implicated in the case. He relied on the judgment in ***Biswajyoti Chatterjee Vs. State of West Bengal and another*** decided by Hon'ble the Supreme Court by order dated 07.04.2025 in ***SLP (Criminal) No. 4261/2024***

(Paragraph-17) and further relied upon the order dated 08.09.2025 passed the by a co-ordinate Bench of this Court in ***Criminal Revision No. 8743/2025 (Km. Neha Anuragi Vs. State of U.P. and another)*** **(Paragraph-7)**. The relevant paragraphs of each citation are quoted underneath:-

In Biswajyoti Chatterjee (supra):-

"17. In the case of ***Uday Vs State of Karnataka****, the Court had acquitted the accused on the basis that she was a mature college student who had consented to sexual intercourse with the accused of her own free will. It is unlikely that her consent was not based on any misconception of fact. In Uday (supra), the Court noted that:*

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

In Km. Neha Anuragi (supra) :-

> *"7. After hearing the submissions of learned counsel for the parties and on perusal of record, it is not in dispute that the applicant and opposite party No.2 were in relationship for four years and this fact was known to all employees as well as officials*

of Tehsil. Subsequently, on refusal by opposite party No.2 to get married to the applicant, the applicant made a complaint to the Sub Divisional Magistrate as well as to police. However, during enquiry by the Sub Divisional Magistrate and also by the police officers on the complaint made by the applicant, both the parties settled their dispute and applicant decided not to pursue the case. However, the report of Tehsildar dated 8.1.2024 also shows that there was consensual relationship between the parties and applicant herself requested to withdraw her complaint against opposite party No.2. Though there is allegation that initially physical relationship was made by opposite party No.2 with the applicant by playing trick and subsequently, he assured the applicant for marriage, it is also not in dispute that the applicant remained in relationship with opposite party No.2 for a considerably long time. This fact shows that it was a case of consensual relationship between the applicant and opposite party No.2 and thereafter their relationship fell apart due to refusal of opposite party No.2 to get married to the applicant."

9. **Per contra,** learned counsel for opposite party no. 2 and learned A.G.A. have submitted that the accused-applicant continuously entered in sexual intercourse with the opposite party no. 2 on false promise of marriage, since last 11 years. It is subsequent to the act of the accused that the opposite party no. 2 came to know that the accused-applicant is already married. This shows that the promise of marriage with the opposite party no. 2 was false from the very beginning. Further submits that the victim was initially not aware about the marital status of the applicant and that the applicant has three children, it is only after lodging the F.I.R. that the victim came to know about the fact of marriage. Further submits that applicant and victim were married at Aarya Samaj Mandir on 24.04.2025 and later on, they both resided together as husband-wife. The victim, time and again, asked for ceremonial and formal marriage but the applicant refused. Further submits that there is no compromise between the parties ever entered and the police report dated 25.09.2018 is false. Further submits that the victim suffered

injuries at the hand of the accused-applicant. There is marriage between the two which has been solemnized on 24.04.2025. The opposite party no. 2 has filed marriage certificate along with counter affidavit. Further submits that in the thesis submitted by the accused-applicant the name of victim is mentioned as his better half, which is filed along with supplementary counter affidavit. Hence, submits that the application moved by the applicant is devoid of merits and liable to be dismissed.

10. This Court has taken into consideration the rival submissions made by the parties and perused the record.

11. Point of concern in the present application is whether *prima facie* the allegations levelled by the victim on the applicant accused is sufficient to proceed with the trial or continuance of the trial would amount to gross abuse of process of law?

12. The facts alleged in the F.I.R. and the material available on record on the face of it reveals the *prima facie* facts that the victim is residing in the house of accused-applicant and was in relationship with the accused-applicant since last 11 years. The sexual intercourse for the first time was the result of unconsciousness of victim and subsequently, on false promise of marriage. It is further revealed that at one point of time the accused-applicant and victim resided as husband-wife in the same house, at Aligarh. The statement of victim recorded under Section 183 B.N.S.S. also reveals the same facts and it is the contention of the victim that she came to know about marriage of applicant only after lodging of the F.I.R. The intra departmental report which has been given by Deputy S.P.-Aligarh to Senior Superintendent of Police, Aligarh on 25.09.2018 shows the statement of opposite party no. 2, wherein she is admittedly aware about the marriage of applicant and therefore, she has entered into compromise. The same is however denied and not the part of case diary, but relied on by the applicant. This report is reiterated underneath:

"जॉच आख्याः- उक्त संदर्भित प्रकरण की जॉय व दौरान आवेदिका कु० पूजा रानी पुत्री श्री मुकेश कुमार निवासी गूलर रोड थाना देहली गेट जनपद अलीगढ़ ने अपने बयानो ने बताया कि वह करीब 3-4 वर्ष पूर्व कस्बा खैर के खैर कन्या महाविधालय में बी.एड की शिक्षा प्राप्त कर रही थी तो उस समय श्री कुलदीप वर्मा पुत्र नेत्रपाल वर्मा निवासी मौ० नई बस्ती थाना खैर भी उक्त विधालय मे शिक्षण का कार्य कर रहे थे। इसी दौरान उसके एवं कुलदीप वर्मा के बीच स्लेबस को लेकर जानकारी हेतु आपस मे जान पहचान हो गई और स्लेबस के सम्बन्ध में एक दूसरे की फ़ोन पर वार्ता होती रही, आवेदिका अविवाहित है जिस कारण आवेदिका एवं कुलदीप वर्मा के बीच आपस में शादी को लेंकर नज़दीकिया बढ़ना आवेदिका ने अपने बयानो मे बताया परन्तु जब आवेदिका को कुलदीप वर्मा के शादी शुदा होने एवं अपने आप को शिक्षारत होना बताते हुए शिक्षा मे किसी प्रकार का व्यवधान उत्पन्न ना हो इस कारण अपने द्वारा दिये गये उक्त प्रार्थना पत्र पर कुलदीप वर्मा के विरुद्ध कोई कार्यवाही ना किये जाने के सम्बन्ध मे जाँच के दौचन लिखित बयान दिये। जैसा कि आवेदिका के बयानो से स्वतः स्पष्ट है । आवेदिका अपने द्वारा दिये गये उक्त प्रार्थना पत्र पर अब कोई कानूनी कार्यवाही नही चाहती है । इस तरह आवेदिका कु० पूजा रानी उपरोक्त के उक्त्त प्रार्थना पत्र पर अन्य किसी पुलिस कार्यवाही की आवश्यकता प्रतीत नहीं होती है।"

13. In the statement under Section 183 B.N.S.S. the victim has specifically stated about the marriage solemnized with the accused-applicant in the year 2018 and has also annexed the certificate of marriage.

14. Thus, these facts alleged is required to be taken into consideration on the face of it, weigh on the touchstone of legal prepositions.

15. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that *"Whoever,* ***by deceitful means*** *or* ***by making promise to marry a*** *woman* ***without any intention of fulfilling the same,*** *has* ***sexual intercourse with her,*** *such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*

16. The provision contained in Section 69 of B.N.S. is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage

is not ‘Rape’, but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 B.N.S. of ‘Deceitful means’ “shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity.”

17. It is an admitted fact that the accused-applicant was already married when he came in contact with opposite party no. 2. It is also an admitted fact that the accused-applicant is a teacher in the college, where the opposite party no. 2 is pursuing her B.Ed. Course. Moreover, the opposite party no. 2 has filed a certificate of marriage solemnized between the accused applicant and opposite party no. 2 to show the intensity in their relation and states that she was not aware about the marriage of applicant, which came to her knowledge after lodging the F.I.R. It is worth mentioning that in the marriage certificate the date of solemnization of marriage was 24.04.2025 and the F.I.R. has been lodged on 20.06.2025. The opposite party no. 2 in her counter affidavit has annexed the marriage certificate of Arya Samaj Mandir, Agra as Annexure CA-2. The relevant paragraph of counter affidavit is reiterated underneath:

> *“ That the contents of paragraph no. 9 & 10 of affidavit to the extent of record, call for no comments. However it is submitted that the opposite party no. 2 was not aware of the marital status of t he applicant so also the fact that he had three children and the said fact came to the knowledge of the opposite party no. 2 only after lodging the present FIR. The fact of marriage was not within the knowledge of the opposite party no. 2 and therefore she agreed to marry the applicant in Arya Samaj Mandir on 24.04.2025 and later on they both were residing together as husband and wife in the house of the applicant. The opposite party no. 2 was time and again requesting the applicant to do a ceremonial/format marriage with the opposite party no. 2, however the applicant refused to do the same and since the relationship of applicant with the*

opposite party was over more than 10 years therefore even after repeated harassment and denial she could not leave the applicant who was her alleged husband. A copy of the marriage certificate issued by the Arya Samaj Mandir, Agra is being filed herewith and marked as ***Annexure No. C.A.-2*** *to this affidavit."*

18. The applicant in reply to the aforesaid mentioned paragraph has merely stated that the certificate is fraud and he will file appropriate application under Section 195 and 340 Cr.P.C. at an opportune time, further mentioned, that the two stands of the opposite party no. 2 cannot go simultaneously, which are sexual intercourse on false promise of marriage and the marriage between the parties. The relevant paragraph-5 of the rejoinder affidavit is reiterated underneath:

"5. That the content of paragraph no. 6 of the counter affidavit is not admitted as stated in reply there to it is submitted that the contents of paragraph no. 9 and 10 of the affidavit filed in support of the affidavit are reasserted, it is further submitted that in the first information report, the opposite party no. 2 stated that the relation was established on the ground of the false promise of marriage, however she herself annexed a document claiming that she is being married with the applicant though the documents dated 24.04.2025 is a false, frivolous and concocted documents regarding which the proceeding under section 195 and 340 of the Cr.P.C. was going to be launched separately, but first of all, it must be clarified that whether it is a case of false promise of marriage or it is a case of humiliation after marriage both allegations can not run concurrently as both are voice-versa to each of other."

19. Though the charge sheet is not submitted under the offence of rape, but it would be expedient in the interest of justice that the provision of rape under Section 63 of B.N.S. is required to be dealt with along with Section 64(2)(f). Wherein, there are several circumstances mentioned in Section 63 B.N.S. which amount to the definition of rape whereas sub section (iv) of Section 63 provides *'with her consent, when the man knows that he is not her husband and that her consent is given because she*

believes that he is another man to whom she is or believes herself to be lawfully marriage;'

20. It would also not be out of place to mention that Section 120 of Bhartiya Sakshya Adhiniyam 2023 provides a presumption as to absence of consent in certain prosecution for rape. This presumption in certain cases, only qualifies upon the authorities provided under sub-section (2) of Section 64 of B.N.S., wherein the offence of rape committed by police officers, public servant, member of Armed Forces and others is dealt with. In the same category the act of a teacher is also provided under subsection (2)(f) of Section 64, reiterated, *being a relatives, guardian or teacher of, or a person in a position of trust or authority towards a woman, commits rape of such woman;'* the presumption provides that where intercourse by accused is proved and the question is whether it was that the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

21. Even otherwise Section 69 B.N.S. provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the deceitful means. In the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608,*** Hon'ble the Supreme Court has drawn a clear distinction between 'false promise of marriage, which is given on understanding by the maker that it will be broken' and 'a breach of promise which is made in good faith but subsequently not fulfilled'. It is former which out rightly attracts penal provision.

22. In the present case, the applicant accused *prima facie* knew from the beginning that he could not marry the opposite party no. 2, as he was already married. It is a matter of trial to decipher from evidence, whether the opposite party no. 2, victim was knowing the marital status of the applicant and despite that she has entered into sexual intercourse with him, which

continued for eleven long years. On the basis of *prima facie* facts, this Court does not find sufficient ground to quash the charge sheet and the proceedings. Hence, the application moved under Section 528 B.N.S.S. is devoid of merits and liable to be dismissed.

23. The application under Section 528 B.N.S.S. is **dismissed.**

(Avnish Saxena, J.)

Date:- 13.01.2026
Sharad/-