



109

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-37432-2019

Date of Decision:09.04.2026

Karan Kumar Mutneja

...Petitioner

Vs.

Manjit Kaur

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Gourav Chopra, Sr. Advocate with
Ms. Seerat Saldi, Advocate
for the petitioner.

Mr. Krishan Kumar Thakur, Advocate
for the respondent.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned complaint titled as "**Manjit Kaur Vs. Karan Kumar Mutneja and Ors**" instituted under Sections 376/313/323/452/504/506/217/218/148/149 of IPC (Annexure P-1) and the summoning order dated 03.07.2019 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Guruharsahai and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner vehemently argued that in the present case, the impugned complaint (Annexure P-1) was filed by the respondent against the petitioner and nine other persons by alleging that the respondent/complainant was earlier married with Boor Singh in the year 2008, however, she was beaten up by her husband and was turned out of her matrimonial house in the year 2010. Since then, she was staying in her parental house at Village Panje Ke Uttar. The petitioner and his father were on visiting



terms with their family. The petitioner allegedly told the respondent that he wanted to solemnize the marriage with her and on this pretext, the petitioner and his family members started visiting their house. On one day, by taking advantage of the above, the petitioner had sexual intercourse with the respondent on the pretext of marriage and she even became pregnant. Thereafter, the petitioner gave her some medicines and the pregnancy was aborted, without her consent. Still further, the respondent informed the family members of the petitioner regarding the above incident, but they also threatened the respondent. It was further alleged that the petitioner had raped her on the pretext of solemnizing the marriage with her between January, 2017 to March, 2017 and he was liable to be prosecuted for the same.

3. Learned counsel further submits that, during the course of preliminary evidence, the respondent examined herself as CW-1 and also examined five other witnesses in preliminary evidence. Ultimately, vide the impugned summoning order dated 03.07.2019 (Annexure P-2), the petitioner was summoned under Section 376 IPC to face trial in the present case.

4. Learned counsel for the petitioner further vehemently argued that the date of birth of the petitioner is 11.07.1992 and at present, the petitioner is aged about 34 years old. On the other hand, the respondent is also a married lady and is also aged about 34 years. The brother of the respondent used to work as a labourer with the father of the petitioner, who was running a commission agent shop. Thus, the petitioner and respondent were known to each other and were maintaining consensual relationship with each other. He further contends that in fact, it has been falsely shown that the petitioner had raped her on between January, 2017 to March, 2017, on the pretext of



solemnization of marriage, however, the said allegation is wrong and palpably false. In fact, the petitioner got engaged to Sonika on 15.01.2017 and their marriage was solemnized on 29.03.2017 at Jalalabad and since then, the petitioner and his wife have been cohabiting together as husband and wife and are also blessed with a son on 30.01.2008. Learned counsel further contends that even the allegations levelled by the respondent in the complaint (Annexure P-1) were completely vague and unfounded. Even, the respondent had not mentioned any date, time or place, when the promise of marriage had been given by the petitioner or when the parties had sexual relations with each other. Even, the respondent was herself a married lady admittedly and had not obtained divorce till date. Consequently, there was no question of giving a false representation of marriage to a married lady, by the present petitioner.

5. Learned counsel further submits that even if the allegations levelled in the impugned complaint are taken at their face value, even though not admitted to be correct, still it is discernible that the petitioner and the respondent had sexual relations with each other, despite the fact that respondent was a married lady and had not been divorced from her estranged husband. He further submits that even from the allegations levelled in the impugned complaint, the penal provisions of Section 375/376 IPC would not be attracted. In fact, consent with respect of Section 375 IPC involves an active understanding of circumstances, actions and consequences of the proposed act and individual, who makes a reasoned choice to act after evaluating various alternate actions (or inactions) as well as the various possible consequences flowing from such action or inaction, consent to such an action.

6. Learned counsel for the petitioner also relies upon the law laid



down by the Hon'ble Supreme Court in the matter of "**Dhruvaram Murlidhar Sonar Vs. State of Maharashtra, 2018 SCC Online SC 3100,** which was a case involving the invoking of the jurisdiction under Section 482 Cr.P.C. and the Hon'ble Supreme Court observed as under:-

"15.... An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of."

This understanding was also emphasized in the decision of the Hon'ble Apex Court in Kaini Rajan v. State of Kerala, (2013) 9 SCC 113:

"12... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and asset. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

7. Still further, the Hon'ble Supreme Court in the matter "**Anurag Soni Vs. State of Chhattisgarh (20149) SCC Online SC 509,** in the context of a promise to marry, had observed that there was a distinction between false promise given on the understanding by the maker and it will be broken and the breach of a promise which is made in good faith but subsequently not fulfilled and held as under:-

"37. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he



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

8. The Hon'ble Supreme Court further held in the matter of "**Pramod Suryabhan Pawar Vs. The State of Maharashtra, Criminal Appeal No.1165-2019, decided on 21.08.2019**, held as under:-

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

19. The allegations in the FIR indicate that in November 2009 the complainant refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:-

- i) The complainant and the appellant knew each other since 1998 and were intimate since 2004;
- ii) The complainant and the appellant met regularly, traveled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a



course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant, and
iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015.

9. On the other hand, learned counsel appearing on behalf of the respondent has vehemently argued that there are specific allegations against the present petitioner and he has raised several disputed questions of fact, which cannot be adjudicated by this Court while exercising the jurisdiction under Section 482 Cr.P.C.. Moreover, the petitioner is the principal accused and had committed rape with the respondent, on the false pretext of marrying her. Thus, the present petition deserves to be dismissed by this Court.

10. I have heard the learned counsel for the parties and with their able assistance; I have gone through the record carefully.

11. In the present case, the prosecutrix herself is a married lady, who had married with Boor Singh in the year 2008. However, in the year 2010, she started living separately from her husband and was residing at her parental house in Village Panje Ke Uttar till the date of institution of complaint. Still further, it is also apparent from the record that the respondent herself had not obtained divorce from her estranged husband and thus, it cannot be believed that the petitioner had promised to marry her. Still further, from the facts of the case, it is further established that a married woman could not be said to have acted under the alleged false promise given by the petitioner or under misconception of fact while giving consent to have sexual relationship with the present petitioner. Even, undisputedly, she continued to have sexual relations



with the petitioner for several months and even if the allegations made by her are taken on their face value, then also to construe such allegation as “rape” by the petitioner would be stretching the case to far. The prosecutrix/respondent being a married woman was a mature lady and was intelligent enough to understand the significance and consequences of the moral or immoral quality of act, she was consenting to. Apart from that, even if her conduct is viewed in entirety, it is apparent that she had betrayed her estranged husband and had developed a liking for the petitioner, without obtaining divorce from her husband. Thus, it is well proved from the facts and circumstances of the case that the prosecutrix had not given her consent for the sexual relationship with the petitioner under the misconception of fact, so as to prosecute the petitioner for having committed rape within the meaning of Section 375 IPC.

12. Still further, the Hon’ble Supreme Court has held in the matter of “Naim Ahamed Vs. State (NCT of Delhi),2025(2),SCC (Cri)640, held as follows:-

“12. The exposition of law in this regard is discernible in various decisions of this Court, however the application of such law or of such decisions would depend upon the proved facts in each case, known as legal evidence. The ratio laid down in the judgements or the law declared by this Court do provide the guidelines to the judicial mind of the courts to decide the cases on hand, but the courts while applying the law also have to consider the evidence before them and the surrounding circumstances under which the alleged offences are committed by the accused.

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



14. In *Uday v. State of Karnataka (2003) 4 SCC 46*, the prosecutrix aged about 19 years had given her consent for having a sexual intercourse with the accused with whom she was deeply in love, and it was alleged by the prosecution that the prosecutrix continued to meet the accused as the accused had given her a promise to marry her on a later date: The prosecutrix became pregnant and the complaint was lodged on failure of the accused to marry her. This Court while holding that under the circumstances, the consent could not be said to have been given under a misconception of fact under Section 90 of IPC, held in para 21 and 23 as under:-

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

22. -XXX-XX-



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

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

“28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to "misconception of fact within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is



established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of Jayanti Rani Panda [1984 Cri LJ 1535: (1983) 2 CHN 290 (Cal)] which was approvingly referred to in Uday case [(2003) 4 SCC 46: 2003 SCC (Cri) 775 (2003) 2 Scale 329]. The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) "unless the court can be assured that from the very inception the accused never really intended to marry her. (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case [ILR (1913) 36 Mad 453: 15 Cri LJ 24] (vide passage quoted supra). By making the solitary observation that "a false promise is not a fact within the meaning of the Code", it cannot be said that this Court has laid down the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case ((2003) 4 SCC 46:2003 SCC (Cri) 775: (2003) 2 Scale 329] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out."



13. Thus, in view of the above discussion, the present petition is allowed by this Court and the impugned complaint titled as **“Manjit Kaur Vs. Karan Kumar Mutneja and Ors”** instituted under Sections 376/313/323/452/504/506/217/218/148/149 of IPC (Annexure P-1) and the summoning order dated 03.07.2019 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, Guruharsahai and all consequential proceedings arising therefrom are quashed by this Court qua the petitioner only.

(N.S.SHEKHAWAT)
JUDGE

09.04.2026
hitesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No