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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. 32121 of 2025

Jitendra Kumar And 2
Others

.....Applicant(s)

Versus

State of U.P. and
Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Tripurari Pal
Counsel for Opposite Party(s)	:	G.A., Sanjay Mishra

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard, Shri Tripurari Pal, learned counsel for applicants, Shri Sanjay Mishra, learned counsel for opposite party no. 2 and Shri S.K. Rai, learned A.G.A. for the State. Perused the record.

2. The present application under Section 528 B.N.S.S. has been moved by three applicants accused. The main allegation of sexual intercourse on false promise of marriage is leveled against applicant no. 1. The applicant no. 2 is brother of applicant no. 1 and applicant no. 3 is wife of applicant no. 2 and sister-in-law of applicant no. 1. The applicant nos. 2 and 3 have been charge sheeted for the offence of criminal intimidation. The relief sought is to quash the charge sheet dated 30.03.2025, cognizance taking order dated 22.05.2025 passed by learned Additional Chief Judicial Magistrate-1, Aligarh and the entire proceeding of

Criminal Case No. 419 of 2025 (State Vs. Jitendra Kumar and others) arising out of Case Crime No. 55/2025, under Sections 69 and 351(2) of B.N.S., Police Station- Gandhi Park, District- Aligarh.

3. Learned counsel for applicants submits that the relationship between applicant no. 1 and victim was of love and affection since their graduation time, which could not mature into marriage, though the accused applicant no. 1 and victim being adult entered in sexual intercourse with consent. The accused applicant has not hide his identity to maintain relations with the victim. The accused applicant and victim were studying together and there was love affairs between the two. Further submits that the victim has no case of sexual intercourse on false promise of marriage, but the proposal and assurance was *bona fide* and the relations between two was not due to any deceitful act of accused applicant. The statement of victim recorded under Section 180 and 183 B.N.S.S. is inconsistent. The victim is a lawyer, who knew repercussion of her act and long duration of sexual intercourse between the two adults without playing of deceit is inferred as consensual relation. Further submits that the victim has demanded Rs. 10 lakhs from the applicant prior to lodging of the F.I.R. and in the event of not handing over the amount a false and frivolous F.I.R. at a belated stage is lodged. Learned counsel has relied on the case of ***Mahesh Damu Khare Vs. State of Maharashtra*** and another reported in (2024) 11 SCC 398; ***Pramod Suryabhan Pawar Vs. State of Maharashtra*** reported in (2019) 9 SCC 608; ***Prashant Vs. State of NCT of Delhi*** reported in (2025) 5 SCC 764.

4. Learned A.G.A. and learned counsel for opposite party no. 2 have submitted that the case in hand is of sexual intercourse on false promise of marriage, where the accused applicant no. 1 since the year 2021 had continuously entered into sexual intercourse on false promise of marriage. The victim in her statement under Sections 180 & 183 B.N.S.S. has made specific allegation against the accused applicant no. 1, which has been corroborated by other witnesses, who were residing in the same vicinity where the victim resides. Further submits that the false promise of marriage was given by the applicant no. 1 since the

start of their affairs and in the garb of false promise of marriage he has pursued the victim to enter into sexual intercourse and lastly he has refused to enter into marriage. Further submits that the applicant no. 1 is in police and in the garb of his uniform he has continuously threatened the victim. The threatening has also been extended by applicant nos. 2 and 3. As such, the victim could not muster courage to lodge the F.I.R. Further submits that the cases cited by the accused applicant are of offence under Indian Penal Code, whereas, the new provision under Section 69 of B.N.S. is for the offence of sexual intercourse which is not rape, but held punishable. Hence, submits that the application is devoid of merit and is liable to be dismissed.

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

6. The point of concerned in the present case is whether the accused applicant no. 1 has entered into sexual intercourse with the victim on false promise of marriage by playing fraud on the victim, which required to be tried or the *prima facie* material available on record goes to infer that no case is made out against the applicants and proceeding with the trial would tantamount to miscarriage of justice.

7. The F.I.R. dated 06.02.2025 has been lodged by opposite party no. 2 at Police Station- Gandhi Park, District Aligarh, which was registered at 2:00 p.m. in Case Crime No. 55/2025 for the incidents carried out between 01.09.2021 to 16.01.2025, for the offence of sexual intercourse on false promise of marriage, forceful abortion and criminal intimidation against the applicants with the allegations that the opposite party no. 2 is resident of Aligarh and was B.Sc. Student in the year 2015-16, where accused applicant no. 1 was also studying, they came in contact with each other, entered in love relation and reciprocate the promise of marriage. This relationship continuously persist. In the years 2019-20, the applicant no. 1 got a job in police department. In the year 2021, he came to meet the victim at Aligarh and gave an assurance of marriage. Then on false promise of marriage, he entered in sexual intercourse with the victim in the month of September 2021, for the first

time. Whenever, the victim used to ask applicant no. 1 about the marriage, he avoided on one pretext or the other but consistently entered in sexual intercourse. In the month of July, 2024, she became pregnant. The victim asked the accused for marriage but he has asked her to wait till 2025 and forcefully gave some pills for abortion, against her will. On 26.11.2024 the applicant no. 1 came to her room, stayed there from 2:00 p.m. to 5:00 p.m. and had sexual intercourse. Subsequently, the victim got a message from the accused applicant no. 1 that applicant nos. 2 and 3 were to talk to her, as it was odd hours of night, she stated to talk to them in the morning but subsequently applicant no. 1 informed that they have refused the proposal of marriage. On 16.01.2025, the victim posted a message on the mobile phone of accused applicant no. 1 asking either to get marry or she may take recourse of law, on which applicant nos. 2 and 3 have threatened her of dire consequences and false implication, on her mobile on 16.01.2025 at 8:54 p.m.

8. From the bare perusal of contents of the FIR, following facts have been emerged:-

8.1 The accused applicant no. 1 and victim were college friend since 2015-16;

8.2 They entered in love relations since the college time;

8.3 There was promise of marriage between the two;

8.4 In the year 2019-20, the applicant no. 1 got a job in police department;

8.5 The applicant no. 1 has assured marriage with the victim in the year 2021;

8.6 The sexual intercourse between applicant no. 1 and victim, for the first time took place in the month of September, 2021. It is alleged in the FIR that the sexual intercourse was continued to false promise of marriage;

8.7 This sexual intercourse between the two, continued from the month of September, 2021 to 26.11.2024;

8.8 In the month of July, 2024 the victim became pregnant and she was forcefully administered the abortion pills. During the investigation, the Investigating Officer did not find any material to substantiate this fact and, therefore, the charge sheet is not submitted for offence under Section 89 BNS;

8.9 On 26.11.2024, the accused applicant no. 1 came to the room of the victim, stayed there from 2:00 p.m. to 5:00 p.m. and they had sexual intercourse;

8.10 On 26.11.2024, she got a message from applicant no. 1 that his brother and sister-in-law would like to talk to her, but she could not reciprocate, as it was odd hours of night and stated to talk to them in the next morning;

8.11 The victim could not receive the call and in the evening, she was intimidated by applicant no. 1 that the marriage is refused;

8.12 On 16.01.2025, the victim posted a message on the mobile phone of applicant no. 1 asking him either to marry or she may take legal recourse;

8.13 It is on 16.01.2025 at 8:54 p.m. that there was conversation between applicant nos. 2 & 3 with the victim, wherein they have threatened the victim of dire consequences and false implication of her family members in cases.

9. The victim in her statement under Sections 180 BNSS has stated that she is 28 years of age, studied LL.B. and is a lawyer, resident of District- Bulandshahar and residing at District- Aligarh. She has reiterated the allegations made in the FIR. In specific questions put to her about her abortion, she could not give either the name of the pills or the medical papers for her abortion.

10. In her statement under Section 183 BNSS, the victim has reiterated what she has stated in the FIR lodged by her and in her statement recorded under Section 180 BNSS, but for the first time, she has disclosed that on 31.01.2020, she has attended the marriage of sister of accused applicant no. 1 and on the next day, the accused applicant no. 1

has asked her, what she has disclosed with the family members which has created problem in his family, on which she has stated that if he is not comfortable to disclose about their relations in his family then she will not disclose the same. The another incident which is not disclosed either in the FIR or in her statement under Section 180 BNSS is about the video recording of her nude video while the accused applicant no. 1 was on video call with the victim and those photographs and videos were found deleted when she has checked her phone on 29.11.2024.

11. The above facts, as has been taken out from the plain reading of FIR and statement of victim recorded under Sections 180 & 183 BNSS is required to be weigh on the touchstone of the legal proposition.

12. 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.*”

13. 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.”

14. If, the old and new provision in Indian Penal Code and Bhartiya Nyaya Sanhita, 2023 is taken into consideration. In both the provisions the false promise of marriage is considered as deceitful means to sought consent of the victim. Hon’ble the Supreme Court in the case of ***Pramod Suryabhan Pawar (supra)*** has made a clear distinction pertaining to promise at the very inception is *mala fide* and the promise

*bona fide*ly made but not fulfilled. The relevant paragraph no. 18 of the judgment is reiterated underneath:-

“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.”

15. The plain reading of FIR, statement of victim recorded under Sections 180 & 183 BNSS clearly shows that the accused applicant no. 1 and victim were in love relations from the year 2015-16 while both were student of Bachelor of Science. There was reciprocal promise of marriage between the two and even assurance given by the accused applicant no. 1 after getting a job that he will marry the victim shows his *bona fides*. Therefore, the plain reading of the above material clearly shows that the promise of marriage was *bona fide*.

16. It is also not the case of the victim that the accused has hide his identity or was already engaged somewhere else and the promise of marriage was false from the beginning.

17. Hon’ble the Supreme Court in catena of judgments made observations that the two able minded adults if maintain long term physical relations then a presumption would arise that they have voluntarily chosen their consensual relationship to enter into sexual intercourse and subsequent non fulfillment of promise of marriage would not attract any offence. This analogy is drawn from the dictum of Hon’ble the Supreme Court in *Ravish Singh Rana Vs. State of Uttarakhand* reported in [(2025) SCC OnLine SC 1055 (paragraphs 14 & 15)] and *Prashant Vs. State of NCT of Delhi* reported in [(2025) 5 SCC 764 (paragraph no. 20)].

18. Hon’ble the Supreme Court in the case of *Mahesh Damu Khare (supra)* has dealt in paragraph no. 28 that the continued physical relations on false promise of marriage with no protest, which continued

for years takes out the sting of criminal culpability. The relevant paragraph is reiterated underneath:-

“28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.”

19. Thus, at no stretch of imagination, considering the material on record, particularly the allegations made in the FIR, the statement made by the victim recorded under Sections 180 & 183 BNSS, there is any criminal act committed by accused applicant no. 1 which requires to be tried, as is discussed here-in-above. So far as the trial of accused applicant nos. 2 & 3 are concern, the same is not having any material available on record except the statement of the victim and allegations made in the FIR.

20. Hence, the application under Section 528 BNSS is **allowed**. Consequently, the charge sheet dated 30.03.2025, cognizance taking order dated 22.05.2025 passed by learned Additional Chief Judicial Magistrate-1, Aligarh and the entire proceeding of Criminal Case No. 419 of 2025 (State Vs. Jitendra Kumar and others) arising out of Case Crime No. 55/2025, under Sections 69 and 351(2) of B.N.S., Police Station- Gandhi Park, District- Aligarh, is **quashed**.

(Avnish Saxena, J.)

Date:- 29.01.2026

Sharad/-