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2024:GUJHC:50806

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 21237 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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MARSHALL AMUBHAI VADARIYA
Versus
STATE OF GUJARAT & ANR.

==

Appearance:
MS RV ACHARYA(1124) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
MR. JAY MEHTA, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 19/09/2024

CAV JUDGMENT

1. Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

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2. The respondent No.2, although served with the notice issued by this Court, has chosen not to remain present before this Court either in person or through an advocate and oppose the present application.

3. By this application under section 482 of the Code of Criminal Procedure,1973, the applicant seeks to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-35 of 2019 registered before the Keshod Police Station, Junagadh for the offence punishable under Sections 376, 506(2) of IPC and Sections 3(1), W(i)(ii), 3(2)(5), 3(2)(5A)of the Atrocities Act.

4. According to the complaint filed on 21.02.2019, the complainant-Jayaben and the applicant-accused came into contact with each other about one and a half year ago, and before five months, the applicant-accused entered into a physical relationship with the complainant by giving her a promise to marry. Thereafter, they continued to meet each other. After some time the applicant-accused called the complainant at his Vadi and again made a physical relationship with her. It is alleged that after some period of time, on the complainant realizing her of being pregnant, she informed the applicant about the same, however, the applicant-accused declined to accept the same and backed from his promise. With this sort of allegations, the impugned FIR has been registered.

5. Learned advocate Ms. R.V. Acharya appearing for the applicant submits that even assuming that the entire allegations of love affair and the promise made by the

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applicant to marry the complainant are true, still, the same would not make out an offence of rape at all, as it is projected by the prosecution. She submits that the applicant-accused is an innocent person against whom a false and frivolous complaint is filed by the complainant, a consensual party, which is nothing but a sheer abuse of process of law. She further submits that from the FIR itself, it appears that there was a love affair between the applicant-accused and the complainant which continued for about one and half year. Learned advocate Ms. Acharya also submits that the complainant voluntarily entered into a physical relationship with the applicant-accused. Even the impugned FIR has also been filed after a period of six months. She submits that it is the specific case of the prosecution that the applicant-accused impregnated her and after came to know about the same, the applicant-accused deserted her. In this regard, she would like to submit that after registration of the complaint, she delivered a baby boy claiming to be through the relationship with the applicant-accused. However, during the course of investigation, the concerned investigator collected the DNA samples of both, the applicant-accused and the son of the complainant and sent it to the FSL for analysis, a report of which, was received on 10.07.2019, and as per the said report, the applicant-accused is not a biological father of the son of the complainant. Moreover, during the pendency of the present proceedings, the complainant has got married with another person and, therefore, despite service of notice, the complainant has chosen not to appear and oppose the present application, which clearly shows that she may not be

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interested in pursuing further with the matter. Thus, According to her, allowing the case to be proceeded with further would be a wastage of valuable time of the trial Court.

5.1 In such circumstances, referred to above, learned advocate Ms. Acharya prays that there being merit in this application, the same be allowed and the impugned FIR be quashed.

6. But the learned APP Mr. Jay Mehta appearing for the respondent-State has stoutly opposed this application. According to him, in the present case, charge-sheet has already been filed and the same has also been culminated in Sessions Case No.11 of 2019.. The learned APP further submits that at the first time, when the applicant expressed his love to the complainant and promised to marry her, whether he had any intention to deceive her or not, is a matter to be appreciated on the basis of evidence to be let in only at the time of trial. However, looking to the evidence available on record, more particularly, the DNA report of the FSL and the non-appearance of the original complainant, rest is left for the Hon’ble Court whether to exercise the inherent powers or not.

7. I have considered the above submissions.

8. Before delve into the rival submissions made by the respective parties, let us have a look into Section 376 of the IPC, which reads as follows;

> ***“376. Punishment for rape.—***
>
> *(1)Whoever, except in the cases provided for in sub-*

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section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine](Subs. by Act 22 of 2018, s. 4, for "shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine" (w.e.f. 21-4-2018)

(2)Whoever,—

(a)being a police officer, commits rape—

(i)within the limits of the police station to which such police officer is appointed; or

(ii)in the premises of any station house; or

(iii)on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b)being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c)being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
(d)being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f)being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g)commits rape during communal or sectarian violence; or

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(h)commits rape on a woman knowing her to be pregnant; or

(i)commits rape on a woman when she is under sixteen years of age; or

(j)commits rape, on a woman incapable of giving consent; or

(k)being in a position of control or dominance over a woman, commits rape on such woman; or

(l)commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n)commits rape repeatedly on the same woman,shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.— For the purposes of this sub-section, — (a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b)"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c)"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

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(d)"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3)Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim."

9. A cursory perusal of the above provision makes it clear that in the entire provision, there is not a whisper about a person committing rape on a woman being her love interest. Because the word love in itself carries 'consent'. Clause (j) of sub-section (2) of Section 376 talks about a woman incapable of giving consent, which means either a girl of a tender age who is not so matured enough to understand the things and the consequences of the consent being given by her for the proposed act, or a mentally disabled girl or a woman. Here, in the instant case, at the time of the alleged offence, as per the say of the applicants' counsel, the girl was 19 years old and had already attained the age of majority and was matured enough to understand what is right and what is wrong and what would be the consequences of a particular act being

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allowed to be done upon her. That apart, looking to the allegations as stated in the complaint, the same do not make out a case under any of the other categories as mentioned in Section 376, requiring the applicant-accused to undergo the ordeal of trial.

10. The word "rape" is derived from the Latin term *"rapio"* which means to **"**seize**"**. In other words, rape can be defined as the ravishment of a woman without her consent, by force, fear against her will. To further define a rape, it can be once and there must be a resistance from the victim upon which such an sexual assault is attempted to be committed. But if such a sexual act was allowed to be continued for some time by a woman, for which FIR is being lodged at a later stage upon disputes having been cropped up, then the element of consent would come into play, and when consent comes, that too of a major girl, then the case no longer remains to be of a rape.

11. Like the cases under the provisions of the Domestic Violence Act and under Section 498(A), the cases of consensual sexual relationship being later converted into allegations of rape are rapidly increasing. In the case at hand, the applicant-accused and the complainant was in relationship past one and a half year. She knew the applicant-accused since quite a long time. It is alleged that before five months from the date of the filing of the complaint, applicant-accused established a sexual relationship with her on the promise of marriage. Now the question arises that mere say of a woman of being promised to marry by the accused, can be so

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believable so as to held the accused guilty of the offence of rape. The answer is ‘No’. In every case where a man fails to marry a woman despite a promise made to her, cannot be held guilty for committing the offence of rape. He can only be held guilty if it is proved that the promise to marry was given with no intention to honour it and also that was the only reason due to which the woman agreed to have a sexual relationship. Let us assume that instead of asking her to share the bed, if a woman is asked to provide anything else by the accused like any assets or some other valuable things of her ownership on a promise to marry her later, then whether would she fulfill such a demand; if ‘No’, then why her precious corpus before marriage?, and if still it has been done, then she can be presumed to be the consensual party fully aware about the consequences of the proposed act and action, and deliberately avoiding or ignoring any foresee danger, would result into the present situation. Further, a girl who is fully aware of the nature and consequences of the sexual act, gives consent for the same based on a promise to marry and continue her relationship for a long period, then in such cases it becomes really difficult to determine whether the reason behind the giving of consent was only the promise made by the boy and not a mutual desire to be together.

12. Further, there is a distinction between a false promise and a breach of promise. False promise relates to a promise which the accused had no intention to fulfill from the beginning, whereas a breach of promise may happen due to many factors. Such as if a boy fell in love with someone, he

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might get involved with another partner, he might be compelled by his family to marry someone else, etc. this doesn't mean that the promise was false from the beginning. So, the determining factor is only the intention of the accused. However, the determining factor of the consent, whether it was obtained voluntarily or involuntarily, will depend on the facts of each case. The court must consider the evidence and the circumstances in every case before reaching a conclusion, but if the court finds that the prosecutrix was also equally keen, then, in that case, the offence would be condoned.

13. With regard to the controversy on hand, the Hon'ble Apex Court in a decision in the case of *Pramod Suryabhan Pawar v State of Maharashtra,* AIR 2019 SC 4010, penned by Justice Dr. D.Y. Chandrachud has observed as under;

"The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfill his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred."

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14. In another decision in the case of *Prashant Bharti v. Delhi,* AIR 2013 SC 2753, the Supreme Court observed that the age of the victim should be taken into consideration to evaluate the issue of consent and to know an indication of how wordly-wise she is, and to what degree she is judged to given her consent based on the belief that the accused will execute his promise of marriage. It has been observed as under;

> *"16. The factual position narrated above would enable us to draw some positive inferences on the assertion made by the complainant/prosecuterix - against the appellant-accused (in the supplementary statement dated 21.2.2007). It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23.9.2008 reveals, that the complainant/prosecuterix was married to Lalji Porwal on 14.6.2003. It also reveals, that the aforesaid marriage subsisted till 23.9.2008, when the two divorced one another by mutual consent under Section 13B of the Hindu Marriage Act. In her supplementary statement dated 21.2.2007, the complainant/prosecuterix accused Prashant Bhati of having had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecuterix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the*

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judgment and decree dated 23.9.2008 produced before us by the complainant/prosecuterix herself is taken into consideration alongwith the factual position depicted in the supplementary statement dated 21.2.2007, it would clearly emerge, that the complainant/prosecuterix was in a relationship of adultery on 23.12.2006, 25.12.2006 and 1.1.2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecuterix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

17. Would it be possible for the prosecution to establish a sexual relationship between Priya, the complainant/prosecuterix and Prashant Bharti, the appellant-accused, is the next question which we shall attempt to answer. Insofar as the instant aspect of the matter is concerned, medical evidence discussed above reveals, that the complaint made by the complainant/prosecuterix alleging a sexual relationship with her by Prashant Bharti, the appellant-accused, was made more than one month after the alleged occurrences. It was, therefore, that during the course of her medical examination at the AIIMS, a vaginal smear was not taken. Her clothes were also not sent for forensic examination by the AIIMS, because she had allegedly changed the clothes which she had worn at the time of occurrence. In the absence of any such scientific evidence, the proof of sexual intercourse between the complainant/prosecuterix and the appellant-accused would be based on an assertion made by the complainant/prosecuterix. And an unequivocal denial thereof, by the appellant-accused. One's word against the other. Based on the falsity of the statement made by the complainant/prosecuterix noticed above (and other such like falsities, to be narrated hereafter), it is unlikely, that a - factual assertion made by the complainant/prosecuterix, would be acceptable over that of the appellant-accused. For the sake of argument, even if it is assumed, that Prashant Bharti, the appellant-

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accused and Priya, the complainant/prosecuterix, actually had a physical relationship, as alleged, the same would necessarily have to be consensual, since it is the case of the complainant/prosecuterix herself, that the said physical relationship was with her consent consequent upon the assurance of marriage. But then, the discussion above, clearly negates such an assurance. A consensual relationship without any assurance, obviously will not substantiate the offence under Section 376 of the Indian Penal Code, alleged against Prashant Bharti."

15. In *Deepak Gulati v. State of Haryana*, AIR 2013 SC 2071, the Supreme Court held that an accused can be convicted for the offence of rape under the penal provisions only if there is evidence to show that 'the intention of the accused was mala fide and that he has clandestine motives.' The Court further observed that the defendant should have adequate evidence to show that he had no intention to marry the victim in the first place. Section 90 of the IPC cannot be invoked in such a situation, to fasten the criminal liability on the accused and to pardon the act of the victim in entirety unless the court is assured of the fact that the accused never intended to marry the victim from the very beginning. I may quote some of the relevant observations of the said decision as under;

"8. 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

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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 mis-representation 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.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at 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.

22. The instant case is factually very similar to the case of Uday (Supra), wherein the following facts were found to exist:

I. The prosecutrix was 19 years of age and had adequate intelligence and maturity to understand the significance and morality associated with the act she was consenting

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to.

II. She was conscious of the fact that her marriage may not take place owing to various considerations, including the caste factor.

III. It was difficult to impute to the accused, knowledge of the fact that the prosecutrix had consented as a consequence of a misconception of fact, that had arisen from his promise to marry her.

IV. There was no evidence to prove conclusively, that the appellant had never intended to marry the prosecutrix.

23. To conclude, the prosecutrix had left her home voluntarily, of her own free will to get married to the appellant. She was 19 years of age at the relevant time and was, hence, capable of understanding the complications and issues surrounding her marriage to the appellant. According to the version of events provided by her, the prosecutrix had called the appellant on a number given to her by him, to ask him why he had not met her at the place that had been pre- decided by them. She also waited for him for a long time, and when he finally arrived she went with him to the Karna lake where they indulged in sexual intercourse. She did not raise any objection at this stage and made no complaints to any one. Thereafter, she also went to Kurukshetra with the appellant, where she lived with his relatives. Here to, the prosecutrix voluntarily became intimate with the appellant. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the appellant at the Birla Mandir. Thereafter, she even proceeded with the appellant to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married in court at Ambala. However, here they were apprehended by the police."

16. In *Uday v. State of Karnataka*, AIR 2003 SC 1639 the Supreme Court observed that the consent given by the victim to sexual intercourse with a person whom she is deeply in love on a promise to marry her in future, cannot be said to be a misconception of fact under Section 90 of IPC and hence, the

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accused will not be convicted for rape within the meaning of Section 375.

> "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, is 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. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are

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> over come with emotions and passion and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.
>
> In view of our findings aforesaid, we do not consider it necessary to consider the question as to whether in a case of rape the misconception of fact must be confined to the circumstances falling under Section 375 Fourthly and Fifthly, or whether consent given under misconception of fact contemplated by Section 90 has a wider application so as to include circumstances not enumerated in Section 375 IPC.
>
> In the result, this appeal must succeed, and is accordingly allowed. The impugned judgment and order convicting and sentencing the appellant for the offence punishable under Section 376 IPC is set aside, and the appellant stands acquitted of the charge. Since the appellant was granted exemption from surrendering when the special leave was granted, no further order for his release is necessary."

17. The High Court of Calcutta has also consistently taken the view that the failure to keep the promise on a future uncertain date does not always amount to misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. In Jayanti Rani Panda vs. State of West Bengal and another : 1984 Crl. L.J. 1535 the facts were

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somewhat similar. The accused was a teacher of the local village school and used to visit the residence of the prosecutrix. One day during the absence of the parents of the prosecutrix he expressed his love for her and his desire to marry her. The prosecutrix was also willing and the accused promised to marry her once he obtained the consent of his parents. Acting on such assurance the prosecutrix started cohabiting with the accused and this continued for several months during which period the accused spent several nights with her. Eventually when she conceived and insisted that the marriage should be performed as quickly as possible, the accused suggested an abortion and agreed to marry her later. Since the proposal was not acceptable to the prosecutrix, the accused disowned the promise and stopped visiting her house. A Division Bench of the Calcutta High Court noticed the provisions of Section 90 of the Indian Penal Code and concluded :-

> "The failure to keep the promise at a future uncertain date due to reasons not very clear on the evidence does not always amount to a misconception of fact at the inception of the act itself. In order to come within the meaning of misconception of fact, the fact must have an immediate relevance. The matter would have been different if the consent was obtained by creating a belief that they were already married. In such a case the consent could be said to result from a misconception of fact. But here the fact alleged is a promise to marry we do not know when. If a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. S. 90 IPC cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the

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> Court can be assured that from the very inception the accused never really intended to marry her."

18. Before I conclude, it is to be worth noting that after the registration of the complaint, the complainant gave birth to a baby boy claiming to be through the relationship with the applicant-accused. Therefore, the DNA samples of both, the son of the complainant and the applicant-accused was taken and sent to the FSL for analysis, and a report thereof on record suggests that both the DNA samples are not matching to each other and the applicant-accused is not a biological father of the son of the complainant. After that nothing more remains to be said. Because specific allegation has been made in the complaint that the complainant became pregnant through the relationship with the applicant-accused, however, as per the DNA report of the FSL, the applicant-accused is not a biological father of the son of the complainant, which completely falsifies the case of the prosecution.

19. So far as the allegations under the provisions of the Atrocities Act are concerned, looking to the allegations made in the complaint, the same do not constitute an offence under the Atrocities Act.

20. Based on the holistic consideration of the facts and circumstances summarized in the foregoing paragraphs as well as the tenets of law enunciated in the above referred decisions, I am of the view that the present application deserves consideration.

21. In the result, the present application succeeds and is

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hereby allowed. The First Information Report being C.R. No.I-35 of 2019 registered before the Keshod Police Station, Junagadh is hereby ordered to be quashed. All consequential proceedings arising from the same also stands terminated. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(DIVYESH A. JOSHI,J)

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