

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.175 OF 2020

Avishek Asit Mitra

Aged: 32 years,

Occ: Service,

R/O B/9, Swapnali Apartment,

Dattavadi, Shirgaon Road,

Badlapur (E), Dist. Thane

... Applicant

Vs

1 The State of Maharashtra

(At the instance of Borivali

Police Station, Mumbai in

C.R.No.234/13

2 Ms. Vinita Nirmal Trivedi

Occ: Service,

R/O Sun Vile, Plot No.157, Gorai II

A.A.C. No.50, Borivali (West)

Mumbai 400092

... Respondents

...

Mr. Raja Thakare, Sr. Adv. With Mr. Shreeram Shirsat
with Mr. Amandeep Singh Sra with Mr. Aakash Pathare
for the Applicant.

Ms. Sharmila Kaushik, APP for the Respondent-State.

PSI P.S.Khamkar, Borivali Police Station present.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 16TH SEPTEMBER , 2021.
PRONOUNCED ON : 20TH SEPTEMBER, 2021

JUDGMENT :

Heard.

2 **Rule.**

3 With consent of the learned counsel for the
parties, matter is taken up for final hearing forthwith.

4 Applicant's application for discharge under
Section 227 of the Code of Criminal Procedure, 1973
did not find favour with the Additional Sessions Judge,
Borivali Division, Dindoshi. Hence, this revision under
Section 397 read with Section 401 of the Cr.P.C.

5 The allegations in the First Information Report
are summarised as under:

(a) According to the complainant, she and the applicant know each other since 2012. Both were working in, one Grand Hyatt Hotel at Mumbai. Their friendship blossomed and applicant assured that he would marry her. In the complaint, it has been stated that applicant promised to marry her and then exploited her emotionally and mentally to have physical relations with her frequently. In October, 2012 in Hotel Cafeteria twice they had physical intimacy. It has been stated in the complaint that in October/November ,2012 both had been to Matheran (Hill Station) and Alibag where applicant had established sexual relationship with her. Thereafter, she was conceived. At that time, the complainant told him that it would be better to get married instead aborting the fetus. Applicant, however, expressed his disinclination to marry immediately and promised to marry after two years. Although Dr. Bhojani suggested to take pills to abort fetus, complainant was reluctant.

However, the applicant could prevail over her and promised to marry her. She believed the applicant and took pills. Whereafter though the complainant was unwell, he forced himself on her in December, 2012 and thereafter started avoiding and neglecting her. In these circumstances, the complainant was under tremendous pressure. She disclosed her relationship to her father. Whereafter father drove her out of the house. In the difficult situation, she pleaded with the applicant to marry her and take her to his home. Applicant flatly refused to marry her. Complainant stated, although her family members had agreed and consented for her marriage with the applicant but the applicant had refused and declined to marry her. Whereafter she filed written complaint on 28th December, 2012. The Assistant Commissioner of Police suggested counselling of the parties and referred to Inspector Parulekar. Applicant was summoned in the

police station on 4th January, 2013. Applicant in the presence of his parents, unconditionally, agreed to marry her. The complainant was convinced and was sure that applicant would marry her since he had so agreed and assured in the presence of his parents. Under this belief, she withdrew complaint on 6th January, 2013. Surprisingly, on 18th January, 2013, within fifteen days, applicant turned the table round and informed Mr. Parulekar (Counsellor) his, disinclination to marry the complainant. He communicated to counsellor that, since the first date, he never committed her for marriage, but, of-late, when he realised, he could not continue with this relation, he tried in possible ways to make her understand for not continuing the relations with her. His letter to counsellor suggests, that he was scared as to how his family would react and accept this relationship; he was not mentally prepared to marry at the age of 24; his family was not financially sound as

they belonged to lower middle class; he was allegedly threatened over the phone by respondent's brother-in-law and, therefore, he was mentally dismantled. In the fact situation, the complainant renewed her complaint. Whereupon Crime No.234 of 2013 under Sections 376 and 420 of the Indian Penal Code, 1860 came to be registered against the applicant and others.

6 The learned Sessions Judge declined to discharge the applicant whereupon this Revision is preferred.

7 Mr. Thakare, the learned Senior Counsel for the applicant, contended that the material on record does not suggest that there was absolutely no intent on the part of the applicant, when he entered upon the relationship, not to marry the second respondent nor can it be even suggested that the promise to marry was false. Mr. Thakare submitted that final report does

not suggest that it was a case of misconception of facts, which vitiates the consent but, it is a case of breach of promise, which could not be said to be false promise. In support of this arguments, Mr. Thakare has relied upon the transcript of telephonic conversation between the complainant and father of the applicant. This conversation had held after withdrawing the first complaint, but before lodging the complaint in question. Mr. Thakare has taken me through the transcript of telephonic conversation to contend that applicant's father/family were willing to perform the marriage of their son with the complainant subject to religious prohibitions. Mr. Thakare submitted that conversation suggests that father of the applicant sought particulars of the complainant's date, time and place of birth. According to Mr. Thakare, these details were sought for astrological compatibility (Matching of horoscopes of the complainant and the applicant). Mr. Thakare would rely on the statement of the

complainant dated 18th May, 2013 to submit that since horoscopes of the applicant and the complainant did not match and being case of astrological incompatibility, relations could not be furthered. Thus, argued, it is a case of breach of promise and not false promise of marriage. In support of this contention, Mr. Thakare has relied on the judgment of the Apex Court in **Sonu @ Subhash Kumar v. State of Uttar Pradesh & Anr. LL 2021 SC 137**. It is , therefore, submitted that since the evidence on record is suggesting, this being the case of breach of promise to marry, no ingredients of Section 376 of the IPC are borne out from evidence and, therefore, there is no sufficient ground for proceeding against the accused. As such, it is case of discharge.

8 In the case of **Pramod Suryabhan Pawar v. State of Maharashtra (2019) 9 SCC 608**, the Hon'ble Supreme Court has held, 'a breach of promise

to marry cannot, be a false promise. To establish false promise, maker of promise should have had no intention of upholding his words at the time of giving it.' In the case in hand, there is sufficient material to suggest that since inception, applicant had no intention of upholding his promise to marry the complainant. Prima-facie, I am of the view that the applicant prevailed over the complainant to withdraw her first complaint lodged in December, 2012 by promising that he would marry her. However, his intentions were otherwise. Had intentions were bonafide and true, the applicant would not have addressed a letter to Mr. Parulekar (Counsellor) and resiled from his promise to marry the complainant. Notably, this letter was addressed to Counsellor within twelve days from the date on which complainant withdrew her first complaint. It is apparent that the applicant in the guise of astrological incompatibility of the horoscopes, avoided the promise. Thus, I am convinced that the

material on record suggests, it is case of false promise to marry which apparently vitiates the complainant's consent.

9 It is settled law that while considering the question of framing of the charges under Section 227, the Court has power to sift and weigh the evidence for the limited purpose for finding out whether or not prima-facie case against the accused has been made out. The facts emerging from the material/documents on record taken at their face value, disclose the existence of all ingredients constituting alleged offence under Section 376 of the IPC. For these reasons application deserves no consideration. It is rejected.

10 It is made clear that observations made here-in-above be construed as expression of opinion for the

purpose of revision only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)