

2026 LiveLaw (SC) 459

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
K.V. VISWANATHAN; J., MANMOHAN; J.
SLP (Cr.) No. 2260/2026; 20 April, 2026**

SHAILESHBHAI GOVINDBHAI MAKWANA *versus* THE STATE OF MAHARASHTRA & ANR.

Criminal Procedure – Section 482 of the Code of Criminal Procedure, 1973 – Maintainability of second quash petition – Dismissal of earlier petition as withdrawn without merits – Held - There is no inviolable rule that a second quash petition under Section 482 CrPC is not maintainable - Where the earlier petition was withdrawn without any discussion on the merits, the second petition cannot be thrown out purely on the ground of maintainability, especially when the facts reveal that the alleged offence is not made out. [Paras 15 - 22]

Penal Code, 1860 – Section 376(2)(n), 377, and 506 – Rape on false promise of marriage – Consent given under misconception of fact versus breach of promise – Prolonged physical relationship with full knowledge of marital status – Held: If a physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the relationship was purely because of the alleged promise of marriage - Unless it is shown that the physical relationship had a direct nexus with the promise of marriage, without being influenced by any other consideration, there can be no vitiation of consent under a misconception of fact - In the present case, both parties were fully aware that they were married to different spouses - The complainant uploaded her profile on a matrimonial site and established a physical relationship even before her divorce was finalized - The parties happily cohabited and travelled together for over 4 years without any complaint of force - This is a case of a relationship turning sour, rather than a promise of marriage resulting in deception - Criminal proceedings quashed. [Relied on Mahesh Damu Khare v. State of Maharashtra and Anr., (2024) 11 SCC 398; Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385; M.C. Ravi Kumar v. D.S. Velmurugan & Ors., [2025] SCC Online SC 1498; Superintendent & Remembrancer of Legal Affairs West Bengal v. Mohan Singh and Others, (1975) 3 SCC 706; Paras 18 - 21]

[Arising out of impugned final judgment and order dated 03-09-2025 in CRA No. 2335/2023 passed by the High Court of Judicature at Bombay at Aurangabad]

For Petitioner(s) Mr. Sachin Patil, Adv. Mr. Kailas Bajirao Autade, AOR

For Respondent(s) Ms. Rukhmini Bobde, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR Mr. Shrirang B. Varma, Adv. Mr. Vinayak Aren, Adv. Mr. Jatin Dhamija, Adv. Ms. Aishwarya Nigam, Adv.

ORDER

1. Leave granted.
2. Heard Mr. Sachin Patil, learned counsel for the appellant and Rukhmini Bobde, learned counsel for the State. The Defacto complainant, though served, is not appearing.
3. The appellant seeks quashment of RCC No.328/2021 pending before the Judicial Magistrate First Class, Tuljapur, Taluk Tuljapur, Dist. Osmanabad, Maharashtra.
4. The said proceedings arise out of a chargesheet filed for offences punishable under Sections 376(2)(n), 377 and 506 of IPC. The chargesheet in turn was filed pursuant to a First Information Report dated 09.02.2021 lodged by the respondent no. 2 against the appellant.

5. According to the case of the complainant, complainant was earlier married to one "K" in the year 1998 but in 2012 due to differences they started living separately.
6. It is admitted in the complaint leading to the First Information Report that in 2017 itself before the divorce with "K" was finalised, complainant/respondent no. 2 gave an advertisement on a matrimonial site and created a profile for a second marriage.
7. It is the case of the complainant that the appellant got her number from the matrimonial site and kept in contact with her; he talked to her affectionately and video called her. The complainant avers that the appellant guaranteed that he would marry her. According to the complainant, on 17.10.2017, the appellant came to Tuljapur where she was living with her son. He stayed with the complainant for 2-3 days, helped her with the household work and also took care of her son. He even talked about marrying the complainant. The complainant was told that even the appellant was in the process of getting divorced from his first wife. According to the complainant, believing his words she divorced her husband.
8. The complainant states that one night in Tuljapur, the appellant against her will had sexual intercourse with her and also had unnatural intercourse. The complainant admits that even thereafter the parties were in a relationship and the appellant visited for 2-3 days and had a physical relationship. They even stayed in the hotel in Bhuj, Gujarat for four days and had a physical relationship.
9. According to the First Information Report, the physical relationship continued and the parties stayed together at a hotel in Surat. Further on 03.10.2020, the physical relationship continued for several days thereafter. The complainant even states that she transferred initially a sum of Rs. 10,000/- (Rs. Ten Thousand only) and in all a sum of Rs. 2,50,000/- (Rs. Two lakh fifty thousand only).
10. It is stated that on 06.02.2021 when she came to Surat and called the appellant to meet her at night, he did not come. She called again next morning for which there was no response. It is stated that in the morning the appellant called her to Sumul Dairy Road. The complainant stated that she wanted to marry him but the appellant's brother stated that he would not let them get married and the appellant also refused to marry.
11. It is at this point, the complainant came to Mahidharpura Police Station to file a complaint on 08.02.2021, stating that after giving a guarantee that he would marry her, the appellant refused to marry the complainant.
12. Thereafter, the complainant states that by this process the appellant lured her with the promise of marriage against her will and established physical intercourse including forcible sexual intercourse. Chargesheet has been filed for the offences punishable under Sections 376(2)(n), 377 and 506 IPC.
13. The High Court, on being approached, has dismissed the quash petition primarily on two grounds, one that earlier quash petition was dismissed as withdrawn and secondly, the offences required trial.
14. Mr. Sachin Patil, learned counsel for the appellant submits that both the appellant and the complainant were married earlier and it is within their knowledge. More importantly, he submitted that in 2017 admittedly when the complainant was not divorced, she put her profile on the matrimonial site for a second marriage. Admittedly, for at least a period of 04 years before the FIR was lodged on 09.02.2021, parties with full knowledge that they were earlier married, continued in a physical relationship. The physical

relationship continued even at points when the complainant's divorce was not finalized. Since, according to the records, divorce was finalized only in 2018.

15. In so far as the maintainability of the quash petition is concerned, Mr. Patil argues that there is no inviolable rule that the second quash petition will not be maintainable. Since, the earlier proceedings were dismissed as withdrawn on the facts and circumstances, Section 482 petition could not have been thrown out on maintainability. He relies on the judgment reported in M.C. Ravi Kumar vs. D.S. Velmurugan & Ors. ([2025] SCC Online SC 1498) (See also Superintendent & Remembrancer of Legal Affairs West Bengal v. Mohan Singh And Others, [(1975) 3 SCC 706]).

16. Ms. Rukhmini Bobde, learned counsel for the respondent defended the impugned order.

17. We have carefully considered the submissions of the learned counsel for the appellant and the respondent-State and perused the records.

18. A careful perusal of the records indicates that:

- (i) Both parties were aware that they were earlier married to different spouses;
- (ii) The complainant at a point when her divorce was not finalized put up a matrimonial advertisement;
- (iii) Admittedly, for over a period of 04 years, the parties travelled together and established a physical relationship;
- (iv) The physical relationship which the complainant states to have been forceful was on 17.10.2017;
- (v) Admittedly, even after 17.10.2017 parties travelled together and had a physical relationship;
- (vi) No complaint of the incident of 17.10.2017, about the forcible sexual intercourse and the unnatural sex was lodged till 09.02.2021.

19. In the above background, the question is whether the appellant under a promise of marriage deceived the respondent? In the light of the admitted facts, parties had knowledge that they were married to some other spouse earlier and the admitted fact is that before obtaining a divorce the respondent-complainant gave a matrimonial advertisement and before finalization of divorce had sexual relationship and never complained of any force by the appellant for 04 years.

20. We are of the opinion that this was not a case where a promise of marriage resulted in appellant deceiving the complainant. Parties have happily cohabited together between 2017 and 2020 and, thereafter, the relationship soured.

21. In Mahesh Damu Khare v. State of Maharashtra and Anr. (2024) 11 SCC 398 this Court held as under: -

“26. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in Naim Ahamed v. State (NCT of Delhi) [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385] : (SCC p. 398, para 21)

“21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause — Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376.”

27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.”

22. We are also not convinced with the reasoning of the High Court that the quash petition was not maintainable, especially, because in the present case the earlier petition was withdrawn without any discussion on the merits. Further when we have examined the facts and found that the offence alleged is not made out, we feel it will not be just to throw out the petition on maintainability. We say so on the special facts of this case.

23. In view of what has been discussed hereinabove, RCC No. 328/21 pending before the Judicial Magistrate First Class, Tuljapur, Taluk Tuljapur, Dist. Osmanabad, Maharashtra would stand quashed.

24. The appeal is allowed and the impugned order dated 03.09.2025 in Criminal Application No.2335 of 2025, passed by the High Court of Judicature at Bombay, Bench at Aurangabad is set aside. Bail bonds if any, shall stand discharged.

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