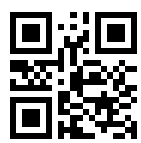


2025:PHHC:108858

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

207 **CRA-S-1392-SB-2016**

Judgment reserved on: 13.08.2025
Date of Pronouncement: 20.08.2025

MANJIT SINGH @ TONI

... Petitioner

VERSUS

XXXXXX AND ANOTHER

... Respondents

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

****

Present: Mr. R.S. Cheema, Sr. Advocate with
Ms. Sumanjeet Kaur, Advocate for the appellant.

Mr. Vikas Gupta, Advocate for respondent No.1.

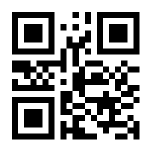
Mr. Jatinder Pal Singh, Sr. DAG, Punjab.

****

SHALINI SINGH NAGPAL, J.

This appeal is directed against judgment dated 04.03.2016 and order of even date, on quantum of sentence, of learned Addl. Sessions Judge, Tarn Taran, vide which the appellant was convicted for the commission of offence punishable under Section 376 of IPC and was sentenced to undergo rigorous imprisonment for a period of 09 years, also to pay fine of Rs.1,00,000/-. In default of payment of fine, to further undergo rigorous imprisonment for a period of nine months.

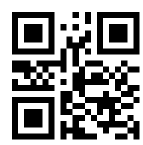
The case arose out of a private complaint filed by the prosecutrix (name withheld) against the appellant. The prosecutrix alleged in her complaint that she was a home maker and had strained relationship with her husband, who



served in the Indian Army. Due to strained relations, talks of divorce with her husband were going on. She along with her children was living at her in-laws' village Pandori Ran Singh while her husband was residing in Delhi. Manjit Singh, who was serving in Police Department, came in contact with her during a bus journey in March, 2012. Gradually, she developed relations with him and started sharing her problems. Appellant visited her matrimonial home at village Pandori Ran Singh, allured her of marriage and made physical relations with her saying that he was a bachelor and would perform marriage with her. She further stated that appellant visited her house and raped her continuously against her wishes. Whenever she asked him to marry her, he flaunted his position and asked her to keep mum. He continued to visit her home and had been raping her, alluring her of marriage, putting her in fear, against her wishes. When she threatened to take legal action against him, he gave her an attested affidavit to deceive her.

Prosecutrix further alleged that appellant had been committing rape upon her, against her wishes, whenever he visited her home. When she refused him, accused him of ruining her life and asked him to marry her, he forcibly committed rape under threat, at pistol point and threatened to kill her children if she disclosed the matter. Every time, out of fear she remained silent, apprehending danger to her life and children. She confided about the relationship to village Ex. Sarpanch Narender Singh son of Santokh Singh. Appellant tendered apology before the Sarpanch Narender Singh and assured that he would marry her.

Prosecutrix further averred that appellant deceitfully took away Rs.50,000/- from her. She moved a complaint to Senior Superintendent of



Police, Tarn Taran, seeking registration of FIR against him but police took no action, rather the Police officials, in connivance with the appellant were threatening to kill her and her family. Appellant also threatened to upload her videos on facebook if she disclosed the matter. Now, the appellant had married someone else. It was prayed that FIR be got registered by invoking Section 156(3) Cr.P.C.

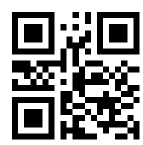
On the basis of preliminary evidence led, vide order dated 18.02.2014, learned ACJM, Tarn Taran summoned the appellant to face trial under Sections 376 and 506 IPC. Appellant appeared and the case was committed to the Court of Sessions by learned ACJM, Tarn Taran vide order dated 31.10.2015.

Prima facie case being made out, chargesheet was served upon the appellant under Sections 376 and 506 of IPC. He abjured his guilt and sought trial.

The only witness examined by the prosecution is the prosecutrix, who reiterated her version in the complaint on oath.

After prosecution closed its evidence, appellant was examined under Section 313 Cr.P.C. He claimed false implication and projected that prosecutrix knowingly and intentionally prepared forged document i.e. affidavit Ex.CW1/A to strengthen her case and the affidavit was never signed by him. He stated that proper enquiry was conducted in the case by Police officials and he was found innocent.

In defence, he examined HC Amandeep Singh as DW1, who brought the original file of enquiry conducted on application of the prosecutrix



and placed on record Ex.D1, photocopy of the enquiry report running into 20 pages.

Learned trial Court, in the impugned judgment of conviction, has relied upon enquiry report Ex.D1 to record a finding that physical relations between the parties were ascertained, therefore, it was not disputed that appellant had committed sexual intercourse with the complainant/prosecutrix. The absence of suggestion regarding non-performance of sexual intercourse was also regarded as an admission. Referring to Section 375 IPC, Section 90 IPC and Section 114-A of the Indian Evidence Act, it was observed that once the prosecutrix stated that sexual intercourse by the appellant was committed against her will and consent, it was to be so presumed unless and until it was disproved by the appellant. Affidavit Ex.CW1/A was also banked and relied upon by the trial Court to hold that the appellant promised to marry the prosecutrix. It was held that this amounted to obtaining consent of the prosecutrix under misconception of fact, which was no consent in the eyes of law. Appellant was accordingly convicted under Section 376 IPC, though he was acquitted of the charge under Section 506 of IPC.

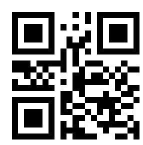
Aggrieved, the appellant is before this Court seeking reversal of the judgment of conviction.

Mr. R.S. Cheema, learned senior counsel for the appellant argued that the judgment under challenge was perverse, passed by learned Trial Court overlooking stark facts and binding legal principles. It was submitted that the provisions of Section 225 Cr.P.C. were bye-passed by learned trial Court on which account, entire trial was vitiated. It was argued that in every Sessions trial, even if it emanated from a private complaint, it was only the Public

Prosecutor, in-charge of the case, who had the authority to conduct it. The provisions of Section 225 and 301(2) Cr.P.C. were completely overlooked in the present case. To support his arguments, learned counsel for the appellant referred to ***Abhilasha and another Versus State of Rajasthan and others*** reported as ***(2000) 10 SCC 237*** and ***Hukam Singh and others Versus State of Rajasthan*** reported as ***(2000) 7 SCCC 490.*** Referring to Section 2(16) of the Advocates Act, 1961, learned counsel submitted that had the Public Prosecutor appeared to prosecute the criminal trial, the prosecution may not have resulted in conviction of an innocent.

On merits, it was canvassed that learned trial Court had shown great insensitivity to the facts and circumstances of the case. The admitted fact that the prosecutrix was 10 years older than the appellant and a mother of two children was not considered by learned trial Court and it was erroneously held that the offence under Section 375 IPC punishable under Section 376 IPC was made out. Prosecutrix being married could not have been induced by the appellant to agree for physical relations on the pretext of marriage. Infact, the prosecutrix had been betraying her husband, serving in paramilitary establishment and had developed physical relationship with the appellant, who was much younger to her. There were tell-tale signs in her deposition regarding normal relationship with her husband which learned trial Court failed to appreciate.

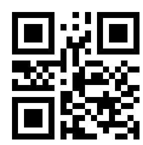
Next submission of learned counsel for the appellant was that affidavit Ex.CW1/A was not a genuine document, yet, was erroneously relied upon by learned trial Court to hold that the prosecutrix consented to sexual intercourse under misconception of fact. Neither the affidavit was proved in



accordance with law nor did it constitute a valid contract. In support of his arguments, learned counsel referred to ***Prashant Bharti Versus State (NCT of Delhi); (2013) 9 SCC 293; XXX Versus State of Madhya Pradesh and another; (2024) 3 SCC 496 and Sanjay Kumar Sharma Versus State of Haryana and another; (2024) 3 RCR (Criminal) 753.***

Learned counsel for the respondent failed to address any worthwhile argument. His only submission was that the prosecutrix did not want to contest the appeal any longer on account of a compromise with the appellant and she had no objection if the appeal was allowed. In this context, reliance was placed on ***Madhukar and others Versus The State of Maharashtra; 2025 SCC Online SC 1415.***

The mandate of Section 225 of Criminal Procedure Code, 1973 is that every trial before a Sessions Court shall be conducted by a Public Prosecutor. The scheme of administration of criminal justice is that the primary responsibility of prosecuting a sessions case is on the Public Prosecutor. The Apex Court in ***Subhash Chander Versus State (Chandigarh Administration) and others*** reported in ***AIR 1980 SC 423*** has observed that a Public Prosecutor acts as a limb of judicative process. He must work as minister of justice assisting the State in administration of justice and not as a representative of the party. Undoubtedly, complainant has no independent right to have guilty person punished in a Sessions Trial. An offence once committed is against the entire society, not against an individual. On that account, conduct of prosecution in a Sessions Trial is entrusted to Prosecutors appointed by the State Government. The idea behind it appears to be to save innocent persons from vexatious

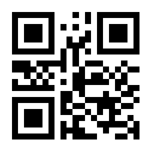


prosecution and harassment during the trial. Complainant has also been given limited right during trial by incorporating Section 301(2) and 302 Cr.P.C.

Reverting to the facts of the present case, it was a case launched on a private complaint and the appellant was summoned to face trial vide order dated 18.02.2014 of learned Addl. Chief Judicial Magistrate, Tarn Taran. Upon commitment of the case, however, the provisions of Chapter XVIII of Cr.P.C. came into operation, it being a sessions trial and as per Section 225 Cr.P.C., law enjoined that the prosecution be conducted by a Public Prosecutor. This, however, was not done and learned trial Court, apparently oblivious of the legal provision, permitted complainant counsel to prosecute the trial from the time of framing charges till culmination thereof.

The poser which now arises for determination is whether in the fact situation of the case, the entire trial stands vitiated or not. The Code of Criminal Procedure, like all procedural laws, is designed to further the ends of justice, to ensure that an accused person gets a full and fair trial. The question whether the omission was a mere unimportant mistake in procedure, or it was substantial and vital will depend on the facts and circumstances of each case. As per settled principles, if the omission is so grave that prejudice is imported, it can be described as an illegality, but if the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established.

In case the accused is tried by a competent Court, if he is told and he clearly understands the nature of offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded full and fair opportunity of defending himself, then the mistake(s) in procedure should



not be regarded so as to vitiate the entire trial unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the code is based ***(See W. Slaney Versus State of Madhy Pradesh; ASI 1956 SC 116 and Gurbachan Singh Vs. State of Punjab; AIR 1957 SC 623)***. Record shows that nowhere during the trial of the case, neither at the time of framing charges nor at the time of recording statements of witnesses or defence evidence/arguments, any objection was raised by the appellant regarding the conduct of trial by a private counsel. It is not a case where there has been a denial of full and fair opportunity to the appellant to defend himself. Hence, non-prosecution of the case by a Public Prosecutor should not, in the opinion of this Court, be regarded as an illegality grave enough to vitiate the trial.

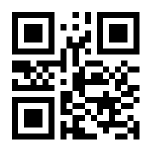
Intrinsic worth of evidence led during trial should now be evaluated.

Solitary witness examined by the prosecution is the complainant/ prosecutrix. From the statement of prosecutrix read with her cross-examination, following positive inferences can readily be drawn:

(i) The prosecutrix is a mature, married woman 36 years of age with 02 children, 10/12 years of age.

(ii) At the time of initiation of relationship, the appellant was 10 years younger to the prosecutrix.

(iii) Husband of the prosecutrix was in the Army. Though, she claimed that she was not on good terms with him and was contemplating divorce, her statement that she was residing with her children in her in-laws' house belies her claim. Her admission that she did not file any case in any Court of law against her husband seeking



maintenance nor did she ever file any application before senior officers of Army, shows the falsity of her version

(iv) Appellant was a bachelor when he met the prosecutrix in the month of March 2012 whereafter, physical intimacy developed between them.

(v) Appellant frequently visited house of prosecutrix, sometimes after 10/15 days and at times, after some months. Appellant visited her house 55-60 times in the year 2013.

(vi) Prosecutrix came to know before filing the complaint that appellant had performed marriage with someone else. Apparently, marriage of the appellant with another woman was the trigger point for initiating prosecution.

Section 375 of IPC (as it then was), Section 90 of IPC and Section 114-A of Indian Evidence Act are reproduced as under:

"375. Rape.-

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

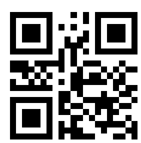
First- *Against her will.*

Secondly- *Without her consent.*

Thirdly- *With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

Fourthly- *With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

Fifthly- *With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or*



intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- *With or without her consent, when she is under sixteen years of age.*

Explanation- *Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*

Exception- *Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.*

XXX XXX XXX

90. Consent known to be given under fear or misconception—

A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

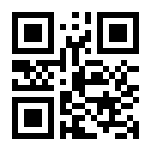
Consent of insane person.*— if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*

Consent of child.*— unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*

XXX XXX XXX

114-A. Presumption as to absence of consent in certain prosecution for rape.

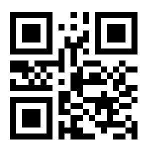
In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is



whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the Court shall presume that she did not consent."

An inducement for marriage is understandable if the same is made to an unmarried woman. Undisputedly, the prosecutrix was a married woman, though she claimed that she was in an unhappy marriage and was in the process of seeking divorce from her husband. This claim of the prosecutrix is false on the face of it, given her admission that she was residing with her in-laws and had never launched any sort of litigation against her husband including divorce petition. Her statement regarding sexual intercourse by the appellant 55-60 times during the year 2012-13 is conspicuous by absence of dates and other material particulars. She admitted that the physical intimacy 55-60 times in the year 2012-13 was in her in-laws' house. Clearly, the prosecutrix was in a consensual relationship with the appellant for a period of more than two years during which period, she remained married to her husband. In the fact situation, her claim that appellant had physical relations with her and committed rape upon her on the assurance that he would marry her is *per se* false and unacceptable.

The prosecutrix was not a naive, innocent bashful young lady who could not judge the implications of her impulsive decisions. She was a grown-up woman, mother of two children and was ten years older than appellant. She was intelligent enough to understand the consequences of the immoral acts for which she consented while her marriage was subsisting. When a fully matured married woman, consents to sexual intercourse on a promise of marriage and continues indulging in such activity, it is merely an act of promiscuity,



immorality and reckless disregard of the institution of marriage, not an act of inducement by misconception of fact. Section 90 of IPC cannot be applied in any such case to pardon the act of a woman and the criminal liability on another. The appellant was clearly not in a position to induce her to intimacy on the assurance of marriage, that too in her own matrimonial house where her in-laws and children would also be present. The assertion that she was induced into sexual relationship and raped by the appellant on the basis of a promise to marry stands irrefutably falsified.

Learned trial Court has also relied upon Ex.CW1/A, the affidavit of the appellant, which reads thus: -

"AFFIDAVIT

1. Manjit Singh Slo Gurdeep Singh, Jat Sikh by caste am resident of Village Chusrewal, Tehsil Patti, District Tarn Taran and do solemnly affirm and declare as under:

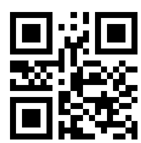
1. That I am permanent resident of the above address.

2. That I shall perform marriage with Sarabjit Kaur D/o Sukhdev Singh, Jat by caste Rio Muhaar, Tehsil Ajnala, District Amritsar in March, 2014 as per Sikh Rites.

3. That in case, I failed to perform married with Sarabjit Kaur within the stipulated period then Sarabjit Kaur would have full right to take any legal action against me in the Police Station or before panchayat to which I shall have no objection thereto.

4 That I will not perform marriage with any other woman except Sarabjit Kaur.

5 That before the expiry of stipulated period Sarabjit Kaur D/o Sukhdev Singh shall not initiate any legal action against me before Police or Panchayat.


2025:PHHC:108858

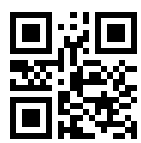
Sd/- Manjit Singh
Deponent

My aforesaid affidavit is correct and true as per my knowledge and belief and nothing has been kept concealed therein.

Sd/- Manjit Singh
Deponent"

Ex.CW1/A as relied upon by learned trial Court on the premise that it was produced by the appellant in his defence. Learned trial Court, however, appears to have ignored the report Ex.D1 tendered by DW1, HC Amandeep Singh relating to complaint bearing No.1618 dated 28.10.2013 submitted by the prosecutrix against appellant. The report makes it clear that the stand of the appellant before the Inquiry Officer was that he had not sworn any affidavit. Even in his statement under Section 313 Cr.P.C., the clear stand of the appellant was that prosecutrix knowingly and intentionally prepared the forged document i.e. the affidavit Ex.CW1/A to make her case strong and that the said affidavit was never signed by him. The photocopy Ex.CW1/A was tendered in the statement of prosecutrix. The original document was neither produced nor proved in accordance with law by examining the notary public in whose presence, it was sworn. The appellant having specifically denied his signatures on the affidavit, burden was on the prosecution to have proved the document in accordance with the settled principles of law. In the absence of valid proof of the affidavit, the photocopy Ex.CW1/A could neither have been exhibited in evidence nor could have been read to the disadvantage of the appellant to hold that the appellant made a promise to marry the prosecutrix.

In the case of ***Uday Vs State of Karnataka; (2003) 4 SCC 46***, the Court acquitted the accused as the prosecutrix therein was a mature college

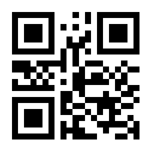


student who had consented to sexual intercourse with the accused of her own free will. The Court noted that:

> *"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."*

Hon'ble Supreme Court in case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another*** reported as ***AIR 2019 SC 4010*** has held as under:

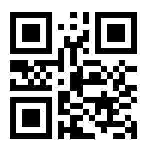
> *"12. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action."*



In the case before this Court, the prosecutrix cannot be said to have acted under the inference of promise made by the appellant under misconception of facts, while venturing into unrestrained sexual activity with the appellant. Even if the allegations levelled by her are accepted at their face value, it is unconceivable that a legally married woman could be induced into sexual relations on a promise of marriage. Accepting, such a promise was indeed made, it would be unenforceable in law being contrary to law and morality of the society. It appears that for two long years, day after day, week after week and month after month, the immoral arrangement of prosecutrix with appellant continued until the day of reckoning when she suffered an emotional set back on coming to know that appellant had solemnized marriage with another woman.

A similar issue was considered by Hon'ble Supreme Court in ***Naim Ahamed Versus State (NCT of Delhi); (2023) 15 SCC 385.*** In that case also, the prosecutrix was already a married woman having two children. The complaint of alleged rape on false promise of marriage was made after five years after they had started having relations. Hon'ble Supreme Court held that by no stretch of imagination, it could be said that prosecutrix had given her consent for sexual intercourse under misconception of fact. Relevant paragraph No.22 of the said judgment is reproduced as under: -

> *"22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant Undisputedly, she continued to have such relationship with him at least for about five years till*



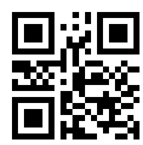
she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC."

In ***Biswajyoti Chatterjee Versus State of West Bengal and another; 2025 SCC Online SC 741*** also, the appellant/accused was in a subsisting marriage, though he claimed to be separated. The prosecutrix too was a married woman. Hon'ble Supreme Court held that physical relations between the complainant and the appellant were consensual and could not be said to be without her consent or against her will. It was observed as under: -

> *"20. We find that there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext to marry, in the event of a fall out. It is such lis that amounts to an abuse of process of law, and it is under such circumstances, that we deem fit to terminate the proceedings at the stage of charge itself."*

Similarly, in ***Amol Bhagwan Nehul Versus The State of Maharashtra and another; 2025 SCC Online SC 1230***, the prosecutrix was a married woman who levelled allegations that for a period of more than one year, the appellant forcibly had sexual intercourse with her on a false assurance of marriage. Hon'ble Supreme Court observed as under: -

> *"9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.*



10. As demonstrated hereinabove, the ingredients of the offence under Sections 376 (2)(n) or 506 IPC are not established. ………..”

Present is a clear case of a consensual relationship turning sour and could not have been made the foundation for setting the criminal law in motion, to wreak vengeance on the appellant. Though the appellant cannot be regarded as completely innocent in the fact situation, yet such a relationship based on consent cannot be made the foundation of a charge, as serious as one under Section 376 IPC. In such a case, presumption stipulated under Section 114-A of Indian Evidence Act, 1872 cannot come into play nor can it be held that consent was given under a misconception of fact. The findings of learned trial Court based on Section 114-A of the Indian Evidence Act and Section 90 of IPC are unsustainable in the fact situation of the case and are liable to be set aside.

For the reasons aforesaid, the appeal is allowed. Resultantly, impugned judgment of conviction and order on sentence dated 04.03.2016 of learned Addl. Sessions Judge, Tarn Taran is hereby set aside. Appellant is hereby acquitted of the charge under Section 376 IPC. Bail/surety bonds of the appellant are ordered to be discharged. Trial Court record be sent back in original to the quarter concerned.

(SHALINI SINGH NAGPAL)
JUDGE

AUGUST 20, 2025.
Rajender

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