



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2180 OF 2024

Devidas s/o Wamanrao Doiphode
Age: 52 years, Occu.: Business and Agri.,
R/o. Plot No.3, 4 Survey No.17,
Gajanan Colony, Chhatrapati Sambhajnagar .. **Applicant**

Versus

1. The State of Maharashtra
Through its Police Inspector,
Police Station, Kranti Chowk,
Chhatrapati Sambhajnagar.
2. XYZ .. **Respondents**

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Mr. S. S. Thombre, Advocate for the applicant.
Mr. A. R. Kale, APP for respondent No.1/State.
Ms. Angha Pedgaonkar, Advocate for respondent No.2 (Appointed Through
Legal Aid).

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 08 APRIL 2025

PRONOUNCED ON : 09 JUNE 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed initially for quashing the FIR
vide Crime No.17 of 2024 dated 20.01.2024 registered with Kranti
Chowk Police Station, District Chhatrapati Sambhajnagar and later on,
by way of amendment, for quashing the proceedings in Sessions Case
No.60 of 2025 pending before the learned Additional Sessions Judge,

Aurangabad for the offences punishable under Sections 354-D, 376(2)(n), 313, 500 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Thombre for the applicant, learned APP Mr. A. R. Kale for respondent No.1/State and learned Advocate Ms. Angha Pedgaonkar for respondent No.2 (Appointed Through Legal Aid).

3. Learned Advocate appearing for the applicant has taken us through the FIR and the entire charge-sheet and submits that the FIR which was initially registered for the offences punishable under Sections 354-D, 500 read with Section 34 of Indian Penal Code has been conveniently and falsely stretched to include offence under Section 376(2)(n) and 313 of Indian Penal Code. The FIR came to be lodged against the present applicant on 20.01.2024 in respect of the incident between 2007 to 2008. At that time, the informant had not disclosed that she was sexually abused by the applicant, but while referring to co-accused, she states that the present applicant with an intention to defame her told to co-accused that applicant and the prosecutrix had sexual relations and after about 30 days, she has totally changed her version and had stated about some incidences which had allegedly taken place in 2008 to 2009. She has stated in the supplementary statement that she was forcibly taken in his vehicle and though the

applicant's wife was chasing them, she was taken at a distance and thereafter the applicant had made her to get down. Thereafter, the applicant had a quarrel with his wife and nephew, but he sent his wife by giving some advise and again took the prosecutrix to hotel. After the lunch, she felt giddiness and when she was unconscious in the car, she states that the applicant had sexually abused her and had made the recording of the act in his mobile. She states that she had become pregnant thereafter, but the applicant had managed to get some medicine. After consuming the same, there was a forcible abortion for which thereafter the applicant had taken her to a doctor. She has stated that thereafter also she herself and the applicant were in contact with each other, but after that from so many years, they were not in contact. She used to contact the applicant only in case of work. She then states that the applicant, in order to defame her, had made some defamatory statements with the co-accused regarding the relations between her and the applicant. Her statement under Section 164 of the Code of Criminal Procedure is on the same line. The inquiry with the doctor in the vicinity of the Chowk mentioned in the FIR would show that they were unable to give any record since it is very old. There is huge delay in lodging the report and except bare words of the prosecutrix, there is nothing in the charge-sheet. Therefore, with this evidence, it would be unjust to ask the applicant to face the trial.

4. Learned APP as well as learned Advocate Ms. Anagha Pedgaonkar, who is appointed through legal aid to represent the cause of respondent No.2, have strongly opposed the application and submitted that the present applicant appears to have taken disadvantage of the poor financial condition of the prosecutrix. She was not having any support from the family or people and could not get the courage, but it appears that by taking disadvantage even the applicant had then started defaming her. Therefore, ultimately, she has to raise and make complaint. The FIR and the charge-sheet cannot be quashed and set aside only on the ground of delay. Confident statements of the prosecutrix may also suffice to book the present applicant. This Court cannot go into the aspect as to whether there would be a conviction in the matter or not at the stage of Section 482 of the Code of Criminal Procedure. The material which has been placed in the charge-sheet is sufficient to take cognizance of the offences and, therefore, this is not a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

5. Here, in the present case, it appears that the informant prosecutrix had made a complaint with Police Inspector, Kranti Chowk Police Station, Chhatrapati Sambhajinagar on 19.01.2024. The said complaint application has been made a part of the charge-sheet. Perusal of the same would show that co-accused had allegedly given an obscene

message to her and she felt defame and the present applicant had gone to the house of co-accused and told him about alleged physical relations. On the basis of the said complaint application, FIR has been taken down on 20.01.2024. Perusal of the FIR would show that there are absolutely no facts regarding the ingredients of Section 376(2)(n) and 313 of the Indian Penal Code. As regards the present applicant is concerned, she has stated that she used to go for work with the applicant in 2007 – 2008, as she had admission on Architecture side and the applicant was a contractor. She has then stated that the applicant had taken disadvantage and though promised that he would give financial support to her for future education, since she fell ill, she had left work of the applicant. It appears that whatever had happened or referred to was in the year 2007-2008. Then she directly comes to the story in respect of co-accused and she states that co-accused used to refer her as his sister and they were acquainted with each other, even used to visit each others house. 8-10 days prior to 20.01.2024, she had received the WhatsApp message of co-accused saying I Love You. Then she asked as to why he has given that message. He replied that not sexually, but as a sister. Thereafter, co-accused disclosed that he had met the applicant and at that time, applicant disclosed that there were physical relations between him and the prosecutrix. The prosecutrix states that the applicant is defaming her stating that there were relations. Thus, in a

way, she has tried to say in the FIR that there were no such physical relations, yet the applicant is pretending that and, therefore, she has taken it as an act of defamation. However, when her supplementary statement was taken on 10.02.2024, it was totally a U-turn wherein as aforesaid she has given the entire story as to how she was allegedly raped and forced to abort. Even if we take that story as it is, it appears that it had happened in 2008-2009. She has not made any complaint about the same, but she further states that thereafter also that means even after the abortion, she was in contact with the applicant and then she says that since last few years they have again come in contact with each other only in respect of work. When she had not made any complaint about the alleged act of the applicant, then after so many years she wants to raise it under the pretext that the co-accused had given her message and he states that the applicant had told him about alleged physical relations.

6. If we peruse the charge-sheet, then there is absolutely no statements of witnesses, who were knowing the informant and the applicant in 2008. There is a statement of carrier Police Constable Vilas Chavan attached to Kranti Chowk Police Station stating about delivery of the samples. Except this, there is nothing. We do not want to place the material from the medical examination of the prosecutrix, as the alleged incident is of 2008-2009 and her medical examination has been got done

on 08.02.2024. The statement of the prosecutrix under Section 164 of the Code of Criminal Procedure is on the same line. Inability to build courage or support from others cannot be a reasonable ground for delay. With such belated FIR and that too by way of improvement after 30 days, it would be unjust to ask the applicant to face the trial. Even as regards the offence under Sections 354-D and 500 of Indian Penal Code, the facts do not attract these provisions. The message was sent on WhatsApp, which has end to end encryption. That means a third person cannot read the same. The defamation alleged against the present applicant is that he had made certain statement to co-accused. Of course, the prosecutrix was not present at that time. Only on the basis of the statement of the co-accused to the prosecutrix, the prosecutrix is now saying that such statement was made by the applicant and, therefore, ingredients of none of the offences are getting attracted from the material i.e. collected in the charge-sheet. Therefore, it would be an abuse of process of law, if the applicant is asked to face the trial. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.17 of 2024 dated 20.01.2024 registered with Kranti Chowk Police Station, District Chhatrapati

Sambhajinagar and the proceedings in Sessions Case No.60 of 2025 pending before the learned Additional Sessions Judge, Aurangabad for the offences punishable under Sections 354-D, 376(2)(n), 313, 500 read with Section 34 of Indian Penal Code, stand quashed and set aside as against the present applicant –
Devidas s/o Wamanrao Doiphode.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm