

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1787 OF 2016

Shri Kunal Mandaliya

... Petitioner

Vs.

The State of Maharashtra

... Respondent

Ms.Krupali Rajani for the Petitioner

Mr.V.V. Gangurde .APP, for Respondent – State

Mr.Sandeep Kumar Singh for Resp. No.2

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: DECEMBER 19, 2016

P.C.:

1. Rule. By consent, Rule made returnable forthwith and heard finally.
2. This writ petition is directed against the order dated 4.3.2016 passed by the learned Additional Sessions Judge, Kalyan in S.C. No.334 of 2014 for discharge. The accused is prosecuted by Mahatma Phule police station at C.R. No.I-5/2014 for the offences punishable under sections 376, 420, 323 and 506 of the Indian Penal Code.

3. It is the case of the original complainant that she was working as a lecturer in one of the reputed colleges in Mumbai since 2007. She teaches accounts in the said college. In the year 2010, she became friendly with the petitioner and after some time he proposed to her. In January, 2011, he took her to a hotel near Shil Phata road and raped her. However, the petitioner assured her that he would marry her and thereafter, on a number of times, though the complainant was not willing, he forced her to have sexual intercourse. However, he had promised her to marry and also requested her not to speak anything about their relationship. Around June, 2012, the petitioner and the accused introduced each other to their respective parents and their marriage was fixed. On 15.2.2013, in the presence of the family members, both got engaged at Dadar, Mumbai and the families fixed the date of marriage on 26.12.2013. Her father booked the venue of the marriage. However, in the month of May, the petitioner forced the complainant to have sexual intercourse in May 2013 at Lonavala. In July 2012, he demanded some cash and procured a sum of Rs.1,30,000/- from her. He used to quarrel with her, beat her and insult her. Again, in September, 2012, without her consent, he had sexual intercourse with her in some resort on Gujarat Highway. There was a continuous demand

of money from him, so she gave a cheque of Rs.150,000/- to him drawn on Andhra Bank, Ghatkopar branch, which was credited. On 23.11.2013, a meeting of members of both the families was held. At that time, he declared his refusal to marry her and he left her on 2.12.2013. Thereafter, she met him and requested him about marriage. At that time, the petitioner demanded Rs.5 lakhs cash as a condition for marriage and no marriage took place on 26.12.2013. Therefore, on 3.1.2014, she gave complaint to the Mahatma Phule police station, Kalyan, pursuant to which the offence was registered at C.R. No.5 of 2014 under sections 36, 420, 323 and 506 of the Indian Penal Code.

4. The learned Counsel for the petitioner submitted that there is no evidence against the petitioner/accused. He is an innocent person. It was a love affair and the girl consented for sexual relationship so also whatever money she gave him, was returned to her when he refused to marry her. She submitted that there was no quarrels, no beating and thus, the case for rape, cheating, hurting or intimidation is not made out. The learned Sessions Judge has erred in rejecting her application for discharge.

5. The learned Counsel for the original complaint and the learned APP have opposed the writ petition. The learned Counsel for the complainant has vehemently argued that the petitioner deceived the girl and had sexual relations on a false promise of marriage. The consent of the girl was obtained vehemently and therefore the offence of rape was complete. Her medical report goes against the accused. He further submitted that the police have seized the registers of the various hotels under panchanama where it shows that the accused and the prosecutrix were lodged on various dates in different hotels. The petitioner demanded money from her which she paid under duress and thus, she was cheated by him. There were incidents of beating and humiliation and insult. Therefore, this writ petition is to be rejected.

6. Perused all the documents presented here. After going through the FIR, it is apparent that the petitioner and the victim were in love with each other nearly for four years and thereafter, they decided to marry. During this period, they had sexual intercourse on a number of occasions at various places and lodges. It is a fact that there was a promise by the petitioner to marry the complainant. However, it cannot be said in any manner that the promise to marry was a

condition precedent for giving a free consent for sex before marriage. The prosecutrix at the time of filing the complaint was 30 years old and was nearly 25 to 26 years old when the first incident of sexual intercourse took place. Thus, she was aware of the consequences of keeping sexual relations with a man and she was also aware that there may be differences between two persons and they may find each other not compatible. The girl was highly educated and also 25 years old. Therefore, the consent cannot be said to have been obtained by fraud. I also rely on the order dated 12.3.2014 of this Court passed in Criminal ABA No.27 of 2014 wherein a similar issue with identical facts was dealt with and it was held that under such circumstances, it is a conscious decision to keep sexual relations with a man and thus, to have physical relationship is a matter of choice of both the adult persons, it can hardly be said that the consent was obtained fraudulently. Therefore, there is no material against the accused to charge him under section 376 of the Indian Penal Code. However, there are other allegations of intimidation, cheating and causing hurt and beating.

7. Thus, Rule made absolute partly. The accused is discharged from the charge under section 376 of the Indian Penal Code alone,

however, for the remaining charges, the order of the Sessions Court is hereby maintained.

8. Writ petition is disposed of accordingly.

(MRS.MRIDULA BHATKAR, J.)