

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2061 OF 2017

X.Y.Z.

.. APPLICANT
[ORIG.COMPLAINANT]

VERSUS

- 1] Tukaram S/o Bhivaji Sonkamble
Age 49 years, Occu.Service.
R/o Indira Nagar, Parbhani,
Tq. & Dist.Parbhani. .. [ORIG.ACCUSED]
- 2] The State of Maharashtra
Through Police Station Officer,
Nanalpeth Police Station,
Parbhani, Dist.Parbhani. .. RESPONDENTS
[Copy of Respondent No.2 is
to be served through Public
Prosecutor High Court of Bombay
Bench at Aurangabad]

Mr.Mahesh P.Kale, Advocate for applicant.
Mr.S.P.Deshmukh, APP for Respondent No.2/State.
Mr.Swapnil S.Rathi,Adv. for respondent No.1.

**CORAM : S.S.SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 3/11/ 2017.
PRONOUNCED ON : 17/11/2017.**

ORDER (PER MANGESH S. PATIL,J.) :

This is an application by the prosecutrix seeking leave to Appeal under Section 378(3) of Cr.P.C. against judgment and order of acquittal passed by the learned Ad-hoc Additional Sessions Judge-I, Parbhani in Sessions Trial Case No.149/13

thereby acquitting the sole accused (respondent No.1) of the offences punishable under Sections 376, 406, 417, 420, 323, 504 and 506 of IPC.

2] It is necessary to mention that in view of Section 228-A of the I.P.C., we do not propose to mention the name of the prosecutrix and that is why we have omitted to state her name in the title clause, following the decisions of the Supreme Court in the case of **Bhupinder Sharma V/s. State of Himachal Pradesh; (2003) 8 SCC 551** and in the case of **State of Karnataka V/s. Puttaraja; (2004) 1 SCC 475**.

3] We have heard the learned Advocate for the applicant and perused the record and proceedings. We have also heard learned APP and the learned Advocate for the respondent no.1.

4] Stated in brief, the prosecution case is that the applicant is widow since the year 2006. She has two sons. Since her husband had died in a motor accident, the family had received compensation from the Motor Accident Claims Tribunal, which was deposited with a bank. An amount of Rs.1,10,000/- was deposited in her name, whereas an amount of Rs.90,000/- was deposited in the name of her mother-in-law and Rs.50,000/- were deposited in the name of her two sons. She got acquainted with the respondent no.1 in the year 2010 and the relations blossomed into an affair. In the year 2011, he promised to marry her and also assured to maintain her sons. He then rented a premises for her at Parbhani for their

occupation. Since she was having full faith in him, he started handling all her affairs. Taking advantage of such faith and trust, he persuaded her and her mother-in-law to withdraw the entire amount of compensation by luring them of higher interest. However, when she insisted for depositing the amount again as was assured by him, he did not deposit it anywhere. When she insisted for performing marriage, he started avoiding her. Lastly, on 26/4/2013, when she again raised the demand for performing marriage, he informed her that he was already married and has his wife and their children to maintain and he was not mad to solemnize marriage with her. He also told her that he had maintained the relation with an oblique view of usurping the money and flatly refused to continue/maintain the relations. He also abused her and beat her with hands. Lastly, he threatened her of dire consequences. She then approached Nanalpeth police station and lodged complaint (Exh.12) on 12/4/2013.

5] Accordingly, criminal law was set in motion. All the formalities of investigation were completed and the respondent no.1 was made to face the trial. After a full fledged trial, by impugned judgment and order, the learned Additional Sessions Judge acquitted him of all the charges. Hence this application for leave to appeal by the prosecutrix.

6] The learned advocate for the applicant vehemently submitted that the allegations in the complaint lodged by the applicant and evidence laid clearly establish all the necessary

ingredients for constituting the offences with which the respondent no.1 was charged. The applicant being the prime witness has stuck to her version and has deposed in consonance with the allegations. The learned Additional Sessions Judge without assigning sufficient and cogent reasons and without scanning her deposition, has jumped to a conclusion that she was not reliable, which observation is perverse and capricious. The learned Advocate also submitted that since the applicant has been levelling serious allegations which even touch her character as well, she could not have been readily disbelieved. According to the learned advocate obviously except the applicant herself, there could not have been more direct evidence. Thus according to him, the learned Additional Sessions Judge has fallen in error in appreciating the evidence which is otherwise sufficient to bring home the charges.

7] The learned APP also made submissions on these lines and assailed the impugned judgment and order.

8] The learned advocate for the respondent no.1 submitted that the version of the applicant on the face of it shows that she was having consensual relations with the respondent no.1 and by no stretch of imagination a man of ordinary prudence going by the allegations, would believe that there was any element of rape which is a charge against the respondent no.1. The period for which the couple was maintaining relations without any obstruction and the fact that even the landlady Satyabhama

(P.W.5) and even the mother-in-law of the applicant Anusayabai (P.W.3) knew about such open relations between the couple is sufficient to discard the allegations of rape. The learned Advocate also submitted that even there is no sufficient, cogent and reliable evidence to draw even an inference remotely about the respondent no.1 having appropriated the compensation received by the applicant and her family. The investigation in this respect is also scanned and there is absolutely no material to show that the amount of compensation was firstly withdrawn that too at the instance of the respondent no.1 and that the latter had appropriated it. There is absolutely no evidence to establish these facts. Thus according to the learned Advocate, the learned Additional Sessions Judge has rightly acquitted the respondent no.1 of all the charges. In support of his submission, the learned Advocate also sought to rely upon the latest decision of the Supreme Court in the case of Tilak Raj V/s State of Himachal Pradesh; AIR 2016 S.C. 406.

9] We have minutely and carefully perused the entire record and proceedings and have gone through the depositions of each witness. We have also examined the impugned judgment and order. It is indeed a case where the allegations *per se* do not inspire any confidence. We do not intend to be prejudiced in arriving at the conclusion which we are. However, we cannot resist the temptation of commenting upon the improbabilities which are writ large on the basis of the allegations levelled by the applicant in the complaint. Even by her own saying, she was maintaining sexual relations with the respondent no.1

openly. It was so even to the knowledge of the society including her mother-in-law and the land lady clearly shows that the relation was consensual and there could not have been any deceit to which she had fallen prey. It is also equally unbelievable that she was not knowing that the respondent no.1 was a married person. On the contrary, she has admitted in her cross examination that she is acquainted with the wife of the respondent no.1 viz. Shobha. She also has admitted that she had knowledge that he was having a son and two daughters. Not only that but even she has admitted that she knew that the son of the respondent no.1 was married and was in an employment at Pune. All these circumstances sufficiently indicate that she was well aware about family background from which the respondent no.1 was coming.

10] In this regard it is further important to note that the mother-in-law of the applicant Anusuyabai (P.W.3) in fact failed to support her during her examination in chief and it is only after the learned APP was accorded permission to put such question to her as are put during the course of cross examination that she nodded about having stated portions 'A', 'B', 'C' to the Investigating Officer during the course of investigation. Even in this portion A (Exh.38) she has addressed the respondent no.1 as 'rakhel' (paramour) and in the latter portions B and C (Exhs.39 and 40) has, in stereo-typed manner stated about the applicant having questioned him about money and marriage and he having refused and thereafter, verbal altercation took place and he assaulted her and threatened her. Bearing in mind the

fact that Anusayabai is the mother-in-law of the applicant, she has not specifically supported the applicant to bring home the allegations of any false promise to marry and enticing her to enter into any sexual relationship. On the contrary, she has addressed the respondent no.1 as the paramour of the applicant. Similarly, she has also not stated anything more about the alleged misappropriation of the amount and has merely vaguely stated about the applicant having inquired with him about money.

11] The reliance placed by the learned advocate for respondent no.1 in the case of Tilak Raj (supra) in our view is apposite. The long relationship between the applicant and the respondent no.1 without any hiatus is sufficient to evoke the inference that the relationship between the two was indeed consensual one and there was no element of deceit.

12] The other witnesses examined by the prosecution Vaishali (P.W.2) and Satyabhama land-lady (P.W.5) have also not supported the prosecution and their evidence has been rightly branded by the learned Additional Sessions Judge as hearsay.

13] All in all, the evidence led by the prosecution is far from satisfactory much less probable, sufficient, cogent and convincing to bring home the charges against the respondent no.1. In such peculiar circumstances granting leave to appeal would be a exercise in futility. Under these circumstance, we are more than convinced that there is no substance in the

application and it is liable to be rejected.

14] Before parting we deem it necessary to caution the Learned Ad-hoc Additional Sessions Judge for referring to the applicant-prosecutrix by name in complete disregard to the directions of the Supreme Court in the case of **Bhupinder Sharma V/s. State of Himachal Pradesh; (2003) 8 SCC 551** and in the case of **State of Karnataka V/s. Puttaraja; (2004) 1 SCC 475**.

15] A copy of the judgment be forwarded to the Registrar General who shall solicit suitable orders on the administrative side.

16] The application is rejected.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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