

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1352 OF 2017

Himanshu Sanjiv Patil

.. Petitioner

vs

1. State of Maharashtra

2.Smt Vaishali Sunny Ubale

.. Respondents-

Mr.S.R.Ronghe for Petitioner

Ms.M.M.Deshmukh APP for State

Mr.S.H.Nimbalkar for Respondent no.2

CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE : 20 JUNE, 2017.

P. C. :

1. Heard learned Counsel for the Petitioner, Respondent No.2 and the learned APP.

2. The Petition is filed for quashing of FIR No.315/2016 registered with Hadapsar Police Station, Pune. The said FIR is registered at the instance of the Respondent no.2 for the offence punishable under sections 376 and 417 of IPC.

3. We have gone through the copy of the FIR which is annexed at page 5. The FIR discloses that the complainant in the year 2007 was serving in Hotel Deccan Rendezvous. The Petitioner-Accused was also serving in the said hotel, as a Chef. In the year

2009, the Petitioner and Respondent no.2 became friendly and this friendship was converted into love relationship. The said FIR further reveals that in the month of June 2013 the Petitioner called the Respondent no.2 at his residence. No other persons were there in the house. At that time the Petitioner raped the Respondent no.1 saying that he will marry her and under this representation and assurance, the Respondent no.2 had physical relations with the Petitioner. The FIR also discloses that the Petitioner thereafter time and again had physical relations with the Respondent no.2 under the pretext of marriage till February 2016.

4. Mr.Ronghe learned Counsel for the Petitioner submitted that the relations between the Petitioner and the Respondent no.2 was consensual and therefore, no offence under section 376 of IPC is made out. Learned Counsel for the Respondent no.2 however, has asserted that the Petitioner refused to marry the Respondent no.2 and whatever relations she has kept with the Petitioner was under misconception/misrepresentation.

5. The learned APP submitted that the investigation is almost completed and the charge sheet is ready.

6. Having considered the rival submissions and having gone through the FIR, we are not inclined to quash the FIR in exercise of our Writ Jurisdiction under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973.

7. Section 90 of the Indian Penal Code defines consent as under :

“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.....”
.....”

8. It is the specific case of the Respondent no.2 that she kept physical relations under misconception that the Petitioner would marry her.

9. Section 114A of the Indian Evidence Act,1872 which is relevant in this regard reads thus :

“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.”

10. In the light of above provisions, we can't deny the Respondent no.2 an opportunity to prove her case against the Petitioner at the stage of trial.

11. In the above circumstances, no case is made out for interference in our Writ Jurisdiction under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973. Writ Petition is accordingly dismissed.

12. At this stage, Mr.Ronghe learned counsel for the Petitioner seeks extension of the ad interim relief granted in his favour in order to enable him to approach the Apex Court. The request is opposed by the learned counsel for Respondent no.2. Learned counsel for the Petitioner does not dispute that the Petitioner is on bail. The Charge Sheet is yet to be filed. Therefore, we are not inclined to continue the ad interim protection. The request is rejected.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)