

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 847 OF 2016

Rahul Kamal Tiwari

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Ms. Gulestan M. Dubhash for the Applicant.

Dr.F.R.Shaikh, APP for the Respondent No.1.

Mr.Dilip Bodke for the Respondent No.2.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.

RESERVED ON : 17th MARCH, 2017

PRONOUNCED ON : 17th APRIL, 2017

JUDGMENT (PER ANUJA PRABHUDESSAI, J.).

1. Rule. Rule made returnable forthwith. By consent of parties taken for hearing.

2. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing the FIR No. 93 of 2016 registered with Mulund Police Station for offences punishable under Section 376, 420, 323, 504 of the Indian Penal Code.

3. The Respondent No.2 had lodged the aforesaid FIR alleging that the applicant had sexual relations with her from September, 2014 against her will and under the false promise of marriage. She had alleged that she was compelled to terminate the pregnancy as the Applicant had avoided to take responsibility of the child. She had further claimed that the applicant had got married to her and subsequently left her alleging that he had performed the marriage ceremony only to avoid the prosecution.

4. Mr. Dubash, the learned Counsel for the Applicant has submitted that the Respondent no.2 is a major. The relations between the Applicant and the Respondent No.2 were consensual. He has further submitted that the family members of the Applicant had compelled him to marry the Respondent No.2. He has further submitted that the allegations made in the First Information Report, even taken at its face value do not make out ingredients of the offence under Section 376 or 420 of the Indian Penal Code. He has submitted that the continuation of these proceedings would be nothing but abuse of process of law.

5. Mr. Bodke, the learned Counsel for the Respondent No.2 has opposed the application on the ground that the applicant had physical relationship with the Respondent No.2 against her will and without her consent. He has submitted that the applicant induced the Respondent No.2 to have physical relationship with her on false promise of marriage. He submits that the allegations leveled against the Applicant constitute offence under Section 376 and 420 of the Indian Penal Code. He has relied upon the following decisions:-

1. Bharat Devdas Salvi & Ors. vs. The State of Maharashtra, 2016(1) Bom.C.R.(Cri.) 781
2. Mohammed Faizan Amir Khan vs. The State of Maharashtra, dated 5th July, 2016 in Cri. Writ Petition No.1721 of 2016
3. Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS and Anr.2006 DGLS (SC) 646
4. Sahebgonda Laxman Birajdar vs. The State of Maharashtra, 2017 ALL MR (Cri) 293.
5. Prashant Bharti vs. State of NCT of Delhi 2013 DGLS (SC) 30.
6. Indian Oil Corporation vs. NEPC India Ltd. & Ors 2006(2) Bom.C.R. (Cri) 687.
7. State of Uttar Pradesh vs. Naushad, 2013 DGLS (SC) 919.

8. Karthi @ Karthick vs. State Representative by Inspector of Police, Tamil Nadu, 2013 DGLS (SC) 474.

6. At the outset, it may be mentioned that the Apex Court in State of Haryana & Ors. vs. C.H.Bhajanlal & Ors. 1992 SCC Supl. (1) 335 has laid down the principles in respect of quashing of the complaint/FIR. The said principles have been reiterated by the Apex Court in Sunderbabu & Ors. Vs. State of Tamil Nadu, wherein the Apex Court has held as under:-

Though the scope for interference while exercising jurisdiction under Section 482 Cr.P.C. is limited, but it can be made in cases as spelt out in the case of Bhajan Lal. The illustrative examples laid down therein are as follows:

1 Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2 Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Sec.156(1) of the Code except under an order of a Magistrate within the purview of Sec.155(2) of the Code.

3 Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4 Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Sec. 155 (2) of the Code.

5 Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6 Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7 Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. These well settled principles have also been reiterated by the Apex Court in Prashant Bharti and Indian Oil Corporation (supra). It is thus well settled that in exercise of wide powers conferred on the High Court under Section 482 of the Code of Criminal Procedure, the High Court can quash the FIR/complaint, charge sheet or the proceedings. However, these powers are to be exercise sparingly and

cautiously for preventing abuse of process of the court and securing the ends of justice. Furthermore, such exercise of powers has to be in consonance with the well settled principles stated and reiterated by the Apex Court.

8. Reverting to the facts of the present case, the Respondent No.2 had lodged a report dated 7th March, 2016 wherein she had alleged that she had developed friendship with the Applicant. She had stated that she was not willing to have physical relationship with the applicant without entering into marital ties. However, the Applicant had physical relationship with her several times, by convincing her that their relationship was as good as husband-wife relationship. She has further stated that she had terminated the pregnancy as the Applicant was ready to take the responsibility of the child. She has stated that the Applicant maintained goods relationship with her for about one month after termination of the pregnancy, but latter started avoiding her.

9. The Respondent No.2 further stated that the family of the

applicant, particularly his sister, were not supportive and they abused her and told her that the Applicant would not marry her. Hence she went to the Mulund Police Station to lodge a complaint. The police called the Applicant and his sister and thereafter the Applicant told her that he was ready to marry her. She has stated that they performed the marriage ceremony on 25th April, 2015. She resided at her parental house for about one week and thereafter started living with the Applicant in a rental premises. She has stated that the applicant behaved normally for a few days, but thereafter started demanding unnatural sex and also subjected her to physical and mental cruelty. The applicant, subsequently claimed that the marriage was not valid and that he had married her only to prevent her from lodging complaint against him.

10. The Respondent No.2 further stated that on 28th January, 2016 the Applicant left the house on the pretext of attending marriage of his friend at Khajurao, Madhya Pradesh. He he did not return and started avoiding her phone calls. She later learnt that the Applicant had left the job at Kandivali, Mumbai. He also sent an email to the

Respondent No.2 asking her to arrange a resident for herself. In these circumstances, she lodged FIR against the Applicant for having physical relations with her since July 2014 under the false promise of marriage. Based on the said FIR, C.R.No. 93/2016 was registered against the Applicant for the offences under Section 376, 420, 323, 504 of the Indian Penal Code.

11. The first informant is admittedly a major. A bare perusal of the FIR reveals that she was friendly with the Applicant and had maintained physical relations with the Applicant since September, 2014. The FIR does not indicate that the Respondent No.2 / First Informant had consented to have physical relationship with the Applicant under fear or misconception of facts. On the contrary, the contents of the FIR reveal that the relationship between the Applicant and the respondent No.2 was totally consensual.

12. The Applicant and the Respondent No.2 thereafter got married and continued to maintain physical relationship as husband and wife. The fact that the Applicant had married the Respondent No.2 also

negates the allegation that the Applicant had deceived the Respondent No.2 and that he had intentionally induced her into physical relationship by making false promise of marriage. It is also to be noted that in order to constitute an offence of cheating it has to be shown that the accused had fraudulent or dishonest intention at the time of making the promise. In the instant case the FIR does not make out a case of deception since inception. In the light of these facts the decision in State of UP vs. Naushad and Karthi @ Karthik (supra) are distinguishable and are not applicable to the facts of the present case.

13. The FIR reveals that the initial physical relationship between the Applicant and the Respondent No.2 was consensual. Subsequently they married each other and continued having physical relationship as husband and wife. The relationship between the husband and wife or the consensual relationship between the parties without any deceit or inducement would not constitute the offence of rape and cheating within the meaning of Sections 375 and 415 of Indian Penal Code.

14. A bare perusal of the FIR reveals that the Respondent No.2 has made the imputations of rape and cheating only because the Applicant had walked out of the marriage. The allegations leveled in the FIR even if taken at its face value do not disclose essential ingredients of "rape" and "cheating" as defined under sections 375 and 415 of the Indian Penal Code and made punishable under sections 376 and 420 of the Indian Penal Code. In such facts and circumstances, continuation of criminal proceeding would be gross abuse of process of law and therefore the FIR is required to be quashed.

15. Under the circumstances, and in view of the discussion above, the application is allowed. The FIR No. 93 of 2016 registered with Mulund Police Station for offences punishable under Sections 376, 420, 323, 504 of the Indian Penal Code is quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)