

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL REVISION APPLICATION NO.186/2018

Jaykumar @ Jayant Nandkumar Tayade Vs. State of Maharashtra, P.S.Frezarpura, Tq.
Amravati, District Amravati.

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

Shri N.R.Tekade, Advocate for applicant.
Shri V.A.Thakre, APP for non-applicant/State.

CORAM : M.G.GIRATKAR, J.
DATE : 26.10.2018

Present revision is against the order dated 19.06.2018 passed by Additional Sessions Judge, Amravati, in Sessions Trial No.145/2013 on the application below Exhibit No.4, by which the applicant prayed to discharge him from the offences punishable under Sections 376, 406, 384, 342 of the Indian Penal Code.

Heard Shri Tekade, learned counsel for the applicant. He has pointed out report lodged by her father in Police Station Dhantoli, upon which non cognizable offence was registered after enquiry. Learned counsel for applicant further submitted that thereafter, the complainant/victim lodged a report on 26.12.2012 in the Frezarpura Police Station at Amravati. On her report offence punishable under Sections 376, 406, 384, 342 of the Indian Penal Code, registered against the applicant. He has further submitted that the complainant aged about 25 years. The first report lodged by her father was in respect of non cognizable offence. Her report is nothing but exaggeration and as such, offence punishable under Section 376 is not made out. Therefore, he has applied for discharge. According to him, the learned trial Court wrongly rejected the said application without considering the ingredients of offence punishable under Section 376 of the IPC. In support of his contentions, he has placed a reliance upon the decision in the case of **Shivshankar @ Shiva Vs. State of Karnataka** reported in **2018 Cri. L R 502**.

Heard learned APP for the non applicant/State. He has submitted that it is a matter of evidence as to whether offence punishable under Section 376 of IPC is made out or not as while framing the charge, the trial Court has to see the material on record i.e. charge-sheet, statement, etc. The statement and report of the complainant showed that the applicant had sexual intercourse under the promise of marriage. Therefore, the consent of victim was under the promise given by the applicant. Whether it is a consent under Section 90 of IPC or not is to be decided by the trial Court. Hence, the present revision is liable to be dismissed.

Section 90 of the Indian Penal Code is reads as under :

*“ **Consent known to be given under fear or misconception :-** A consent is not such a consent as is 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*

***Consent of insane person :-** if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*

***Consent of child :-** unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. “*

From the report and statement of the complainant, it is clear that the accused not only had sexually intercourse with her but obtain certain ornaments valued at Rs.Six lakhs from her. She has stated that as the accused promised to marry her, she consented for the sexual intercourse.

In the decision cited supra, the accused and victim were residing as husband and wife. They reside for a period of 8 years as husband and wife and thereafter the report was lodged. Therefore, the decision in the case of **Shivshankar @ Shiva** (supra) is not applicable in the case in hand.

The Hon'ble Apex Court in the case of **State of Uttar Pradesh Vs. Naushad** reported in **(2013) 16 SCC 651** held that sexual intercourse under the promise of marriage amounts to rape. As the consent given by the victim was not a free consent as defined under Section 90 of the IPC. In the present case, whether the consent was a free

consent or not is to be decided by the trial after recording the evidence. While framing the charge, the Court has to see prima facie case. The trial Court while rejecting the application found that there is sufficient material to frame the charge. Hence, the application for discharge rightly rejected by the trial Court.

In view of aforesaid discussion, I do not find any merit in this revision application, the same is accordingly dismissed.

The trial Court is directed to decide the Sessions Trial as expeditiously as possible.

JUDGE

Andurkar