

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

20 CRIMINAL REVISION APPLICATION NO.145 OF 2017

Ravi s/o Shantilal Kokani
Age : 29 years, Occu:- Service
R/o Shravani Tq Nawapur
Dist. Nandurbar

... APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra

(Copy to be served on P.P., in the
High Court of Judicature of Bombay
Bench at Aurangabad)

... RESPONDENTS

...

Advocate for Applicant : Mr. Chaitanya C. Deshpande
APP for the respondent - State : Mr. P.K. Lakhotiya

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CORAM : MANGESH S. PATIL, J.

DATE : 23.09.2019

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. On the request of the parties the matter is heard finally.

2. The applicant is facing the prosecution for the offences punishable under Section 376 and 420 of the Indian Penal Code. He

filed an application under Section 227 of the Code of Criminal Procedure seeking discharge. The learned Sessions Judge by the impugned order dated 06.05.2017 rejected the application. Hence this Revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

3. The learned advocate for the applicant takes me through the FIR, the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure, statements of few witnesses viz. Sheela Subhan Kokani, Rajesh Chandrasingh Kokani and Sachin Sarjerao Pawar, the history recorded by the Medical Officer while examining the prosecutrix and the other papers. The learned advocate also cites the decision of the Supreme Court in the Case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and Another; in Criminal Appeal No.1165/2019 decided on 21.08.2019.**

4. The learned advocate for the applicant submits that accepting the allegations in the FIR as it is, there is absolutely no whisper about the applicant having promised to marry and it is only because of such promise that prosecutrix had consented to have sexual intercourse. Even in her statement recorded under Section 164 of the Code of Criminal Procedure she has been cryptic and has not specifically alleged about having consented for sexual intercourse only

because he was promising to marry. He would further submit that the witnesses (supra) also do not specifically mention that prosecutrix consented to have sexual intercourse because of the promise given by him to marry. Again he points out that the history given to the Medical Officer during medical examination of the prosecutrix also reads that she had stated that she was ditched by applicant.

5. The learned advocate would further submits that for a long period of almost 4 years the couple has been in intimate relation. At no point of time she had made any grievance about he having ravished her. The endorsement in the history by the Medical Officer also shows that while narrating the history the prosecutrix had stated that the last sexual relation had occurred in the month of September 2015 whereas the FIR has been lodged belatedly on 01.04.2016. A cumulative effect of all these facts and circumstances would unerringly demonstrate that the prosecutrix of her free will had engaged in sexual relations with the applicant and therefore following the observations and the conclusions in similar set of facts drawn in the case of Pramod Suryabhan Pawar (supra) the allegation and the applicant deserves to be discharged.

6. Lastly, the learned advocate for the petitioner submits that the learned Sessions Judge seems to have been swayed away by

emotions rather than the material. The learned Judge has not considered all the necessary parameters in which an accused is entitled to seek discharge under Section 227 of the Code of Criminal Procedure and the revision may be allowed.

7. The learned APP submits that at this preliminary stage this Court should not indulge in meticulous scanning of the material. An opportunity needs to be extended to the prosecutrix as well as the prosecution to lead necessary evidence to substantiate the allegations. Her version in the FIR is duly corroborated by the statements of the aforementioned witnesses. Merely because the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure is cryptic, no inference should be drawn. The prosecutrix has come out with a specific version that respondent was promising to marry her and the FIR has been lodged only after she realize that he was looking for another girl. Merely because the two had been in relation for few years that would not be sufficient to jump to the conclusion that her consent was free. There is every room to believe that such consent was given under a misconception and therefore there being sufficient material to proceed against the applicant, he is not entitled to seek discharge.

8. The learned APP would further submit that in the case of

Pramod Suryabhan Pawar (supra) the Supreme Court has scrutinized various circumstances obtaining on the record and on the basis of such facts and circumstances peculiar to that case, has quashed the prosecution when the High Court had refused to quash it under Section 482 of the Code of Criminal Procedure. The matter in hand is easily distinguishable in material particulars from the facts obtaining before the Supreme Court. Besides, in the matter before the Supreme Court the relief of quashing of the complaint under Section 482 was being sought. In the matter in hand, the applicant had earlier filed a proceeding for quashment of the FIR and since the charge sheet was filed he withdrew it. Thereafter he has not preferred any proceeding for quashment. Instead he moved the present application seeking discharge under Section 227 of the Code of Criminal Procedure. The scope of such application now would be limited to Section 227 of the Code of Criminal Procedure.

9. I have carefully gone through the papers. It would be all the while necessary to remember that the applicant has sought discharge in view of the provisions of Section 227 of the Code of Criminal Procedure which lays down that it is upon consideration of the record and the documents submitted if the Judge considers that there is not sufficient ground for proceeding then the accused can be discharged.

10. Bearing in mind this provision if one adverse to the facts in the matter before hand, in the FIR the prosecutrix has specifically mentioned, firstly, that it is only because of the fact that they were to marry that they had indulged in the sexual relation. She has also alleged that because of the promise to marry extended by him that she had indulged in the sex and he has cheated her. It is not expected that the FIR should be an encyclopedia. In sum and substance there is a very room to infer that what she meant by the allegations in the complaint is about the applicant having promised to marry her and since both had agreed to solemnize marriage that the couple had indulged in sexual intercourse, which clearly hints that her consent was not a free consent.

11. Besides, the statements of the witnesses clearly show that whenever the couple had gone to their places the couple had told them that they were to marry and relying upon their statement that they had allowed the couple to use their respective premises were in according to the prosecutrix the couple had indulged in sex. This again shows that even the applicant was a party to such disclosure to these witnesses that he and the prosecutrix were to marry.

12. True it is that the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure is cryptic and in one

sentence she has stated that he has cheated her by promising to marry. But then, she would be stepping in the witness box to substantiate her allegations in the FIR and though the statement under Section 164 of the Code of Criminal procedure would be her previous statement and she could be cross examined on that basis, at this juncture it cannot be expected that she would not be allowed to come forward with the allegations which she is seeking to make in the FIR.

13. Again, the history given by the prosecutrix to the Medical Officer also *prima facie* does not make specific allegation about the prosecutrix having agreed to have sexual intercourse because of the promise given by the applicant. But she seems to have stated that he had ditched her. One could easily draw an inference coupled with all the other attending circumstances discussed herein above that perhaps what she meant by he having ditched her is about he having cheated her and deceived her to enter into sex.

14. So far as the delay is concerned, at this juncture it would be rather premature to draw any conclusion simply on the basis of the fact that the medical history narrates that the last sexual intercourse had taken place in the month of September 2015 and the FIR has been lodged on 01.04.2016. It would be for the prosecution and the prosecutrix to demonstrate as to what had caused her to file the FIR

belatedly. But merely because of this circumstance one cannot refute her version.

15. All the aforementioned facts and circumstances, on an independent scrutiny, would show that by no stretch of imagination can it be said that there is not sufficient ground for proceeding against him. The cumulative effect of the aforementioned facts and circumstances would indicate that there are indeed sufficient grounds for proceeding against him.

16. As far as the decision in the Pramod Suryabhan Pawar (supra) is concerned a careful perusal of the judgment would reveal that by scrutinizing various circumstances obtaining in that matter, on facts, it was concluded that there was no consent obtained by practicing fraud. Various circumstances were referred to and relied upon to draw such an inference. It was noticed that the prosecutrix and the accused were holding high offices in Government and Police Department. The relation had begun in the year 1998 and the couple had become intimate since the year 2004 onwards. They had met regularly, travelled great distances to meet each other, resided in each others houses on multiple occasions, visited the hospital jointly to check if the prosecutrix was pregnant etc. The decision is clearly based on the facts and circumstances in that case. The observations and

conclusions, with respect, would not be applicable to the fact situation of the matter in hand. The applicant is not entitled to derive any benefit from the judgment, more so when it was a matter of quashment of the prosecution under the powers of the High Court under Section 482 of the Code of Criminal Procedure, whereas in the matter in hand the applicant is seeking discharge under Section 227 of the Code of Criminal Procedure.

17. The revision is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)

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