

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

CRIMINAL APPLICATION NO. 276 OF 2019

Ashutosh Ananda Rane

.. Applicant

Vs.

The State of Maharashtra & Anr.

.. Respondents

Mr.P.G. Sarda, for applicant.

Ms.Sangita Shinde, APP for State.

**CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.**

DATE : 21ST AUGUST 2019

P.C.

1 Heard Shri Sarda, the learned counsel for the applicant and Ms.Shinde, the learned APP for the State.

2 The application is filed for quashing the first information report bearing C.R. No.340/2018 registered with Dehu Road Police Station, Pune at the instance of respondent No.2 for the offences punishable under sections 376(2)(n), 376(2), 376(2)(f) and 417 of Indian Penal Code, 1863.

3 Copy of the FIR is annexed at page 16 of the application. The FIR was registered on 28th May 2018. In the FIR, it is stated the respondent No.2-complainant was working as Data Analyst in Sciformix Company at Hinjwadi. In the month of October 2015, the prosecutrix got acquainted with the applicant who happened to be the maternal cousin of her father. The FIR further discloses that in the month of December 2015, the

applicant came to the house of the prosecutrix and tried to establish physical relations with her but she refused. But the applicant coaxed the prosecutrix that in future he is going to marry her and on this pretext established sexual relations with the prosecutrix. After eight days of the said incident, again the applicant visited the house of the prosecutrix and, despite her refusal, the applicant committed sexual intercourse with her under the pretext of marriage. It is also stated in the FIR that during the period, May 2017 to November 2017, the applicant and the prosecutrix were residing together. Thereafter, in the month of November 2017, the applicant went to United States of America and he was in contact with the prosecutrix. In December 2017, the applicant returned from USA. Thereupon, the prosecutrix asked the applicant about marriage; the applicant replied that he will inform her after consulting his mother. Thereafter, the applicant went to his native village at Kolhapur and sent a message to the prosecutrix stating the he cannot marry her.

4 In the light of the above circumstances, the present FIR came to be registered. A plain reading of the FIR makes it clear that the applicant established physical relations with the prosecutrix under the pretext of performing marriage. The prosecutrix consented for sexual relations on the basis of the applicant's promise that he will marry her. In our, *prima-facie* view, the prosecutrix consented for physical relations with the applicant under the misconception of fact on account of promise of marriage.

5 Shri Sarda, the learned counsel for the applicant relied on a judgment of the Apex Court in the case of ***Dhruvaram Murlidhar Sonar (Dr.) Vs. State of Maharashtra & Ors.***¹ and especially the observations in paragraph 20. We have gone through the said observation. The Apex Court observed that there is a clear distinction between rape and consensual sex. The Court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception.

6 In the present case, on the basis of FIR, we *prima facie* find that the applicant established physical relations with the prosecutrix under the pretext of marriage. Later part of FIR also discloses that the applicant had no intention to marry the prosecutrix and had established physical relationship by making false promise of marriage. It is pertinent to note that the applicant, being a close relative of the prosecutrix, must have been conscious of the possible resistance to the marriage, on account of proximate relations, and yet prevailed upon the prosecutrix to give consent for sexual relations by making a promise of marriage.

7 In the light of above, we are not inclined to entertain the instant

1 2018 DGLS (SC) 1351

petition and the same accordingly stands dismissed.

[N.J. JAMADAR, J.]

[RANJIT MORE, J.]