

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1294 OF 2020

Shafik Yusuf Shaikh,
Age : 30 Yrs, Occu: Agri
R/o : Old Dahiphal, Tq. Shevgaon,
District Ahmednagar.

...APPLICANT

VERSUS

1. The State of Maharashtra.
2. Surekha W/o Jalinder Tambe,
Age: 32 years, Occ. Household,
R/o: Salbatpur, Tq. Newasa,
Dist. Ahmednagar.

...RESPONDENTS

...
Mr. Abhishek Kulkarni, Advocate for Applicant
Mr. B.V. Virdhe, APP for Respondent No. 1 -State
Smt. Madhuri Jain, Advocate for respondent No. 2 (Appointed)

...
**CORAM : T. V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATE : 7th OCTOBER, 2020

ORDER :

1. Present proceeding is filed for the relief of quashing Crime No. 295 of 2020 registered with Police Station, Newasa, District Ahmednagar for the offences punishable under Sections 376 and 506 of the Indian Penal Code.
2. Both the sides are heard.
3. Crime is registered on the report given by present respondent No. 2 - first informant. Report was given on 24-01-2020. On that date, her age was given as 31 years by respondent No. 2. She is married woman and she has one daughter and one son. At the relevant time, her husband was living separate from her.

4. It is the contention that about two years prior to the date of First Information Report (FIR), present applicant intercepted her on the road and he also started talking with her on mobile phone. The applicant started expressing her that he was in love with her. It is the contention that he developed relationship with her and he took the amount on various occasions from her. Thus, total amount of Rs. 75,000/- was taken by the present applicant from respondent No. 2. It is the contention that on so many occasions he had talked with respondent No. 2-informant on phone and he had recorded that conversation. It is contention that the applicant then started giving threats to respondent No. 2 to make such conversation viral and to see that she is defamed. It is the contention that he said that due to such disclosure of conversation to others her daughter will not be able to get married. It is the contention that the threats were given to make such conversation viral, then he called her firstly at Hotel by name Yasharaj and then to another lodge by name 'Surya Lodge' and there by giving threats he took sexual intercourse with her by using force. It is the contention that when she started avoiding the applicant, he started giving threats that he may consume poison, if she goes to Police. It is the contention that due to such threats and as there was her conversation with applicant, she avoided to approach the Police. It is the contention that about three months prior to the date of FIR, the applicant obtained her signature on the stamp paper of Rs.100/- denomination by deceiving her. It is the contention that as the applicant is harassing her and he has created fear in her mind, she took a decision to approach the Police. Due to the nature of allegations made by respondent No. 2 - informant, the crime came to be registered for aforesaid offences.

5. Learned counsel for the applicant submitted that there was some relationship, may be physical relations between the applicant and respondent No.2-informant, but it cannot be said that applicant had raped her. Learned counsel for the applicant placed reliance on one document which is a photo copy of agreement written on 05-02-2020 on stamp paper of Rs.100/- denomination. In the said document, there is mention that there was exchange of messages and photographs on mobile phones of each other. There is mention that the conversation was recorded, but it is mentioned that there is no grievance regarding conversations and they had agreed to delete that conversations. It is mentioned in the document that the applicant had taken Rs.75,000/- from respondent No. 2-informant, but that amount was returned by the applicant on 05-02-2020 in presence of some witnesses. In support of the contention of said document, the applicant has produced the affidavits of those witnesses. It appears that only informant was there on her side and all other persons were of the side of applicant.

6. The aforesaid document can be used against present applicant as it shows that there was relationship and the applicant was able to extract amount of Rs.75,000/- from the informant. As there is admission that there was some conversation, which was recorded by the applicant, the allegation made by the informant that a threat was given to use that conversation needs to be considered seriously. There is allegation that by giving such threat sexual intercourse was taken by applicant. This shows that there was no 'consent' of respondent No. 2 to physical relationship, which the applicant is admitting.

7. Learned counsel for the applicant placed reliance on some

observations of the Supreme Court and this Court viz- *Dr. Dhruvaram Murlidhar Sonar Versus State of Maharashtra and others* reported in *2019 All MR (Cri.) 771 (S.C.)*, *Pramod Suryabhan Pawar Vs. The State of Maharashtra and another* reported in *2019 ALL MR (Cri) 3949 (S.C.)*, *Central Bureau of Investigation Versus Ravi Shankar Srivastava, IAS and another* reported in *AIR 2006 Supreme Court, 2872* and *Dilip Uttam Lomate Versus the State of Maharashtra and another* reported in *2019 All MR (Cri) 3206*. The facts of each and every case are always different.

8. In the matter, like present one, the Court is expected to consider the unrebutted allegations made by the informant. In present matter, there are unrebutted allegations of aforesaid nature and there is also one document of aforesaid nature supporting the allegations. As the allegation is that by giving threat of making conversation viral, sexual intercourse was taken, this Court holds that there is sufficient material on record to make out the *prima facie* case that there was no "consent" as mentioned under Section 375 of the Indian Penal Code from respondent No. 2. Due to this circumstance, this Court holds that the relief cannot be granted in favour of the applicant.

9. In the result, the Criminal Application stands dismissed.

10. Fees of the appointed counsel Smt. Madhuri Jain is quantified as Rs.4,000/- (Rs. Four Thousand Only) it is to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.

Sd/-
[M.G. SEWLIKAR]
JUDGE

MTK

Sd/-
[T. V. NALAWADE]
JUDGE