

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

949 CRIMINAL APPLICATION NO. 247 OF 2021

MUBIN LUKNAN MANIYAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Ms. Sabhat T. Kazi
AGP for Respondent No.1-State : Mr. R. D. Sanap
Respondent No.2 served- absent

....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 24th NOVEMBER, 2021.

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ORDER : (PER : SANDIPKUMAR C. MORE, J.)

1. By consent of the parties, heard finally at the stage of admission.
2. Learned counsel for the applicant seeks leave to correct the prayer clause "B and B-1" to the extent of mentioning Sessions Case Number in stead of Regular Criminal Case number. Leave accordingly granted. None appears for respondent no.2.
3. This is an application filed by the applicant for quashing of F.I.R. No. 369 of 2020, registered with Taloda Police Station, District Nandurbar for the offence punishable under Sections 376, 376(2)

(n), 420, 468, 469, 471, 295-A, 120-B of IPC and Section 67 of Information of Technology Act, 2020 against himself and his relatives. However, during the pendency of this appeal, charge sheet has been filed and therefore, under the amendment the applicant has also claimed quashing of the criminal proceeding arising out of the aforesaid crime bearing Sessions Case No. 44 of 2021 pending before the learned District Judge-I and Additional Sessions Judge, Shahada, District : Nandurbar.

4. Initially the FIR was registered against the applicant and other persons, who were his relatives under the aforesaid sections. However, after investigation, it was revealed that there was no evidence against other accused except the present applicant and hence, charge sheet in the present crime has been filed only against the present applicant and that too under Sections 376, 376 (2)(n) and 420 of IPC only.

5. It is to be noted here that the informant i.e. respondent no.2 had not filed direct complaint to the police but instead, she had filed complaint before learned Judicial Magistrate (First Class), Taloda under Section 156(3) of Cr.P.C. and thereafter on the order from the learned Judicial Magistrate (First Class), Taloda, police authorities have registered the crime against the applicant and

other persons initially under Sections as mentioned above.

6. The sum and substance of the complaint lodged by respondent no.2 is that she is doing service and resides at Taloda, District Nandurbar along with her children. Accused no.1 i.e. the applicant and other accused are relatives of each other. Marriage of respondent no.2 was solemnized with one Vijaysing Pardeshi and out of the said wedlock, she gave birth to three sons, namely Rohit, Rahul and Alekh. However, in the year 2013 dispute arose between herself and husband Vijaysing, which continued till February, 2016 and ultimately Vijaysing drove her out along with two children and hence, she started residing separately. It has been alleged by respondent no.2 that then the present applicant established sexual relations with her under pretext of giving her job as an Air Hostess. The applicant also got signed some documents from her by applying undue force and under constant threats. The applicant continued to have sexual relations with her since 2017 till 2020. The applicant had even threatened her to make her message viral, in which she was in objectional condition.

7. Learned counsel for the applicant submits that no offence can be established under Section 376, 376(2) and 420 of IPC even if the allegations made in the complaint are taken as true. She further

submits that one witness has stated that there was on going love affair between the applicant and respondent no.2 and that the applicant eloped with respondent no.2. Further, own brother of respondent no.2 has stated that despite his advice, respondent no.2 took one house on rent at Shirpur and started residing with the present applicant. He has even stated that respondent no.2 then started another affair with one Deepak Kalal and as such a fight between the applicant and respondent no.2 caused by the said affair. Learned counsel for the applicant further submitted that the landlords cited as prosecution witnesses have also deposed that in year 2018-2019 respondent no.2 along with her two sons had resided in their respective houses along with the applicant and on making inquiry, respondent no.2 had introduced the applicant as her husband during those times. Further there are also witnesses who have stated that respondent no.2 changed her religion and voluntarily signed Nikahnama with the present applicant. The statement of one Notary Public and an Advocate is on record, indicates that respondent no.2 had willingly changed her religion for declaration of her marriage with the applicant in the documents executed before him. Further, it is submitted by the learned counsel for the applicant that there are other witnesses who have stated that respondent no.2 resided with the applicant and also attended wedding reception as husband and wife. Learned counsel

for the applicant also drew our attention to various photographs and the documents showing the consensual relationship between the applicant and respondent no.2 being as that of husband and wife and the alleged Nikahnama between them. With all these submissions, she prayed for quashing of the FIR and the criminal proceeding as mentioned above.

8. Besides this, learned counsel for the applicant also relied on following judgments:

I) *Pramod Surayabhan Pawar vs. State of Maharashtra and another, (2019)9 SCC 608;*

II) *Sonu @ Subhash Kumar vs. State of Uttar Pradesh and another, AIR 2021 SC 1405.*

9. On the contrary, despite notice of final disposal being served upon respondent no.2, none appear on her behalf.

10. Learned APP for respondent no.1-State, submits that though charge sheet has been submitted for some of the offences initially levelled, but ultimately the investigating officer has found the ingredients of Section 376, 376(2) and 420 of IPC against the applicant. He has further submitted that there are direct allegations of sexual relations between the applicant and

respondent no.2 at the instance of respondent no.2 in the complaint itself and therefore, he has contended that this is not a fit case for quashing of the FIR and consequent criminal proceedings.

11. Admittedly, under the order of learned Judicial Magistrate (First Class), Taloda, the investigating officer of Taloda Police Station had initially lodged FIR vide C.R. No.369 of 2020 against other accused for the offence punishable under Sections 376, 376(2) and 420, 468, 469, 471, 295-A and 120-B of IPC along with Section 67 of Information Technology Act, 2000. However, no role of other accused except the present applicant, was found in the said crime. Moreover, the ingredients of Section 376, 376(2) and 420 of IPC found to be revealed in the crime only against the present applicant. Thus, charge sheet under only those sections has been filed and that too against the present applicant only. Though it is claimed by respondent no.2 that the applicant, under pretext of giving her job as an Air Hostess, established forcible sexual relations with her and thereafter continued the same against her will by giving threats of killing her sons and mother, but during investigation some glaring facts are revealed which have caused the entire allegations of respondent no.2 appear to be doubtful. Witness Kamlesh Kumar Baban Bachhav, who happened to be an

employer of respondent no.2, has stated that first wife of the applicant had informed him about on going love affair between the applicant and respondent no.2 at the relevant time and also that the applicant had eloped with respondent no.2. Further, own brother of respondent no.2 has also stated that he had advised respondent no.2 to go to her first husband by leaving the applicant as the said act was lowering prestige of his family. He has also stated that respondent no.2 though initially agreed for his advice, but subsequently refused the same and started living with the applicant by taking one house on rent at Shirpur. Not only this but the brother of respondent no.2 has also stated thereafter that he later on came to know that respondent no.2 started another affair with one Deepak Kalal which caused fight between present applicant and respondent no.2. He had also come to know that the said Deepak Kalal had purchased a house worth of Rs.15 to 16 lakhs for respondent no.2.

Other witnesses Sangitabai Mohan Indwe, Bakir Baheram Pinjare, who were the respective landlords of respondent no.2 in the year 2018 and 2019, have stated that respondent no.2 with her two sons had resided in their respective houses as a tenant and she at that time had told them that the applicant was her husband. Witness Kufti Mohammad Ismail Ansari, who allegedly prepared Nikahnama in respect of marriage between the applicant and

respondent no.2, has specifically stated that after the said Nikahnama, it was read over to respondent no.2 and she on her own will, had signed and executed the same. Further Mohammad Aslam Jameel Ahmed and Sartaj Taslim Ahmed, who were the witnesses of said Nikahnama, have also specifically stated that respondent no.2 had voluntarily signed the Nikahnama in their presence without any undue influence at the hands of the applicant.

Further, one Gudiya Gupta i.e. Notary Public and an Advocate, has also stated that respondent no.2 had been to her house on 04/07/2017 along with one Mufti for preparation of an affidavit to change her religion and stated that she was intending to prepare an affidavit on her own wish for changing her name to Naaz after the change of religion. Advocate Vinodkumar Parmanand Gupta, who had identified respondent no.2, has also stated that respondent no.2 without any undue influence, prepared the aforesaid affidavit for declaration of her marriage with the applicant. Other witness, Kamlesh Chandra Ramakant Dwivedi, who is a Notary Public and an Advocate, has also stated similarly as that of Advocate Vinodkumar Parmanand Gupta that he notarized the said affidavit pertaining to change of religion on 04/07/2017 and respondent no.2 while making that affidavit, was not at all under any undue influence or pressure.

Other witness Shri Digvijay Satish Magar, who is involved in advertising business and also a friend of the applicant, has stated that he had invited the applicant being his friend to his reception arranged at Nooriya Hometel at Pune and also booked a room there for the applicant as well as respondent no.2 on 21/12/2018. He has specifically stated that the photographs of the said reception showed that the applicant and respondent no.2 had joined the same being husband and wife.

12. Besides these statements, there are so many photographs available, which are produced by learned counsel for the applicant and same are referred by single judge of this Court (**CORAM : Mangesh S. Patil, J**) in the order dated 24/11/2020 of the applicant. On perusal of the said order, it is evident that this court in respect of those photographs, has observed that those photographs apparently indicate that she was a consenting party in as much as her posture and appearance on all these photographs do not even give any clue of she being a victim. Further the photographs produced by the applicant on the backdrop of historical monuments from different places like Gateway of India and Taj Mahal further substantiate the version of applicant of the relation being consensual.

13. Thus, considering all the aforesaid material on record, which is before us by way of charge sheet, it prima facie appears that there was love affair between the applicant and respondent no.2 and despite their first marriage, both of them eloped with each other and started residing separately as husband and wife. Further, respondent no.2 had also introduced the applicant as her husband to some of the witnesses. Not only this, but she on her own wish executed an affidavit for changing her religion as well as name and performed marriage with the applicant. Further, from the statement of own brother of respondent no.2, it has been revealed that she was living with the applicant at her own free will as his wife and thereafter started second affair with one Deepak Kalal, which might have caused fight between herself and the applicant. Thus, all the aforesaid facts, which are part of charge sheet, clearly indicate that sexual relationship between respondent no.2 and the applicant was consensual.

14. Learned counsel for the applicant heavily relied on the judgment of Hon'ble Apex Court in the case of **Pramod Suryabhawan Pawar** (supra). We have gone through the said judgment, wherein the Hon'ble Apex Court has discussed the concept of woman's consent engaging in sexual relations on false promise to marriage. The distinction between false promise and

breach of promise has also been discussed. Hon'ble Apex Court in the said judgment has also referred its rear observation. In the case of ***Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1***, as under :

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and and substantial justicie, for the administration of which alone it exists, or to prevent abuse of process of the court. Inherent power under Section 482 of Cr.P.C. can be exercised :

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court &
- (iii) To otherwise secure the ends of justice”.

The Hon'ble Apex Court in the said judgment in para nos. 18 and 21 has also observed as under :

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The

promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfill his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred".

15. Thus, as per the aforesaid observations, the inherent power under Section 482 of Cr.P.C. can be exercised in the case involving Section 376 of IPC for prevention of abuse of process of the court. The aforesaid observations squarely apply to the present case also. Though respondent no.2 has alleged in her complaint that the applicant on the pretext of giving her job as a Air Hostess, established sexual relations with her and continued the same during the period from 2017 to 2020 by giving subsequent threats of killing her sons and mother, but the entire material as discussed above, submitted by way of charge sheet tells a different story altogether. Even the investigating officer appears to have filed the charge sheet against the applicant merely on the allegations of respondent no.2 made in her complaint before the learned Judicial Magistrate (First Class), Taloda by ignoring the otherwise statements recorded during the investigation. Thus, we are of the considered opinion that even if allegations levelled by respondent no.2 are taken as proved, no offence under Section 376, 376(2) and 420 of IPC is made out in view of the material and statement filed on record during the investigation. Therefore, relying on ratio of Hon'ble Apex Court as mentioned above and on the basis of investigation papers, it would be sheer abuse of process of law if the criminal proceeding of Sessions Case No.44 of 2021 pending before the learned District Judge-I and Additional Sessions Judge,

Shahada, District Nandurbar, is allowed to be continued. The allegations levelled by respondent no.2 in her complaint against the applicant definitely appear absurd. In view of the same, we pass the following order.

O R D E R

- I) The criminal application is hereby allowed in terms of prayer clause “ B and B-1”.
- II) The criminal application accordingly stands disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-