

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

CRIMINAL APPLICATION NO. 2344 OF 2020

Ranjit S/o Bhanudas Gaund

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Shaikh Ashraf Patel, Advocate for the applicant

Mr. S. D. Ghayal, APP for respondent No. 1

Mr. Abid Shaikh, Advocate for respondent No. 2

.....

CORAM : RAVINDRA V. GHUGE

AND

B. U. DEBADWAR, JJ.

DATE : 19th APRIL, 2021

ORAL ORDER [Per Ravindra V. Ghuge, J.] : -

01. The applicant has put forth prayer clause 'B' and 'C' as under : -

- B. The C.R./F.I.R. No.I-0572/2020, registered at Taluka Jalna Police Station, Jalna, for the offences punishable U/sec.376, 420, 344, 323, 504 and 506 of the Indian penal Code, on 11.10.2020 in pursuance of the complaint lodged by Suvarna D/o Panjabrao Deshmukh, R/o Ganeshnagar, Indewadi, Tq. & Dist. Jalna may please be quashed and set aside to the extent of the petitioner.
- C. Pending hearing and final disposal of this Writ Petition, further proceedings in pursuance of C.R./F.I.R. No.I-0572/2020, registered at Taluka Jalna Police Station, Jalna, for the offences punishable U/sec.376, 420, 344, 323, 504 and 506 of the Indian Penal Code, on 11.10.2020 in pursuance of the complaint lodged by Suvarna D/o Panjabrao Deshmukh, R/o Ganeshnagar, Indewadi, Tq. & Dist. Jalna may please be stayed.

02. We have heard the Counsel for the respective sides, at length.

03. The petitioner is an Advocate registered with the Bar Council of Maharashtra and Goa, which fact has been suppressed from this Court in so far as the pleadings in the memo of the petition are concerned. It is the learned Prosecutor, who has pointed out to us through the investigation papers, that the petitioner is an Advocate.

04. We find from the FIR filed by respondent no. 2 herein that she had engaged this petitioner to represent her before the Family Court at Jalna for seeking divorce from her husband, Jeevan Dhondiram Pawar. The petitioner and the informant became friendly and as their acquaintance grew, the petitioner told her that he is also seeking divorce from his wife from the Family Court. Very soon, he would be a divorcee and the informant would also be a divorcee. He, therefore, enticed her to start residing with him, along with her son born from the first marriage, on the ground that he would marry her. It is set out in the FIR that the petitioner has forcibly and against the wish and will of the informant, illegally confined her in between 4th January to 29th January of 2020 and ravished her. She then was rendered pregnant and the petitioner refused to marry her.

05. It is further stated in the FIR that the petitioner started physically beating her. She was detained in illegal confinement along with her son, in a tin shed. On 10.10.2020, around 09:30 pm (which is about 14 hours prior to the lodging of the FIR), the petitioner has raped her and thereafter physically assaulted her and her son. She succeeded in escaping from the tin shed in the morning and rushed to the Police Station to register the FIR at 11:14 am on 11.10.2020.

06. The learned Counsel for the petitioner submits that he has married the informant and they have a girl child. He has relied upon the joint affidavit filed by him along with the informant dated 26.02.2021.

07. We have perused the two affidavits filed by the informant on 09.02.2021 and 26.02.2021. It is quite intriguing that the informant now makes an allegation against the I.O. that she had never intended to register a case u/s 376 of the IPC and that the I.O. himself has registered such an offence.

08. The learned Advocate for the informant supports the petitioner. Both rely upon the judgment delivered by the Hon'ble Apex Court in the matter of **Dr. Dhruvaram Murlidhar Sonar Vs. The**

State of Maharashtra and others, (2019) AIR (SC) 327 and an order dated 12.04.2021 delivered by the Hon'ble Apex Court in the case of **Ananda D. V Versus State & Anr.**, [Criminal Appeal Nos. 394-395 of 2021], to buttress their contention that the petitioner and the informant are now husband and wife, that there was no rape committed by the petitioner and hence, the FIR can be quashed by consent.

09. When called upon, the learned Advocate for the petitioner and the learned Advocate for the informant submitted that the petitioner is legally married with another lady, which is his first marriage. The said marriage is not dissolved and there is no divorce decree. The informant had filed HMP No. 261 of 2019, which is now transferred to the concerned Court at Ambad, Dist. Jalna for seeking divorce from her first husband. The said proceedings are pending.

10. As such, neither the petitioner nor the informant have legally separated from their respective wife and husband. Both of them have not obtained a divorce decree from the competent Court, so as to legally marry each other. In these circumstances, we do not find that the view taken by the Hon'ble Apex Court in **Dr. Dhruvaram Murlidhar Sonar** (supra) and **Ananda DV** (supra) would assist the

petitioner. In **Dr. Dhruvaram M. Sonar** (supra), it was a consensual sexual relationship between two adults. In the second case, the alleged rapist and the informant had legally got married.

11. In the instant case, the petitioner, alleged rapist and the informant, still have subsisting first marriages and, therefore, we cannot recognize the alleged second marriage between the petitioner and the informant. We find it quite serious that the petitioner being an Advocate and representing the informant in her Divorce Petition Proceedings, claims that the informant is his legally wedded second wife. We find this to be unacceptable in law.

12. We also cannot turn a blind eye to the fact that after this petitioner allegedly married the informant, the informant goes to the extent of making an allegation against the I.O. that she never wanted a case u/s 376 of the IPC to be registered against the petitioner and that the I.O. has himself registered such a case. The falsity in the statement of respondent no. 2 / informant is further exposed by the fact that the FIR is registered in Marathi, read out to her and she has signed on the said FIR in the Police Station. Her signature is in English. As such, we find that the stand taken by the petitioner herein, along with the informant, is only for self serving purposes and

this case, therefore, assumes the character of being a case of apparent abuse of the process of law.

13. In view of the above, this application is dismissed.

[B. U. DEBADWAR]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE