

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

CRIMINAL APPLICATION NO. 218 OF 2020

Ankur Mahendra Thakkar
Age : 31 years, Occ : Business,
Presently residing at RL-60,
Forum Milap Nagar, Near Green
English School, MIDC,
Dombivali – 421 203.

.... Applicant

Versus

1. The State of Maharashtra
(Through the Senior Inspector of Police,
Manpada Police Station, Thane)

2) Tejasmita Avinash Rale,
Age : 32 years, Occ : Service,
Residing at J/303, Lodha Regency,
Sandeep Gaon, Diva Road,
Dombivali (East).

....Respondents

Mr. Rajendra Sorankar for petitioner.
Mr.V.B. Kondedeshmukh, APP for State.

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: S. S. SHINDE &

N.J. JAMADAR, JJ.

Date

: 23rd September 2021.

PC :

1. This application under section 482 of the Code of Criminal Procedure, 1973 ('the Code') is filed to quash the prosecution in Sessions Case No. 131/2019 pending on the file of the learned Additional Sessions

Judge, Kalyan, arising out of FIR No.I-463/2018, registered with Manpada Police Station, Thane for the offences punishable under section 376(2)(n), 323 and 506 of Indian Penal Code, 1860 ('Penal Code'), at the instance of respondent No.2-the first informant/prosecutrix.

2. The substance of the application is that the applicant became acquainted with respondent No.2 as the latter used to purchase milk from the applicant's dairy. The friendship developed into a love affair. There were consensual relations between the applicant and respondent No.2. Though the applicant made several attempts to put an end to the relationship and save his matrimonial life, respondent No.2 forced the applicant to continue the relationship.

3. The respondent No.2 has instituted a petition for divorce against her husband, being M.P. No.1081/2018, before the learned Civil Judge, Kalyan. Respondent No.2, however, started to abuse the proximity with the applicant and made unreasonable demands. When the applicant refused to comply with those demands, the respondent No.2 lodged a false and concocted report against the applicant.

4. Mr.Sorankar, the learned counsel for the applicant submitted that a bare perusal of the FIR would indicate that the allegations were made with an oblique motive. In the backdrop of the consensual relationship between

the parties, over a period of more than six years, the allegation of rape are *ex-facie* unsustainable, urged Mr. Sorankar.

5. An endeavour was made to take the Court through the allegations in the FIR and the complaint lodged by the husband of respondent No.2 with the Commissioner of Police, Thane, wherein it was asserted that the respondent No.2 had admitted that she had extra-marital affair with the applicant. Mr. Sorankar would further urge that there is a glaring inconsistency in the various allegations in the FIR, on the one hand, and the allegations in the FIR and the statement of the prosecutrix recorded under section 164 of the Code, on the other hand. A strenuous effort was made to persuade the Court to hold that the allegations in the FIR are *ex-facie* false and the prosecution has been initiated with an oblique motive.

6. As against this, Mr. Kondedeshmukh, the learned APP submitted that since the charge-sheet has been lodged and the case has been committed to the Court of Sessions, at this juncture, this court would not be justified in entertaining the prayer for quashment of the proceedings. The veracity of the allegations is a matter for trial, submitted Mr. Kondedeshmukh.

7. We have carefully perused the material on record. The tenor of the allegations in the FIR is that the applicant initially had forcible physical relations with respondent No.2. Thereafter, the applicant threatened first

informant that he had a video recording of the alleged incident of sexual assault and he would share the said video with her husband and ruin her matrimonial life. The applicant continued to allegedly exploit the respondent No.2.

8. Inviting the attention of the Court to certain documents and the complaint lodged by the husband of respondent No.2 and the matrimonial proceedings initiated by and against respondent No.2, Mr. Sorankar would urge that the claim of the respondent No.2 that she was sexually exploited over the years is ex-facie untenable.

9. We find it rather difficult to accede to submissions on behalf of the applicant, at this stage. It is trite that in exercise of extraordinary jurisdiction under section 482 of the Code, this Court is not expected to delve deep into the thickets of the facts. What has to be ascertained is whether the first information report and the material collected during the course of investigation makes out a *prima-facie* case. If such material indicates that the offences are *prima-facie* made out, the veracity of the allegations and the truthfulness or otherwise thereof is a matter for trial.

10. In the case at hand, in addition to the allegations in the FIR, in the statement of respondent No.2, recorded under section 164 of the Code, she has reiterated the allegations of sexual exploitation and assault. In the

circumstances, whether the relationship was wholly consensual, as contended by the applicant, must be left to be adjudicated, at the trial.

11. In the aforesaid view of the matter, we are not inclined to entertain the application.

12. The application, thus, stands rejected.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]