

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.185 OF 2021

ABC : Appellant.
Versus
1] State of Maharashtra
2] XYZ. : Respondents.

Mr. Avinash B Avhad for the Appellant.
Ms. Priyanka Chavan, appointed, for Respondent No.2.
Smt. A S Pai, APP for the Respondent/State.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ

Reserved on : 23rd March 2021
Pronounced on : 05th April 2021

P. C.

1 At the outset it is required to be noted that since the allegations against the appellant are in respect of the alleged sexual assault, the identity of the appellant and respondent no.2 needs to be concealed, and they are referred to "ABC" and "XYZ". The Registry is directed to maintain the record accordingly.

2 By this Criminal Appeal, the Appellant seeks the following relief:-

- (a) That the present Appeal be allowed and the present Appellant be released on Bail in connection with the F.I.R. No.0292 with the Vishrambaug Police Station, Pune for the offense punishable under Sections 376, 354, 504, 323, 506(2) of the Indian Penal Code and u/s. 3(2)9va) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3 The facts leading to filing of this Criminal Appeal can, in brief, be stated thus :-

4 The Respondent No.2 herein is the original Complainant. She is a medical practitioner having degree in Bachelor of Homeopathic Medicine and Surgery (BHMS). The first informant is originally from Nanded, however, for preparing Maharashtra Public Service Commission (MPSC) examination she has been residing in Pune since last 10 years. In the month of June 2016 she met the present Appellant who was also studying for competitive examination. Thereafter the complainant and the appellant used to jointly study for The Civil Service Aptitude Test (CSAT) in the tuition of Mr. Vatamda, at Navi Peth behind Behere Class. Thereafter they became good friends. One day the appellant told the informant that he likes her, upon which, the informant replied that if he is going to marry her, she would think about him. At that time, the appellant assured her that he would marry the informant. Based on assurance given by the appellant, the informant and accused were frequently meeting. It is the allegation of the informant that in December 2016 the Appellant called the complainant at his residence i.e. 1489, Khamkar Wada, Near Renuka Swaroop Girls Hostel and the appellant committed sexual intercourse with her. It is the allegation of the informant that since then the appellant has been continuously deceiving her on the false promise of marriage and on such false promise he had physical relation with her from time to time, due to which the informant

had become pregnant, and after becoming pregnant, she was insisting the appellant to marry her, however, the appellant kept her avoiding and told her that first both of them would make their career and then only think about their marriage. It is the case of the informant that believing the said assurance from the appellant, she took the medicines which caused her abortion. It is alleged that the appellant, on the false promise of marriage, kept physical relations with the informant from time to time till March 2020. Thereafter when the informant asked for marriage, he avoided her, and later on told her that, he cannot marry her as she is from different caste. Thereafter he started avoiding her by not taking her phone calls and started quarreling with her. When she demanded her photographs and video clips from appellant, he threatened her that he will show said video clips and photographs to her parents and also threatened her to kill her family members. It is further alleged by the informant that on 27/05/2020 at about 1.30 am the appellant came to her house and when she asked for her photographs and video clipping, the accused abused her in filthy language and also sent abusing messages and also abused her referring to her caste. The informant therefore went to police station and lodged the F.I.R. No.0292 with the Vishrambaug Police Station, Pune for the offense punishable under Sections 376, 354, 504, 323, 506(2) of the Indian Penal Code and u/s. 3(2)9va) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5 On the basis of the impugned FIR lodged by the Respondent No.2, the Appellant came to be arrested and remanded to police custody for 6 days from 04/12/2020 to 10/12/2020, and thereafter on 10/12/2020 the appellant was remanded to judicial custody and since then he is in Yerwada Jail, Pune. It is submitted after completion of investigation, charge-sheet has been filed in the said case.

6 Thereafter the appellant applied for regular bail under section 439 of the Criminal Procedure Code, which came to be rejected by the learned Special Judge and Additional Sessions Judge, Pune vide order dated 16/01/2021. Hence this Appeal.

7 The learned counsel appearing for the appellant submits that the the appellant and the informant were goods friends and the appellant had never assured the complaint for marriage. He further submitted that the physical relations between the appellant and the informant were consensual It is also submitted that neither the Appellant has used any filthy and abusive words against the informant nor he has any intention to insult her on her caste. He also submitted that the appellant has not committed any offence as alleged in the impugned FIR. The learned counsel appearing for the Appellant submits that the Respondent No.2 – Informant has given her consent for quashing the impugned FIR. He, therefore, prays that the appellant may be released on bail.

8 The learned counsel appearing for the Respondent No.2 – informant submitted that, in Writ Petition ASDB-LD-VC No.232 of 2020 filed by the Appellant, the Respondent No.1 – informant filed her affidavit giving her consent for quashing the FIR and charge-sheet. Therefore, the learned counsel appearing for the Respondent No.2, on instructions submits that there is no objection to release the Appellant herein on bail. In support of her aforesaid submission learned counsel appearing for the Respondent No.2 – Informant has tendered across the bar the affidavit of the Respondent No.2 filed in Criminal Writ Petition ASDB LD VC No.232 of 2020, the same is taken on record.

9 Heard learned counsel appearing for the Appellant, the learned counsel appearing for the Respondent No.2 – Informant and the learned APP appearing for the Respondent/State. With their able assistance, perused the grounds taken in the Appeal Memo, annexures thereto, the impugned order passed by the concerned Court, the charge-sheet and the affidavit filed by the Respondent No.2 in the said Writ Petition No.232 of 2020.

10 We have also perused the affidavit filed by the Respondent No.2 – informant in Writ Petition No.232 of 2020. It would be apt to reproduce herein below the paragraphs 3 to 5 of the said affidavit of Respondent No.2 for ready reference. The same are reproduced herein under :-

“3 I submit that I no longer wish to pursue the said FIR and further give my consent for quashing of the said FIR for the aforesaid reasons.

a) I submit that the physical relations between the Petitioner and I were consensual in nature and that the allegations made in the said FIR arose due to a misunderstanding. I submit that the misunderstanding and differences between the Petitioner and me have now been amicably resolved. We further intend to live our separate lives without interference or contact from each other.

b) I submit that I wish to move on with my life as this episode has caused great mental anguish to me and my parents; my mother has even started suffering from cardiac issues. I further intend on getting married and therefore wish to put this behind me.

4 I submit that considering my future, and the amicable settlement between the Petitioner and I, I no longer wish to pursue the said FIR and therefore give my consent for the quashing of the said FIR.

5 I submit that I have not been co-erced, forced, intimidated or threatened by the Petitioner or any other party to make these submissions and to withdraw the allegations made in the said FIR, and submit that I am doing so of my own free will.”

11 After considering the offences alleged to have been committed by the Appellant and in the light of the judgment of the Supreme Court in the case of Giansingh v. State of Punjab and Another¹ wherein it has held that, the High Courts in serious offences like rape, murder, dacoity, robbery etc. shall not quash the FIR on the basis of amicable settlement by the parties, the prayer of the Appellant, who is the Petitioner in the said Writ Petition No.232 of 2020, for quashing the FIR on the basis of amicable settlement between the Petitioner and the 2nd Respondent was turned down.

12 It is pertinent to mention at this stage that the Appellant is in jail since his arrest and the charge-sheet has been filed. There is no possibility of appellant tampering with the prosecution witnesses and/or evidence in view of the affidavit filed by the 2nd Respondent in the said Writ Petition No.232 of 2020. The learned counsel for the Appellant submits that the appellant is originally from Parli Vaijnath, District Beed and the 2nd Respondent is originally from Nanded District, and therefore, the possibility of further repetition of offence may not arise in future.

13 In that view of the matter, in the peculiar facts and circumstances of the present case, the appellant deserves to be released on bail. Hence the following order.

1 2012 (10) SCC 303

- A] The Appellant is directed to be released on regular bail in connection with FIR No.292 registered with Vishrambaug Police Station Pune on his furnishing P R bond of Rs.20,000/- with one or more sureties in the like amount to the satisfaction of the Trial Court i.e. Special Judge and Additional Sessions Judge, Pune
- B] The Appellant shall be immediately released on furnishing personal bond of Rs.20,000/- with undertaking that he will furnish the surety/sureties as stated in the clause (A) above within six weeks from his release.
- C] The Appellant shall attend the nearest police station once in a week for two months and thereafter once in a fifteen days for three months and shall file proof of such attendance to the concerned trial court.
- D] The Appellant shall attend each and every date fixed by the trial court for framing the charge/trial as the case may be and shall not directly or indirectly contact the 2nd Respondent - Informant and the prosecution witnesses, as also shall not tamper with the prosecution witnesses.

- E] The Appellant shall not send any message on whatsapp of the Respondent No.2 – Informant and shall not try to establish any communication with her in future.
- F] The Appellant shall furnish his correct residential address, phone/cell numbers to the concerned trial Court as well as to the concerned Investigating Officer.
- G] In case there is any incriminating material including photographs, whatsapp messages, messages, and/or video clips of the 2nd Respondent in the mobile phone of the Appellant and the letters, documents, etc. the Appellant shall immediately remove/delete/destroy the said incriminating material.
- H] The Criminal Appeal is allowed to the aforesaid extent and, disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]