

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.109 OF 2018

APPLICANTS:

1. Amit s/o Rajendra Chafale,
Aged about : 24 years,
Occ. : Student.
2. Rajendra s/o Balkrushna Chafale,
Aged about : 52 years,
Occ. Business.
3. Pooja w/o Rajendra Chafale,
Aged about : 48 years,
Occ. Household.

All R/o Sant Tukdoji Ward,
Nandori Road, Hinganghat,
District : Wardha.

V E R S U S

NON-APPLICANTS :

1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Ajni,
Nagpur.
2. Ku. Bhagyashri d/o Vilasrao
Kolase, Aged about : 24 years,
Occ. Student, R/o Dewai
Govindpur, Tukum Post, Tq.
Chandrapur, Distt. Chandrapur.

Shri Anil Mardikar, Senior Advocate assisted by Shri Ved R. Deshpande, Advocate for the applicants.

Ms. Mayuri Deshmukh, Additional Public Prosecutor for Non-applicant No.1-State.

Ms. S. N. Thakur, Advocate h/f Shri A. J. Pathak, Advocate for non-applicant No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 22/01/2021.

ORAL JUDGMENT : (PER : AMIT B. BORKAR, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants have challenged the registration of First Information Report dated 04/12/2017 registered with the non-applicant No.1 – Police Station for the offences punishable under Sections 376(2)(n), 109, 313, 417, 506 and 32 of the Indian Penal Code and consequent Final Report bearing No.60/2018.

4. The First Information Report has been registered against the applicants with the accusations that the applicant No.1 had sexual relationship with the non-applicant No.2 on the promise of marriage. In the First Information Report, there are several instances of sexual intercourse alleged against the applicant No.1. The applicant Nos.2 and 3 are father and mother of the applicant No.1. The offences which have been alleged

against the applicant Nos.2 and 3 are to the extent that they assured the applicant No.1 that they will take care of all issues and the applicant No.1 should not worry about the complaint of non-applicant No.2. It is also alleged in the First Information Report that the applicant No.1 on 17/04/2017 intoxicated the non-applicant No.2 and committed sexual intercourse with her. The First Information Report came to be registered on 04/12/2017.

5. The applicants have, therefore, filed present application challenging the registration of the First Information Report. This Court on 15/02/2018 issued notice to the non-applicants. The non-applicant No.1 has filed reply and contested the application. It is stated in the reply that on 17/04/2017, the applicant No.1 intoxicated the non-applicant No.2 and has sexual intercourse with the non-applicant No.2. The applicant Nos.2 and 3 have stated that they will take care of the complaints of the non-applicant No.2. It is also stated that the statements of witnesses are sufficient to fix involvement of the applicants in the crime alleged against them. The non-applicant No.1, therefore, prayed for dismissal of the application.

6. The non-applicant No.2 has also filed reply and stated similar facts which are reflected in the reply of the non-applicant No.1. The non-applicant No.2, therefore, prayed for rejection of criminal application.

7. We have carefully considered the contents of the First Information Report lodged against the applicants and the replies filed by the non-applicants. On careful scrutiny of First Information Report, reply and the material placed on record in the form of charge-sheet, we are satisfied that there is no material placed on record by the prosecution that at the inception of relationship between the applicant No.1 and the non-applicant No.2, the promise of marriage given by the applicant No.1 was false. In so far as the allegations against the applicant No.1 are concerned, the issue is squarely covered by the Judgment of Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vrs. State of Maharashtra and another**, reported in **(2019)9 SCC 608**. The Hon'ble Apex Court in para 16 of the said Judgment has clearly laid down that in case of offence of sexual intercourse based on promise of marriage, it is necessary to allege that at the inception of relationship, the accused never intended to perform

marriage. It is only in that event, an offence under Section 376(2) of the Indian Penal Code is made out. In the present case, at the most, it can be said that there was breach of promise made by the applicant No.1 to the non-applicant No.2. The Hon'ble Apex Court in the case of **Pramod Pawar (supra)** has laid down that mere breach of promise is not sufficient to attract the ingredients of offence under Section 376(2) of the Indian Penal Code. In addition to the said Judgment, it is to be noted that incident of sexual intercourse by intoxication took place on 17/04/2017 but First Information Report came to be filed only on 04/12/2017. There was delay of seven months in filing First Information Report. From the material on record, it appears that the applicant No.1 is aged about 24 years and applicant No.2 is also aged about 24 years.

8. In so far as applicant Nos.2 and 3 are concerned, the role which is assigned against them is to the extent that they assured the applicant No.1 that in case of any complication arises out of the complaints filed by the non-applicant No.2, they will take care of them. In our view, the allegation which has been assigned to the applicant Nos.2 and 3 are not sufficient to attract

the offences which are alleged against the applicant Nos.2 and 3. On overall scrutiny of the First Information Report, other offences which have been alleged against the applicants are under Sections 109, 313, 417, 507 r/w Section 34 of the Indian Penal Code. On careful scrutiny of the First Information Report, we are satisfied that the allegations made in the First Information Report and the material produced by the prosecution in the form of charge sheet do not constitute the offences which are alleged against the applicants.

9. We are, therefore, satisfied that continuation of prosecution against the applicants would amount to abuse of process of the Court.

10. We, therefore, pass the following order :-

ORDER

I] The First Information Report No.329/2017 dated 04/12/2017 and Final Report No.60/2018 for the offences punishable under Sections 376(2)(n), 109, 313, 417, 506 and 32 of the Indian Penal Code are quashed and set aside.

11. Rule is made absolute in the above terms.

JUDGE

JUDGE

Choulwar