

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

CRIMINAL APPLICATION (APL) NO. 225 OF 2019

Chandrashekhar Ashokrao Kale

Vs.

State of Maharashtra, through its Police Station Officer, Gadge Nagar Police
Stataion, Amravati, Tah and Dist. Amravati and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri N.S. Warulkar, Advocate for applicant.
Shri I.J. Damle, APP for non-applicant no.1/State.
Shri Sandeep Marathe, Advocate for non-applicant no.2/complainant.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 21st OCTOBER, 2021.

Heard Shri N.S. Warulkar, learned counsel for the applicant, Shri I.J. Damle, learned Additional Public Prosecutor for non-applicant no.1/State and Shri Sandeep Marathe, learned counsel for non-applicant no.2/complainant.

2. This application under Section 482 of Code of Criminal Procedure for quashing the F.I.R. No.0319/2018 dated 08.04.2018 registered with Gadge Nagar Police Station, Amravati alleging that the applicant herein has committed offenses punishable under Sections 376(2)(a), 376(2)(n) and 506 of the Indian Penal Code (IPC).

3. Shri N.S. Warulkar, learned counsel for the applicant submits that the allegations in the complaint are

entirely vague and bereft of any particulars like dates, etc. He submits that the allegations are inherently improbable and from the perusal of the penultimate paragraph of the complaint it is apparent that a complaint was lodged on account of misunderstanding. He submits that in the reply filed by the non-applicant no.2 there are incorrect statements made to the effect that the applicant has applied for divorce. He submits that based on such a complaint the prosecution should not be permitted to proceed as otherwise there would be an abuse of process. For all these reasons, Shri Warulkar submits that F.I.R. ought to be quashed.

4. Shri Warulkar, learned counsel further points out that both applicant, as well as non-applicant no.2, were major in age and they were also quite well educated. He submits that non-applicant no.2 must be presumed to have known the consequence of having consensual relations with the applicant herein. He submits that this is a case of consensual sex and therefore the provisions of Section 376 of IPC are not at all attracted. He submits that this is an additional ground to quash the impugned F.I.R.

5. Shri Damle learned Additional Public Prosecutor, and Shri Marathe learned counsel submitted that this is not a fit case for quashing the F.I.R. because the allegations in the complaint clearly make out a case of the applicant having committed a cognizable offense. They submit that at this stage there is no question of going into veracity or

otherwise of the allegations. They point out the applicant was a Police Officer and it is quite apparent that the applicant has taken advantage of his position. They point out the applicant held out to the non-applicant no.2 that he was unmarried and that he was willing to marry her. They point out based on such promise, the applicant induced non-applicant no.2 to have sexual relations with him. They point out the reply filed by non-applicant no.2 in this matter including the submission on oath that she was being pressurized to withdraw the same. For all these reasons, they submit that this application may be dismissed.

6. The scope for quashing of an F.I.R. in the exercise of powers under Section 482 of the Cr.P.C. is quite restricted. At this stage, it will not be appropriate to go into the issue of veracity or otherwise of allegations made in the complaint. The basic test is whether the allegations in the complaint if taken as true in their entirety, disclose the commission of a cognizable offense by the accused i.e. applicant in the present case.

7. In this case, we have perused the F.I.R./complaint dated 08.04.2018. The non-applicant no.2 in her complaint, has clearly set out that she approached the applicant herein to complain about her husband and mother-in-law, and the applicant took her in confidence, obtained her cell phone number, and established contacts with her. The complaint also discloses that the applicant held out to the non-

applicant no.2 that he was unmarried and on the promise of marriage induced her to have sexual relations with him. The complaint also discloses that the applicant promised non-applicant no.2 that he would secure a job for her and this was added inducement for sexual relations. The complaint then speaks about a call from one Archana, who claimed to be the wife of the applicant. The complaint also speaks about the threats given by the applicant to non-applicant no.2 about disclosure of their relationship to the husband of non-applicant no.2 in case she were to resist the sexual demands of the applicant. Finally, in the ultimate paragraph, the complaint refers to the incident of 07.04.2018 when non-applicant no.2, along with her husband, went to the applicant's house to confront him and found that the applicant was living with the niece of non-applicant no.2. There is also a reference to discussion and skirmish with the husband of non-applicant no.2.

8. According to us, the complaint as filed, cannot be regarded as vague or bereft of particulars. If the allegations in the complaint are taken as correct, as, at this stage, we are required to, they indeed disclose the commission of cognizable offenses. In particular, the allegations, disclose the commission of offenses under Sections 376(2)(a) and 376 (2)(n). In this case, there is no dispute that the applicant was a Police Officer. The complaint states that the applicant has taken advantage of his position and by making promises which he never intended to keep, induced and had

sexual relations with non-applicant no.2. At this stage, this Court is not expected to examine the veracity or otherwise of the allegations in the complaint. The allegations cannot at this stage be styled as inherently improbable.

9. For all the aforesaid reasons and having regard to restrictive the parameters of exercise of power under Section 482 of the Cr.P.C., we do not deem it appropriate to quash the impugned F.I.R.

10. The contention about consensual sex also cannot be accepted at this stage. This is a case where the complaint alleges that such consent was secured by false promises of marriage and employment. Therefore, this is also not a ground for quashing the F.I.R. This application is liable to be dismissed and is hereby dismissed.

11. Though we are dismissing this application, we wish to clarify the observations in this order are *prima facie* and only for deciding whether a case is made out to quash the F.I.R. These observations are not to be taken into account at the stage of the trial.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)