

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

CRIMINAL APPLICATION (APL) NO.278 OF 2018

Rajesh s/o Bajrang Mishra,
Aged about : 47 years,
Occ - Business,
R/o Nawathe Plots,
Badnera Road, Amravati,
Tq. & Dist. Amravati.

... **APPLICANT**

V E R S U S

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Rajapeth,
Amravati, Tq. & Dist. Amravati.

2. Manjusha Krushnarao Mahajan,
Aged about : 32 years,
Occ. : Household,
R/o C/o House of Kale,
Athawadi Bazar, Navi Basti,
Badnera, Tq. & Dist. Amravati.

... **RESPONDENTS**

Shri P. R. Agrawal, Advocate for applicant.

Shri T. A. Mirza, Additional Public Prosecutor for respondent No.1.

Ms. Aarti Singh, Advocate (Appointed) for respondent No.2.

CORAM: Z.A. HAQ AND

AMIT B. BORKAR, JJ.

DATED : 12/01/2021.

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

1. Heard.

2. Rule. Rule is made returnable forthwith. Heard by consent of the learned Advocate and learned APP appearing for the respective parties.

3. This is an application filed under Section 482 of the Code of Criminal Procedure challenging the First Information Report No.846/2017 dated 5.12.2017 registered with the non-applicant no.1 – Police Station, for offences punishable under Sections 376 (2) (n) and 506 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the accusation that the non-applicant no.2 was working with the applicant as Receptionist. The applicant was paying her amount of Rs.3,000/- as a salary. The applicant was having relationship with the non-applicant no.2 between June 2015 till September 2015. It is alleged that in the said period, the applicant had physical relationship with the non-applicant no.2 on the promise of marriage. The first incident of sexual intercourse as alleged to have occurred in the month of June 2015 and the last incident is of August 2015. The First Information Report came to be registered almost after two years i.e. on 5.12.2017.

5. The applicant has, therefore, approached this Court by way of present application. This Court on 27.3.2018 issued notice to the non-applicant no.2 and by way of ad-interim relief it was directed that the Charge-sheet should not be filed against the applicant.

6. The non-applicant no.2 is served with notice of the present application. Ms. Arti Singh was appointed as Advocate to represent the non-applicant no.2 by the High Court Legal Services, Sub Committee, Nagpur.

7. We have carefully considered the contents of the First Information Report. From the accusation in the First Information Report, it appears that the non-applicant no.2 was in physical relationship with the applicant from June 2015 till September 2015. It is alleged that in the said period, the applicant had physical relationship with the non-applicant no.2 on the promise of marriage. The First Information Report came to be registered after the period of two years from the last incident, alleged in the First Information Report.

8. The point involved in the present application, no longer *res integra*, in view of the judgment of the Apex Court in the case of **Pramod Suryabhan Pawar Vs State of Maharashtra** reported in **(2019) 9 SCC 608**. The Apex Court in paragraph no.18 observed that the promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, bear direct nexus to the women's decision to engage in the sexual act.

9. The allegations in the First Information Report indicate that the applicant established sexual relation with the non-applicant no.2 on the promise of marriage. The allegations in the F.I.R. do not on their face indicate that the promise by the applicant was false. There is no allegation in the First Information Report that the applicant promised to marry with the non-applicant no.2, in bad faith or with intention to deceive her. The applicant's failure in January 2016 to fulfill his promise made in June 2015 cannot be construed to mean that the promise itself was false.

10. We are, therefore, satisfied that the ingredients of the offences alleged against the applicant in the First Information Report are not fulfilled, even if we take into consideration the said allegations on their face value. Therefore, continuance proceedings against the applicant would amount abuse of process of the Court.

11. We, therefore, pass the following order:

First Information Report No.846/2017 dated 5.12.2017 registered with the non-applicant no.1- Police Station for offences punishable under Sections 376 (2)(n) and 506 of the Indian Penal Code is quashed and set aside.

Rule is made absolute accordingly.

Cri. Application No.(APPP) No.34/2019

In view of disposal of Criminal Application (APL) No.278/2018, this application praying for dispensing with the filing of true copy of the F.I.R. does not survive. It is disposed.

JUDGE

JUDGE

Ambulkar