

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

CRIMINAL REVISION APPLICATION NO. 67 OF 2018

Virendra Dinkarrao Pilondre,
Aged about 35 years,
Occupation – Self Employed,
R/o Ambora, Tq. - Narkhed,
District – Nagpur.

.... **APPLICANT**

VERSUS

1) The State of Maharashtra,
through Police Station Officer,
Police Station, Dhantoli, Nagpur.

2) Mamta d/o Kusoba Nandagawali,
Aged about - Major,
Occupation – Service,
R/o C/o. P.S. Sakkardara, Nagpur.

.... **NON-APPLICANTS**

Ms. N.S. Pathan, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.PP for non-applicant 1,
Mr. S.S. Khadse, Counsel for non-applicant 2.

CORAM : ROHIT B. DEO, J.
DATED : 26th OCTOBER, 2021

ORAL JUDGMENT :

The applicant is the original accused who was charge-sheeted under Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (Atrocities Act) and Sections 376, 493, 496 and 417 of the Indian Penal Code (IPC).

2. The applicant, who shall be hereinafter referred to as the accused, and the complainant are police officers. The gist of the report lodged by the complainant on the basis of which the applicant is implicated, is that she was induced to establish and continue sexual relationship on false promise of marriage.

3. The accused approached this Court in Criminal Application 1424/2010 seeking quashment of the offences. While this Court was pleased to quash the offence punishable under Section 3(1)(xii) of the Atrocities Act, the offences under the Indian Penal Code were not quashed. The relevant consideration by the Division Bench reads thus :

“6. However, we find that the allegations in the FIR in relation to the offence punishable under Section 376 of the Indian Penal Code are made out insofar as present proceedings are concerned which means proceedings invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. We, therefore, relegate the applicant to the remedy other than the present one in the matter of charge levelled against him for the offence punishable under Section 376 of the Indian Penal Code. We are sure that the Trial Court shall not be influenced by the observations made by this Court.”

4. It is manifest that the Division Bench relegated the accused to remedy other than seeking quashment under Section 482 of the Criminal Procedure Code, 1973 (Code). It is axiomatic that the accused was at liberty to seek discharge, which indeed is a valuable

right of the accused.

5. The accused did seek discharge. The application seeking discharge is, however, rejected by the learned Sessions Judge. The learned Sessions Judge has observed that the earlier order of the High Court is binding on the learned Sessions Judge. The observation is wholly misplaced. As a fact, apart from exercising the statutory right of seeking discharge, it was precisely because the High Court relegated the accused to remedy other than Section 482 of the Code that the accused preferred the discharge application. The other reason given for rejecting the discharge application is that considering the factual position, status of the report and the fact that mutual friends are witnesses, there is sufficient material to proceed against the accused.

6. I am afraid the order impugned is not entirely satisfactory. Criminal prosecution is a serious matter. At the stage of framing the charge, it is imperative that the learned Sessions Judge sifts the material, albeit not from the perspective of determining the chance of conviction or otherwise, but for the limited purpose of ascertaining whether there can be an inference or presumption of commission of offence. It is reiterated in plethora of judgments, that the trial Judge discharges an important responsibility at the stage of framing the

charge and is not expected to act as a post office. In the present matter, apart from a general and sweeping observation that the prosecution has collected sufficient material, there is absolutely no consideration muchless appreciation of the material on record even for the limited purpose of ascertaining whether a case for putting the accused on trial exists.

7. The order impugned is unsustainable and is quashed.

8. The learned Sessions Judge is requested to hear the accused and the prosecution, and decide the discharge application afresh, and in accordance with law, which shall be done in the next sixty days.

9. The accused shall appear before the trial Court on 16-11-2021 and shall place copy of this order for the trial Court's perusal.

10. The revision application is partly allowed in the aforestated terms.

JUDGE

adgokar