

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

CRIMINAL APPLICATION (APL) NO. 596 OF 2021

1. Akash S/o. Gulabrao Shejav,
Aged Above – 27 Years,
Occu. - Service.
2. Gulabrao Shejav,
Aged Above – 60 Years,
Occu. - Nil.
3. Durgabai W/o. Gulabrao Shejav,
Aged Above – 50 Years, Occu.- Nil,
1 to 3 R/o. Radhika Nagar,
Ward No.2, Mangal Dham Society,
Amravati, Frezerpura,
District – Amravati.
4. Jitendra Tayade,
Aged Above – 42 Years,
Occu. - Business,
R/o. Vadali, Frezerpura,
Amravati.

.....APPLICANTS

... **VERSUS** ...

1. State of Maharashtra,
Through Police Station,
Frezerpura, Amravati.
2. Diksha D/o. Bhagwan Wankhede,
Aged about – 22 Year, Occu.- Student,
R/o. Radhika Nagar, House No.2,
Mangal Dham Society, Amravati,
Frezerpura, District – Amravati.

.....NON-APPLICANTS

Ms Rani G. Nitnaware, Advocate for the Applicants.
Shri T. A. Mirza, Additional Public Prosecutor for the Non-applicant No.1.

CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATE : 26.08.2021.

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

1. Heard.
2. Rule. Rule is made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure, the applicants are challenging registration of the First Information Report No.1130/2021 dated 31.05.2021 registered with the non-applicant No.1 - Police Station for the offences punishable under Sections 376(2)(n), 323, 504, 506 read with Section 34 of the Indian Penal Code.
4. The First Information Report came to be registered against the applicants with the accusations that the applicant No.1 got acquainted with the applicant No.2 through social media and used to take the non-applicant No.2 to different places. It is alleged that the applicant No.1 promised to marry the non-applicant No.2 and on that ground sexually abused the non-applicant No.2. It is alleged that whenever the applicant No.1 used to come on leave, he used to sexually abuse the non-applicant No.2. It is alleged that in the month of January 2021, the applicant No.1 took the non-applicant No.2 to his house and had sexual intercourse with the non-applicant No.2. At that time when she refused, the applicant No.1 promised to perform marriage with the non-applicant No.2 and had sexual intercourse

with her. It is also alleged in the First Information Report that the other applicants abused and assaulted the non-applicant No.2 and threatened her.

5. The applicants have therefore, challenged registration of the First Information Report against them by way of the present application. This Court on 30.06.2021, issued notice to the non-applicant No.2. The non-applicant No.1 has filed reply stating that the Investigating Officer has recorded statements of witnesses and the witnesses have supported the case of the non-applicant No.2 and there is *prima facie* material to show the involvement of the applicants in the crime. The record shows that the non-applicant No.2 was served with the notice of this application on 12.08.2021. On 17.08.2021 when the matter was called out, the matter was adjourned in order to give one more opportunity to the non-applicant No.2 to appear in the present matter. Today, when the matter is called out, the non-applicant No.2 has not appeared either personally or through Advocate. We are therefore, deciding the present application on its own merits.

6. We have carefully considered the allegations in the First Information Report. On careful perusal of the allegations in the First Information Report, it appears that the allegations in the First Information Report do not on its face indicate that the promise by applicant No.1 was false. There is no allegations in the First

Information Report that when the applicant No.1 promised to marry with the non-applicant No.2, it was done in bad faith or with intention to deceive her. The applicant No.1 is failure in the month of May 2021 to fulfill his promise made in the month of April, 2020, cannot be construed to mean that the promise itself was false. The applicant No.1 is serving in Indian Army and used to visit his native place and at that time, the non-applicant No.2 was in relationship with the applicant No.1. Considering the allegations in the First Information Report, it appears that the applicant No.1 and the non-applicant No.2 were in physical relationship from April 2020 till February 2021.

7. In so far as the allegations in the First Information Report as against the applicant Nos.2 to 4 are concerned, in our opinion, the allegations are vague in nature and do not constitute offences alleged against the applicant Nos. 2 to 4, even if, the allegations are considered on its face value. We are therefore, satisfied that the continuation of proceedings against the applicants would amount to abuse of process of Court.

8. We therefore, pass following order :

The First Information Report No.1130/2021 dated 31.05.2021 registered against the applicants with the non-applicant No.1 - Police Station for the offences punishable

under Sections 376(2)(n), 323, 504, 506 read with Section 34 of the Indian Penal Code is quashed and set aside.

9. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

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