

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

CRIMINAL APPLICATION (APL) NO. 428 OF 2019

APPLICANT :- Nikhil S/o Dadarao Gajbhiye, Aged-26 years, Occ-Nil, R/o. Gajanan Colony, Paratwada, Tq. Achalpur, Dist-Amrawati.

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, through Police Station Officer, Gadgenagar, Tq-Dist-Amravati.
2. Ku.Bhagyashri Ramesh Taywade, Aged-28, Occu-Staff Nurce, R/o Ramesh Taywade, Ganesh Nager, Behind Deshmukh Lawn, Tq. Dist-Amravati.

Mr.M.V. Bole, Advocate for the applicant.
Mr. T.A.Mirza, A.P.P for the respondent No.1.
Mr. P Navlani, Advocate for the respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 31.03.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.
2. **ADMIT.**
3. By this application under section 482 of the Code of Criminal Procedure, the applicant has challenged registration of First

Information Report bearing Crime No.269 of 2019, dated 07/03/2019 registered with the respondent No.1-Police Station for the offence punishable under section 376 (2)(n) of the Indian Penal Code.

4. The First Information Report came to be lodged against the applicant with the accusations that the applicant committed forcible sexual intercourse with the respondent No.2 by promising to marry with her from July, 2016 till 13/09/2016. It is alleged that on 07/03/2019, the respondent No.2 got knowledge that the applicant would be marrying with some other girl and therefore, the respondent No.2 on 07/03/2019 lodged a report against the applicant.

5. The applicant has, therefore, challenged registration of the First Information Report by filing the present application. This Court, on 26/04/2019 issued notice to the respondents. By way of interim order, it is directed that charge-sheet shall not be filed against the applicant without leave of this Court.

6. The respondent No.1 in pursuance of the notice of this Court, filed its reply stating that the applicant had forcibly sexual intercourse with the non-applicant No.2 from July 2016 till 13/09/2016. It is stated that from the allegations in the First Information Report necessary ingredients of offence punishable under section 376 (2) (n) of the Indian Penal Code are made out.

7. We have carefully considered the allegations in the First Information Report. From the allegations in the First Information Report, it appears that it is the allegation of the respondent No.2 is that the applicant committed forcible sexual intercourse with the respondent No.2 on the promise of marriage. It is not stated in the First Information Report that the allegations in the First Information Report do not on their face indicate that the promise made by the applicant was false. There is no allegation in the First Information Report that when the applicant promised to marry the non-applicant No.2, it was done in bad faith or with intention to deceive her. The applicant's failure in March 2019 to fulfill his promise made in July, 2016 cannot be construed to mean that the promise itself was false. The allegations in the First Information Report denied the case that the non-applicant No.2 was deceived by the applicant's promise of marriage. Therefore, even if facts set out in the First Information Report are accepted in totality, no offence punishable under section 376(2)(n) of the Indian Penal Code is made out. We are, therefore satisfied with the continuation of prosecution against the applicant would amount to abuse of process of Court.

8. We, therefore, pass the following order:

- i) The First Information Report bearing Crime No.269 of 2019 dated 07/03/2019 registered with the respondent No.1-Police Station for the offences punishable under

Section 376(2)(n) of the Indian Penal Code, is quashed and set aside.

9. The criminal application is allowed in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

Ghanshyam
Khunte

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