

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

CRIMINAL APPLICATION (APL) NO. 853 OF 2021

Navneet S/o Ashok Bangalkar,
Aged - 29 years, Occ. Business,
R/o at Post Asgaon,
Tq. Pauni, Dist. Bhandara.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through P.S.O. P.S. Umred,
Tq. Umred, Dist. Nagpur.
2. Ku. Ankita Purushottam Morghade,
Aged 27 Years, Occ. Service,
R/o Plot No. 126, Siddheshwar Wadi,
Near Navmaharashtra School,
Kharbi Road, Nagpur,
Tq. and Dist. Nagpur.

... **NON-APPLICANTS**

Shri J. B. Gandhi, Advocate for applicant.
Mrs. S. S. Jachak, Additional Public Prosecutor for non-applicant No.1.
Shri S. V. Deshmukh, Advocate for non-applicant No.2.

**CORAM : A.S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATED : 22/12/2021

JUDGMENT : (PER G. A. SANAP, J.)

1. The applicant has made this application under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") and prayed to quash and set aside the First Information Report No.0573/2021 dated 01/08/2021 registered at Umred Police Station, Nagpur, for the offences

punishable under Sections 376 and 417 of the Indian Penal Code (for short, "IPC").

The facts leading to the filing of this application are stated in brief as under :-

2. The First Information Report / crime has been registered on the basis of the report lodged by the non-applicant No.2 against the applicant/accused. The non-applicant No.2 stated in the report that the applicant and the non-applicant No.2 got engaged on 22/02/2021 at Wadsa, Tq. Wadsa, Dist. Gadchiroli. The engagement function was celebrated at Saint Gajanan Mandir at Wadsa. The marriage was fixed on 13/04/2021. The applicant had made the necessary booking of lawn, etc. However, due to second wave of Covid-19 Pandemic and the lockdown declared by the Government, the marriage was postponed. The marriage was again fixed on 03/05/2021. However, at that time, the non-applicant No.2 was detected Covid positive and therefore, their marriage could not be performed.

3. It is stated in the report that on 01/06/2021, the applicant had arranged a party at Jungle Retreat Resort at Karandala, Near Umred. The applicant, non-applicant No.2 and their friends with family had been to the said Resort. They enjoyed the party. After party, the non-applicant No.2 went to the room of applicant with luggage. The applicant was in drunken condition. The applicant complained that he had headache and therefore, the non-applicant No.2 gave head message to him. The non-applicant No.2 slept in the said room in the night. The applicant had sexual intercourse with the non-applicant No.2 against her consent and under the pretext that the non-applicant No.2 would be her wife after few days. Similarly, in the morning of 02/06/2021, the applicant had sexual intercourse with the non-applicant No.2. In the morning, the applicant left the said Resort. The non-applicant No.2 came to Nagpur with friends and their family.

4. It is stated that after this incident, the applicant started avoiding and neglecting the non-applicant No.2. On

being questioned about it by the non-applicant No.2, the applicant started avoiding her. The applicant sought 8 days time for fixation of the date of the marriage. Gradually, he stopped interacting with the non-applicant No.2. It is stated that on 22/06/2021, the applicant with his family members and friends came to the house of the non-applicant No.2. The applicant told that the non-applicant No.2 is addicted to liquor and her mental condition is such that she could not be shown pity. The applicant, therefore, refused to perform the marriage with the non-applicant No.2. It is stated that the applicant/accused under the false promise to marry, established the sexual relations with the non-applicant No.2. He refused to marry with the non-applicant No.2 and cheated non-applicant No.2.

5. On the basis of this report, crime as above, was registered. In this application, it is the case of the applicant that he has not committed crime. The applicant/accused has admitted that he and the non-applicant No.2 with friends and

their family had gone to Jungle Retreat Resort at Karandala to celebrate the birthday of non-applicant No.2 which was on 23/05/2021. After engagement, the applicant found that the non-applicant No.2 was not interested in him. She used to quarrel with him on small issues. He found that there was compatibility issue between him and the non-applicant No.2. He found it difficult to spend his entire life with the non-applicant No.2. The non-applicant No.2 used to raise doubt on each and every issue. On 15/06/2021, the applicant received call on his mobile phone from unknown phone number and the caller threatened him that he should call off the marriage, else they will see that his marriage is broken. The report of the said incident was lodged on 22/06/2021 at Pauni Police Station. The non-applicant No.2 on being confronted, gave evasive reply. The person making phone call was close friend of non-applicant No.2. On account of compatibility issue between the applicant and the non-applicant No.2, the applicant declined to marry. Various meetings were held between two families. The family members of the non-

applicant No.2 made demand of Rs.50,00,000/- (Rs.Fifty Lakhs) for calling off the marriage. The applicant and his family members did not succumb to the illegal demand. It is stated that the false report has been lodged. No case has been made out on the basis of the report to sustain the prosecution against the applicant. No offence is made out under Sections 376 or Section 417 of the I.P.C. The applicant, therefore, prayed for quashing the First Information Report.

6. The Investigating Officer has filed reply and opposed the application. In his reply, the facts stated by the non-applicant No.2 in the First Information Report have been reiterated. Besides, it is contended that the investigation conducted so far reveals the complicity of the applicant/accused in the commission of crime. The Medical Officer has stated that the sexual intercourse cannot be ruled out. There is prima facie material to establish the involvement of the applicant in crime.

7. The non-applicant No.2 has filed reply and opposed the application. In the reply, the non-applicant No.2 has reiterated the facts stated in the First Information Report. She has stated that after having sexual intercourse on the false promise to marry in near future on 01/06/2021, the applicant had sexual intercourse with her. Her consent was obtained under false promise. It is further contended that the detailed complaint was later on made to A.P.I., Umred Police Station (Rural) on 24/09/2021. The friend of applicant / accused by name Nitin Yenurkar made phone calls to the non-applicant No.2. She recorded the conversation. The transcript of the conversation is annexed to the reply.

8. We have heard the learned Advocate for the applicant/accused, the learned Additional Public Prosecutor for the non-applicant No.1-State and the learned Advocate for the non-applicant No.2. We have perused the record and proceedings.

9. The learned Advocate for the applicant/accused submitted that the allegations made in the First Information Report do not on their face indicate that the promise of the applicant was false or that the complainant engaged in sexual relations on the basis of such promise. The learned Advocate submitted that since the intercourse was with the consent of the non-applicant No.2, the offence under Section 376 of the IPC would not at all get attracted. In the submission of the learned Advocate, the material on record is not sufficient to establish that the applicant engaged in sexual relations with the non-applicant No.2 on false promise to marry and she gave consent under misconception of fact. In order to substantiate his submission, the learned Advocate has placed heavy reliance on the decisions in the cases of **Pramod Suryabhan Pawar**¹ and unreported decision in **Criminal Application (APL) No.480/2021** (Sachin Dadarao Gawai Vrs. State of Maharashtra and another). Relying on the decision in the case of **Sonu @ Subhash Kumar**², the learned Advocate submitted

1 (2019) 9 SCC 608

2 AIR 2021 SC 1405

that there is no iota of evidence to establish the complicity of the applicant/accused in the crime. The prosecution cannot be sustained on the basis of the facts stated in the First Information Report.

10. The learned Additional Public Prosecutor submitted that prima facie offence has been made out on the basis of the facts stated in the reply as well as on the basis of material collected during the course of investigation. The learned Additional Public Prosecutor submitted that in this case, it is apparent on the face of record that the applicant/accused established sexual relations with the non-applicant No.2 on false promise to marry and as such, the consent based on misconception of fact amounts to absence of consent. The learned Additional Public Prosecutor submitted that even prima facie analysis of the material placed on record does not support the case of the applicant/accused. The learned Additional Public Prosecutor submitted that the previous and subsequent conduct of the applicant/accused after the incident

on 01/06/2021 would assume significance while deciding his application.

11. The learned Advocate for the non-applicant No.2 relying upon the decisions in the cases of i] Anurag Soni Vrs. State of Chhattisgarh, reported in (2019) AIR (SC) 1857, ii] XYZ Vrs. State of Gujarat and another, reported in (2019) 10 SCC 337, iii] Vishal Ramnayan Singh Vrs. XYZ and another, reported in 2019 ALL M.R. (Cri.) 3010 and iv] Criminal Application (APL) No.143 of 2021 (Vinay s/o Pradeep Chawhare Vrs. State of Maharashtra and another) (unreported) submitted that the facts of this case are squarely covered by the law laid down in these decisions and as such, the prayer made by the applicant / accused cannot be granted. The learned Advocate submitted that the facts stated in the First Information Report and the conduct of the applicant/accused proves that from the inception, he gave false promise to the non-applicant No.2 to marry, when he did not have intention to marry her and the non-applicant No.2 fell prey to the false

promise. It is held in these decisions that the consent given for sexual intercourse on false promise or assurance to marry could be said to be a consent obtained on misconception of fact and in such a case, such consent would not excuse the offender and the offender is said to have committed a rape as defined under Section 375 of the IPC. The learned Advocate submitted that there was no due diligence on the part of the Investigating Officer. The learned Advocate pointed out that the non-applicant No.2 repeatedly went to the Investigating Officer to hand over the relevant material including the recorded conversation with transcript. However, there was no co-operation from the Investigating Officer. The learned Advocate submitted that no case has been made out by the applicant to grant his prayer.

12. In the case of **Pramod Pawar** (supra) relied upon by the learned Advocate for the applicant/accused, it is held that the consent based on misconception of fact is not a consent in the eye of law. The woman engaged in sexual relations on false

promise to marry clearly indicate that the consent is based on misconception of fact and such sexual act would amount to rape. It is held that the allegations made in the First Information Report on their face must indicate that the promise by the accused was false or that the prosecutrix engaged in sexual relations on the basis of such promise. If the First Information Report does not indicate that the accused did not make a promise to marry the prosecutrix in bad faith or with intention to deceive her then the accused can be saved from the prosecution by invoking the provisions of Section 482 of the Cr.P.C. This ratio has been followed in remaining Judgments relied upon by the learned Advocate for the applicant/accused in support of his contention.

13. It is settled legal position that the powers under Section 482 of the Cr.P.C. can be exercised where the allegations made in the First Information Report even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case

against the accused. If the uncontroverted allegations made in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused then the accused cannot be made to undergo the rigmarole of the criminal trial. The inherent powers given under Section 482 of the Cr.P.C. is with the purpose and object of advancement of justice. If it is found that the solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. In the case of Vineet Kumar and others Vrs. State of Uttar Pradesh and another, reported in (2017) 13 SCC 369, it is held that the Court cannot permit prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in the case of State of Haryana and others Vrs. Bhajanlal and others, reported in 1992 Supp.(1) SCC 335. It is settled legal position that where there are materials to indicate that the criminal proceeding is manifestly actuated with malafide and the proceeding is maliciously instituted with

an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction and discretion under Section 482 of the Cr.P.C. to quash the proceeding in the process of exercise of powers under Section 482 of the Cr.P.C. Prima facie evaluation of the facts stated in the First Information Report and other material is only permissible.

14. In order to consider the applicability of the law laid down to the facts of the case, the relevant facts having bearing on the question involved in this proceeding need to be stated. The marriage between the applicant and the non-applicant No.2 was arranged marriage. It was settled in January, 2021. The engagement ceremony took place on 22/02/2021. The non-applicant No.2 has not attributed any allegation to the applicant/accused about the sexual intercourse prior to the incident dated 01/06/2021. The date of marriage was fixed. However, to the utter misfortune of the non-applicant No.2, the Covid - 19 Pandemic constrained them to postpone the said marriage date twice. The facts stated in the First

Information Report as well as in the application of the applicant/accused would show that till 02/06/2021, there was no dispute between the parties. The so called change of mind of the applicant/accused occurred after establishing the sexual intercourse with the non-applicant No.2 in the night of 01/06/2021. Therefore, the conduct of the applicant / accused before the incident dated 01/06/2021 and after 01/06/2021 would be required to be borne in mind.

15. The discretion is vested with this Court under Section 482 of the Cr.P.C. to pass an appropriate order in the given case to meet the ends of justice and to avoid the abuse of process of law. It is settled legal position that while deciding the application by exercising power under Section 482 of the Cr.P.C. for quashing the First Information Report, the Court cannot venture into the arena of appreciation of the evidence. It is pertinent to mention that while considering the application made by the accused for quashing the First Information Report if the Court finds that the exercise of

venturing into appreciation of the evidence would be warranted to decide the application one way or the other, in our view, the same would be indicator to conclude that the question falls outside the scope of exercise of discretion by the Court. The applicant / accused has stated that the non-applicant No.2 was not very much interested in him. She used to quarrel with him on small issues. He has stated that there was compatibility issue between the applicant and the non-applicant No.2. The applicant therefore, found it difficult to spend his entire life with the non-applicant No.2. In our opinion, this defence of the accused cannot be considered at this stage. This defence of the accused even if considered prima facie would indicate that this change of mind by the accused not to marry with the non-applicant No.2 occurred after having established sexual relations with the non-applicant No.2 on 01/06/2021. If really there was issue of compatibility then in that event, the applicant / accused would not have consciously decided to marry with the non-applicant No.2. In our opinion, this conduct of the applicant / accused coupled

with the relevant facts narrated in the First Information Report would indicate that the applicant under the guise of false promise to marry in future with the non-applicant No.2 established sexual intercourse with the non-applicant No.2. Immediately after establishing the sexual relations, in the night of 01/06/2021 and 02/06/2021, he changed his mind and started avoiding the non-applicant No.2. In our view, all these facts would not weigh in favour in the case of applicant/accused. In this case, the facts stated in the First Information Report and the conduct of the applicant would clearly show that the intention and the motive of the applicant was sinister. He established the sexual intercourse against the will of the non-applicant No.2 by obtaining her consent under the promise to marry. In our view, such a consent could not be said to be free consent. The consent given under the misconception of fact could not be said to be free consent. The prima facie analysis of the material placed on record clearly indicate that no case has been made out to quash and set aside the First Information Report.

16. The non-applicant No.2 as can be seen from the record annexed to the reply indicate that she believed the applicant and his family. She treated his parents as family members even before the marriage. This fact would show that she completely trusted applicant / accused. The accused under the pretext of hosting the party on the eve of her birthday took the non-applicant No.2 to the Resort and committed sexual intercourse with the non-applicant No.2. In our view, this is not a simple case of cheating. The cheating is coupled with the serious offence of rape. It can be gathered on the basis of the material that the applicant/accused had hidden intention not to marry with the applicant once his sexual lust is satisfied. The intention of the accused to commit the offence in such cases has to be gathered from the totality of the facts, conduct of the accused and other material on record. In our view, looking at the facts of the case from any angle, it would show that the case in question is not a fit case to quash the First Information Report.

17. In this case, the investigation is in progress. The learned Advocate for the non-applicant No.2 submitted that on number of occasions, the non-applicant No.2 approached the Investigating Officer with the relevant material and particularly the recorded conversation with transcript which is placed on record but the Investigating Officer did not give positive response. The learned Additional Public Prosecutor submitted that the investigation is still going on. The Investigating Officer would conduct further investigation and go to the root of the matter. It is pertinent to mention that the electronic evidence needs to be collected and converted into legally admissible evidence by the Investigating Officer. The Investigating Officer cannot deny his obligation to collect the available evidence. In view of the submission made by the learned Additional Public Prosecutor, we believe that the Investigating Officer would discharge his duty according to law. In view of the facts and circumstances and the law laid down in the Judgments relied upon by the learned Advocate for the applicant / accused is of no help and assistance to the

case of the applicant. The law laid down in the Judgments cited (supra) by the learned Advocate for the non-applicant No.2 fully supports the contention of the prosecution and the non-applicant No.2. In view of this position, we conclude that this is not a fit case to grant indulgence of the nature sought for by the applicant/accused. In view of the facts and serious nature of offence, we are not inclined to exercise jurisdiction under Section 482 of the Code of Criminal Procedure. The application, therefore, deserves to be dismissed. Hence, the following order :-

ORDER

- i] The application is rejected.
- ii] The interim order granted on 27/08/2021 shall continue to operate for a period of four weeks and cease to operate thereafter automatically.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

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