

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

CRIMINAL APPLICATION (APL) NO. 492/2018

Shranit S/o Diwakarrao Raut,
Aged about 24 years, Occ. Student,
R/o. At Post Pala, Tq. Morshi,
Dist. Amravati

.... **APPLICANT**

// VERSUS //

1] State of Maharashtra,
Through Police Station Officer,
Police Station Morshi, Tq. Morshi
Dist. Amravati

2] Samiksha D/o Suresh Gedam,
Aged about 19 years, Occ. Education,
R/o. Upper Wardha Colony, Morshi,
Tq. Morshi, Dist. Amravati

.... **NON-APPLICANT(S)**

Ms. G. Diwe, Adv h/f Shri P.R. Agrawal, Adv for the applicant
Shri T.A. Mirza, APP for the non-applicant no. 1

CORAM : Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 13/01/2021

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

1] Heard.

2] **RULE.** Rule made returnable forthwith.

ANSARI

3] This is an application under Section 482 of the Code of Criminal Procedure challenging F.I.R. No. 196/2018 dated 31/05/2018 registered with the non-applicant no.1 – Police Station for the offences punishable under Sections 376(2)(n), 354-A, 354-D, 323, 417 and 506 of the Indian Penal Code and Sections 2(va), 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989"). The first information report came to be registered against the applicant with the accusations that the applicant had physical relationship with the non-applicant no. 2 with promise of marriage. It is alleged in the first information report that after having physical relationship, the applicant refused to marry with the non-applicant no. 2 on the ground that the non-applicant no. 2 belongs to backward class.

4] The applicant has therefore filed the present application challenging the first information report. This Court on 06/06/2018 issued notice for final disposal and by way of ad-interim relief, it was directed that the investigation may go on but no coercive steps shall be taken against the applicant.

5] The non-applicant no. 1 has filed its reply contesting the application. In para no. 3 of the reply, the contents of the first information report are reproduced. It is stated that the Investigating Agency has recorded

the statements of the victim and her relatives and in the statement, it has been disclosed by the victim that the applicant committed repeated sexual intercourse on the pretext of performing marriage with her and thereafter refused to perform marriage with her. In pursuance of the notice issued by this Court on 06/06/2018, the non-applicant no. 2 is served but the non-applicant no. 2 has not appeared in the present proceedings either personally or through advocate.

6] We have carefully considered the contents of the first information report and the reply filed by the non-applicant no. 1. The accusations in the reply are to the effect that the applicant has promised to marry with the non-applicant no. 2 but thereafter the applicant has refused to marry with the non-applicant no. 2 on the ground that the non-applicant no. 2 belongs to lower caste. The issue is no longer *res-integra* in view of the judgment of the Hon'ble Supreme Court in the case of *Pramod Suryabhan Pawar vs. The State of Maharashtra & anr.* **reported in (2019) 9 SCC at page 608**. The Hon'ble Supreme Court in the said judgment has categorically held that failure to abide by the promise of marriage is not sufficient to register first information report against the accused. It is held that it is necessary to allege in the first information report that at the inception of the relationship, the accused had no intention to perform marriage. In absence of such allegation in the first information report, prosecution against the accused persons cannot be continued.

7] After perusing the first information report in the present case, we are satisfied that the only allegation in the first information report is that there is failure to abide by the promise of marriage by the applicant. Therefore, we find that continuation of the present proceedings against the applicant would amount to abuse of process of Court. Insofar as the offences registered under the provisions of the Act of 1989 are concerned, we have carefully considered the contents of the first information report from the said angle. We are of the opinion that the allegations in the first information report do not constitute the offences as alleged against the applicant under the provisions of the Act of 1989.

8] Hence, the following order:-

F.I.R. No. 196/2018 dated 31/05/2018 registered with the non-applicant no. 1 – Police Station for the offences punishable under Sections 376(2)(n), 354-A, 354-D, 323, 417 and 506 of the Indian Penal Code and Sections 2(va), 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed.

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

JUDGE

JUDGE