

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

CRIMINAL APPLICATION (APL) NO.552 OF 2018

Umesh S/o Shrirang Zod,
Aged about : 30 years,
Occupation : Service,
R/o S.R.PF. Camp, 48/9,
New Building, Amravati,
Tq. and District - Amravati.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Frezarpura,
Amravati District - Amravati.

2. Priya Pralhadrao Waghmare,
Aged : 24 years, Occ. Nurse,
R/o Wadali Camp, Amravati,
Tq. and Distt. Amravati.

... **RESPONDENTS**

Ms. Aastha Sharma, Advocate h/f Shri P. R. Agrawal, Advocate for applicant.

Shri T. A. Mirza, Additional Public Prosecutor for respondent No.1.

Ms. Sapna Jadhav, Advocate for respondent No.2.

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

DATED : 13/01/2021.

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

1. Heard.

2. Rule. Rule is made returnable forthwith. Heard by consent of the learned Advocates and learned Additional Public Prosecutor appearing for the respective parties.

3. This is an application filed under Section 482 of the Code of Criminal Procedure challenging the First Information Report dated 5.5.2018, vide Crime No.490/2018 registered with the non-applicant no.1 – Police Station, for offences punishable under Sections 376, 376 (2) (n), 354-D, 417 of the Indian Penal Code and Sections 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).

4. The First Information Report came to be registered on 5.5.2018 with accusation that the non-applicant no.2, aged 24 years was in relationship with the applicant from 1.12.2015 till 17.4.2018 before registration of the First Information Report. It is alleged that in the said period the applicant had repeated sexual intercourse with the non-applicant no.2. The non-applicant no.2 being girl belonging to backward class, the applicant performed engagement with another girl.

5. The applicant, therefore, filed present application before this Court and this Court on 22.6.2018 issued notice for final disposal. This Court on 29.8.2018 directed that the Charge-sheet shall not be filed.

6. The non-applicant no.2 has filed reply and submitted that the the non-applicant no.2 got married to one Vishal Sawle on 19.5.2013, but she got divorce from Vishal Sawle by mutual consent. It is stated that the applicant indulged in sexual relationship with the non-applicant no.2 with the promise of performing marriage with the non-applicant no.2. It is further stated that the applicant from 2015 till April 2018 behaved properly with the non-applicant no.2 but, refused to perform marriage on one pretext or the other. It is only when the applicant performed engagement ceremony with another girl, the non-applicant no.2 filed First Information Report against the applicant. It is stated that the marriage of the non-applicant was notarised.

7. We have carefully considered the contents of the First Information Report and the reply filed by the non-applicant no.2. In our opinion, the point involved in the present application is no more *res integra*, in view of the judgment of the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra** reported in **(2019) 9 SCC 608**. The Apex Court in paragraph no.18 has held that promise of marriage must have been a false promise, given in bad faith and with no intention of

being adhered to at the time it was given. The false promise itself must be of immediate relevance or bear a direct nexus to woman's decision to engage in sexual act.

8. The allegations in the First Information Report do not on their face indicate that the promise by the applicant to marry with non applicant no. 2 was false. There are no allegations in the First Information Report that when the applicant promised to marry to the non-applicant no.2, it was done in bad faith or with intention to deceive her. The applicant's failure in the year 2018 to fulfill his promise made in 2015 cannot be construed to mean that the promise itself was false. Therefore, even if the facts set out in the complainant's statement are accepted in totality, no offence as alleged against the applicant under the provisions of the Indian Penal Code is made out.

9. Insofar as the offences under the provisions of the Act of 1989 are concerned, we have considered the contents of the First Information Report. The only allegation in the First Information Report is to the effect that the applicant got engaged with another girl in view of the fact that the non-applicant no.2 belongs to Matang caste. In our opinion, the said averments do

not fulfill the ingredients of offences as alleged against the applicant under the provisions of the Act of 1989.

10. We are satisfied that the contents of the allegations against the applicant does not make out offences alleged against the applicant. Therefore, continuance of the proceedings against the applicant would amount to abuse of process of the Court. We, therefore, pass the following order:

First Information Report No.490/2018 dated 5.2.2018 registered with the non-applicant no.1- Police Station for offences punishable under sections 376, 376 (2) (n), 354-D, 417 of the Indian Penal Code and Sections 3(1) (w)(i)(ii) and 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE

ambulkar