

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

CRIMINAL APPLICATION (APL) NO. 564/2018

- 1] **Suraj S/o. Ashok Kohale,**
Aged about 28 years, Occ. Private Job,
R/o. Hanuman Nagar, Chamorshi,
Tah. Chamorshi, Dist. Gadchiroli
- 2] **Ashok S/o. Ganpati Kohale,**
Aged about 51 years, Occ. Private Job,
R/o. Hanuman Nagar, Chamorshi,
Tah. Chamorshi, Dist. Gadchiroli

.... **APPLICANT(S)**

// VERSUS //

- 1] **State of Maharashtra,**
Through Police Station,
PS. Chamorshi, Tah. Chamorshi
and Dist. Gadchiroli
- 2] **Sadhana D/o. Hivraj Dange,**
Aged about 26 years, Occ. Education,
R/o. Nainpur, Tah. Sindhevahi,
Dist. Chandrapur

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

Shri G.B. Hemke, Advocate for the applicant(s)
Shri N.S. Rao, APP for the non-applicant no. 1
Ms. Radha Mishra, Advocate (appointed) for the non-applicant no. 2

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 01/02/2021

CRIMINAL APPLICATION (APPP) NO. 1275/2019

1] For the reasons stated in the application, the applicants are permitted to carry out the amendment proposed in the criminal application.

2] The criminal application is **allowed** accordingly. The amendment be carried out forthwith.

CRIMINAL APPLICATION (APL) NO. 564/2018**ORAL JUDGMENT : (PER:- AMIT B. BORKAR, J.)**

3] Heard.

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

5] This is an application under Section 482 of the Code of Criminal Procedure challenging registration of F.I.R. No. 84 of 2018 dated 11/04/2018 with the non-applicant no.1 – Police Station for the offences punishable under Sections 376(2)(n), 417, 294 and 34 of the Indian Penal Code and Sections 3(1)(w) and 3(2)(iv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989") and consequent Charge-sheet No. 47/2018 in Special Atrocity Case No. 08/2018. The first information report came to be registered against the

applicants with the accusations that the applicant no. 1 was in relationship with the non applicant no. 2 from 2014 till 02/04/2018 and the applicant no. 1 had sexual intercourse with the non applicant no. 2 with the promise of marriage. It is also alleged that the applicant no. 2 who is the father of the applicant no. 1 had hurled abuses in the name of caste of the non-applicant no. 2.

6] The applicants therefore have filed the present application challenging registration of the first information report against them. This Court on 31/07/2019 issued notices to the non-applicants. Pending the present application, charge-sheet came to be filed against the applicants.

7] We have carefully considered the contents of the first information report and the material produced on record by the prosecution in the form of charge-sheet. From the allegations in the first information report, it appears that the applicant no. 1 was in relationship with the non-applicant no. 2 from 2014 to 2018.

8] The material on record and the accusations against the applicant no. 1 are not to the effect that at the inception of relationship, there was false promise of marriage made by the applicant no. 1 to the non-applicant no. 2. In the present case, at the most, it can be said that there was

breach of promise made by the applicant no. 1 to the non-applicant no. 2. The issue in the present case is squarely covered by the judgement of the Hon'ble Supreme Court in the case of *Pramod Suryabhan Pawar vs State of Maharashtra and another* **reported in (2019) 9 SCC 608**. The Hon'ble Supreme Court in para no. 16 of the said judgment has clearly laid down that in case of offence of sexual intercourse based on promise of marriage, it is necessary to allege that at the inception of relationship, the accused never intended to perform marriage. It is further held that mere breach of promise is not sufficient to attract the ingredients of the offence under Section 376(2) of the Indian Penal Code. From the allegations in the first information report and the material produced in the form of charge-sheet, we do not find any material on record which shows that the applicant no. 1, at the inception of relationship, had made false promise of marriage to the non applicant no. 2. Insofar as the allegations made against the applicant no. 2 in respect of the offences under the Act of 1989 are concerned, we have carefully considered the allegations in the first information report and the statement of witnesses brought on record by way of chargesheet by the applicants. After carefully considering the statements on record in the form of chargesheet and the first information report, we find that except in the statement of victim, there is no corroboration by any other witness in support of the allegations made against the applicant no. 2 for the alleged offences under the Act of 1989. We are therefore satisfied that in absence of any corroboration to the vague

allegations of the victim, the ingredients necessary to constitute the offences under the provisions of the Act of 1989 are not fulfilled. Therefore, continuation of the prosecution against the applicants would amount to abuse of process of the Court.

9] Hence, the following order:-

F.I.R. No. 84/2018 registered with the non applicant no. 1 – Police Station on 11/04/2018 and consequent Charge-sheet bearing No. 47/2018 in Special Atrocity Case No. 08/2018 pending before the Principal District & Sessions Judge, Gadchiroli are quashed and set aside.

Rule is made absolute in the above terms.

Fees of the advocate appointed to represent the non-applicant no. 2 be paid as per the Rules.

JUDGE

JUDGE