

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO. 1336 OF 2021

Rahul S/o Arjunrao Vaidya and another

Versus

State of Maharashtra, through P.S.O., Rana Pratap Nagar, P.S., Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Ateeb A. Syed, Advocate for the applicants.

Shri M.J. Khan, APP for the non-applicants/State.

CORAM: M.S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.

DATED: 14th DECEMBER, 2021

Heard Shri A.A. Syed, learned counsel for the
applicants, and Shri M.J. Khan learned APP for the
non-applicants/State.

2. According to us, the very filing of this
application amounts to an abuse of the process of law.

3. Applicant No.1-Rahul had instituted Criminal
Application (APL) No.492 of 2021 before us seeking
quashing of this very First Information Report (F.I.R.)
in terms of which he was charged for the offenses
punishable under Sections 376, 417, and 497 of the
Indian Penal Code (IPC) read with Sections 3(1)(w)(i)

(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act).

4. Learned Counsel for the applicants has placed on record our judgment dated 22.11.2021 passed in Criminal Application (APL) No.492/2021(Rahul Vaidya vs State of Maharashtra and others) disposing of Rahul's challenge. After a detailed hearing and consideration, we partly allowed the said criminal application and quashed the FIR in so far as it pertained to the registration of offense punishable under Section 497 of the IPC. This was mainly because the Hon'ble Supreme Court of India, in the case of ***Joseph Shine Vs. Union of India [AIR 2018 SC 4898]*** had declared the provision of Section 497 of I.P.C. ultra vires and as unconstitutional.

5. In so far as, offenses under Sections 417 and 376 of the IPC are concerned, we held that in this case, the allegations in the FIR made out a case of false promises by Rahul thereby inducing Pranita to consent to sexual relations. There was material on record to show that Rahul was already married and Pranita in her complaint alleged that this fact was never made known to her. Besides, we found that there are allegations made out under the Atrocities Act. For these reasons, we declined to quash the FIR in so far as it pertained to the

provisions of Sections 376 and 417 of the IPC and the Atrocities Act.

6. Now, Rahul and Pranita have filed a joint application seeking quashing of the FIR. They also filed a joint affidavit in which Pranita has stated that she is not interested in proceeding with this matter. The affidavit also states that the complaint was filed due to *misunderstanding and out of rage*.

7. According to us, both Rahul and Pranita, cannot abuse the legal process in this manner. Now, Pranita, for the reasons best known to her, after so many months seeks to explain that the complaints were filed due to *misunderstanding and out of rage*. In this case, there is an allegation of an offense punishable under Section 376 of IPC, and such an offense, cannot, under all circumstances be regarded as a purely private or a personal offense directed against the alleged victim. Such an offense is an offense against society itself.

8. Based upon such affidavit of settlement, we do not think that the FIR is required to be quashed. We think it pertinent to record that this petition has been filed no sooner we passed our judgment and order dated 22.11.2021 declining to quash the FIR. In this sense, this is nothing but an attempt to seek a review of our judgment and order dated 22.11.2021 based on the joint

affidavit filed by the parties before us, when such review jurisdiction is not normally available in criminal matters.

9. If all this is permitted, then possibly, a message will go out that it is alright to make such serious allegations that have the potential to destroy reputations and families, require the investigating authorities to undertake investigations, require the judicial institutions to take cognizance and even decide the several applications like bails, etc. normally taken out by the parties and thereafter, whenever, it is convenient, to simply say that the allegations were made due to misunderstanding and out of rage.

10. Conversely, a message will also go out that in such matters the criminal proceedings can be short-circuited by “settling” with the complainant and getting the FIR or the criminal proceedings quashed. Such messages are required to be nipped in the bud lest they promote such abuses. The interests of justice will not be promoted by either making it easy for parties to file false complaints or by permitting the parties to escape prosecution in serious offenses affecting the society based on so-called private compromises between the complainant and the accused. In cases of rape, not just the complainant who is alleged to have been raped but the society is also the victim. The legal process,

therefore, cannot be permitted to be used or rather abused for such ulterior purposes.

11. Accordingly, we dismiss this application with costs of Rs.50,000/-(Rs. Fifty Thousand only) to be paid jointly by both the applicants.

12. Rahul and Pranita are present in the Court and they state that they will deposit costs of Rs.25,000/-(Rs. Twenty Five Thousand Only) each, in this Court by 16.12.2021. These statements are accepted as undertakings to this Court. Such costs once deposited to be made over to the Legal Services Authority.

[PUSHPA V. GANEDIWALA, J.]

[M.S. SONAK, J.]