

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

CRIMINAL APPEAL NO.787 OF 2019

APPELLANT : Vivek s/o Gulabrao Biloriya,
Ori. Accused Aged about : 30 years,
Occ. Business, R/o Rangari Pura,
Tiger Chowk, Wani,
Tq. Wani, Dist. Yeotmal.

V E R S U S

RESPONDENTS : 1. State of Maharashtra,
Through Police Station Officer,
Police Station, Koradi, Tq. Kamtee,
Dist. Nagpur.

Original Complainant 2. Poonam Ratan Nagdiwe Alias
Poonam Rahul Wasnik,
Aged about : 29 years,
R/o Plot No. 16, Om Nagar,
Near Shivgiri Hanuman Mandir,
Opp. House of Satish Dube,
Koradi, Nagpur.

Shri J. B. Gandhi, Advocate for appellant.

Ms. Mayuri Deshmukh, Additional Public Prosecutor for
respondent No.1-State.

Shri A. B. Mirza, Advocate for respondent No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 06/01/2021.

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

1. Heard.

2. **Admit.**

3. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989") challenging the order dated 21/11/2019 passed by the District Judge - 6 & Additional Sessions Judge, Nagpur in Misc. Criminal Application No.2627/2019 arising out of Crime No.345/2019 for the offences punishable under Sections 376(2)(n), 328 and 420 of the Indian Penal Code and Section 3(1)(w)(i)(ii) of the Act of 1989.

4. The First Information Report came to be registered against the appellant on 11/11/2019 with the accusations that the appellant was in relationship with the respondent No.2 from 2014. As per the accusations in the First Information Report, the first incident is of May, 2014 and the First Information Report has been registered in the year 2019. It is alleged in the First Information Report that from 2014 till August, 2019, the appellant and the respondent No.2 were in physical relationship. It is also alleged that the appellant has taken amount of Rs.14,00,000/- from her. Apprehending arrest, the appellant filed an application under Section 438 of the Code of Criminal Procedure before the learned District and Sessions Judge, Nagpur which came to be rejected by the impugned order dated 21/11/2019. The appellant has

therefore, filed the present appeal before this Court. This Court on 02/12/2019 issued notice to the respondents and granted interim protection to the appellant, subject to condition as stated in the said order. The respondent No.2, in pursuance of the notice issued by this Court, appeared and has filed reply. In the reply, it is alleged that the appellant has taken photographs of the respondent No.2 in a compromising position. It is also stated in the reply that the appellant has cheated the respondent No.2 for huge amount. Therefore, it is prayed that the appellant is not entitled to any protection from this Court.

5. We have gone through the contents of the First Information Report and the copy of the impugned order. From the contents of the First Information Report, it is clear that the appellant was in relationship with the respondent No.2 from 2014. The First Information Report came to be registered against the appellant on 11/11/2019. The first incident of the physical relationship is of 16/05/2014 as per the First Information Report. The respondent No.2 is aged about 29 years. The appellant, in para No.1 of the Appeal Memo, has stated that there are no criminal antecedents to the credit of the appellant. The prosecution has not pointed out that the appellant has misused the

liberty granted to him by the order dated 02/12/2019. The prosecution has not pointed out that the custodial interrogation of the appellant is necessary. We have gone through the contents of the First Information Report and we find that from the contents of the First Information Report, prima facie, the offences under the provisions of the Act of 1989 are not made out.

6. In view of the above, we pass the following order :-

ORDER

I] The order dated 21/11/2019 passed by the District Judge - 6 & Additional Sessions Judge, Nagpur in Misc. Criminal Application No.2627/2019 is quashed and set aside.

II] The order dated 02/12/2019 granting interim protection to the appellant is confirmed on the same condition as stated in the said order.

The appeal is allowed in the above terms.

JUDGE

JUDGE