

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1387 OF 2020

Shyjeesh K. Thomas,	]	
Aged : 28 Years, Occu. Service,	]	
R/o. Kannanaikkal House,	]	
Peringandoor,	]	
Athani, Thrisur, Kerala	]	... Applicant.

Versus

1.	State of Maharashtra	]	
	Through City Police Station,	]	
	Shirpur.	]	
2.	Rubi Pulikkal Ravi,	]	
	Aged :32 Years, Occu. Teacher,	]	
	Residing at Nimzari Naka,	]	
	Shivsagar Apartment, Shirpur,	]	
	Dist. Dhule,	]	
	Now residing Plot No. 12,	]	
	Rajcity – 1, Vaghoda,	]	
	Taluka & Dist. Nandurbag.	]	... Respondents.

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Mr. Harshal P. Randhir, Advocate for Applicant.
Mr. S. J. Salgare, APP for Respondent No.1 – State.
Mr. Vikrant P. Raje, Advocate for Respondent No.2.

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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 11 NOVEMBER 2022

JUDGMENT (ABHAY S. WAGHWASE, J.) :-

1. By invoking provisions under section 482 of the Code of Criminal Procedure (for short, “Cr.PC.”), applicant herein is seeking quashment of crime bearing no. 63 of 2020 registered at City Police Station Shirpur, along with consequential charge-sheet bearing no. 30 of 2020 giving rise to Sessions Case

No. 57 of 2021 on the file of the learned Sessions Judge, Dhule.

2. Brief facts of the case are as under :-

Respondent No.2 herein approached the learned Judicial Magistrate First Class, Shirpur by invoking powers under section 156(3) by way of private complaint no. 231 of 2020.

The sum and substance of private complaint is that respondent no.2 (complainant herein) joined as a teacher in R.C. Patel English Medium School, Holnath, Shirpur since 1st November 2017. In the same year, accused too joined as a 'Computer Teacher' in the same school since such date. Complainant alleged that she had two children. According to her, accused promised to marry her and also to take all her responsibilities. She accepted the proposal. However, without fulfilling the promise of marriage, time to time on false assurance of marriage, applicant forcibly maintained physical relations with her. According to her, time and again, accused also borrowed amount on the pretext of financial difficulties. She has alleged that, as the love affair between them was known to all and as their relations would have ill effect on her both children, accused forced her to go and stay at Nandurbar. Further according to her, because of the physical relations with applicant, she had conceived and she alleges that accused forced her to get aborted. In February 2020, she learnt that accused got married and therefore she filed private complaint.

3. The learned Judicial Magistrate First Class, after following the initial procedure, directed City Police, Shirpur to register crime i.e. by invoking powers under section 156(3) of Cr.P.C., as a result of which, crime bearing No.63 of 2020 came to be registered and investigation was undertaken and after its completion, charge-sheet was filed and it further culminated into sessions case.

4. In the above backdrop, accused-applicant has knocked the doors of this court praying for quashing of FIR and charge-sheet by invoking provisions under section 482 of Cr.P.C.

5. Before undertaking the exercise of analysing the case on merits, it would be desirable to give a brief account of the settled legal position on the scope and object of provision of under section 482 of Cr.P.C.

By umpteen judgments the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; *firstly*, to give effect to an order under Cr.P.C., *secondly*, to prevent abuse of process of court and *thirdly*, to secure ends of justice.

In the landmark case of *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*, reported in *(2007) 12 SCC 1*, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and (iii) to otherwise secure the ends of justice.

24. Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

6. Similarly, the Hon’ble Apex Court in the case of ***Priya Vrat Singh Vs. Shyam Singh Sahai; (2009) SCC Suppl. 709***, while dealing with the powers of the High Courts under Section 482 Cr.P.C., has held as under :

“6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely

recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S.

Chowdhary ((1992) 4 SCC 305); Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1) and Minu Kumari v. State of Bihar ((2006) 4 SCC 359)."

7. The Hon'ble Apex court in its landmark case, i.e. ***State of Haryana and Ors. Vs. Ch. Bhajan Lal***, reported in ***1992 SCC (Cri.) 426***, after conducting a detailed study of the situations as to when court may exercise its extra ordinary jurisdiction, the Apex Court laid down guidelines and circumstances under which it would be appropriate to quash proceedings. It would be profitable to reproduce the guidelines under which abuse of process of law could be prevented and the same are as under :-

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. Here the fundamental grievance of respondent No.2-complainant is that accused-applicant, with whom she got acquainted, promised to marry her, but subsequently breached the same. She has alleged that under the pretext of false promise of marriage he forcibly maintained physical relations with her at various times and thereby committed rape on her. Thus, here there are allegations of commission of offence of rape and cheating.

In such background, it is to be seen as to whether offence of rape has at all been committed. First, it would be desirable to set out the requirements to attract offence of section 375 of Indian Penal Code.

“375. Rape – A man is said to commit “rape”, if he -

* * *

Firstly -

Secondly – Without her consent.

* * *

Explanation 2. – ‘**Consent**’ means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

9. The word ‘consent’ finding place in the above provision is also of considerable significance. In various rulings, scope of section 90 of IPC in nexus with explanation 2 of section 375 of IPC has also been time and again dealt and fairly settled.

In the recent case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra***, reported in ***(2019) 9 SCC 608***, the Hon’ble Apex Court held -

“Where promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of facts” that vitiates women’s “consent” – On the other hand, a breach or promise cannot be said to be a false promise – Specifically in the context of promise to marry there

is distinction between false promise given on understanding by the maker that it will be broken, and the breach of promise which is made in good faith but subsequently not fulfilled – **To establish false promise, maker of the promise should have had no intention of upholding his word at the time of giving it** – “Consent” of a woman under section 375 is vitiated on the ground of ‘misconception of fact’ where such misconception was the basis for her choosing to engage in the said act – To establish whether “consent” was vitiated by a “misconception of fact” arising out of promise to marry, two propositions must be established – Promise of marriage must have been false promise, given in bad faith and given with no intention of being adhered to at the time of it was given – False promise itself must be of immediate relevance, or bear a direct nexus to woman’s decision to engage in the sexual act.”

10. Similarly, in the case of *Deelip Sing @ Dilip Kumar Vs. State of Bihar*, reported in (2005) 1 SCC 88, the Hon’ble Apex Court succinctly dealt with the concept and scope of the word, “consent” in context with section 375 of IPC. In para nos. 17, 18 and 19 of the Judgment, the Hon’ble Apex Court has held -

“17. The Indian Penal Code does not define “consent” in positive terms, but what cannot be regarded as “consent” under the Code is explained by section 90, which reads as under -

“90. “Consent” known to be given under fear or misconception – A ‘consent’ is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear of misconception;.....”

18. “Consent” given firstly under fear of injury and secondly under a misconception of fact is not “consent” at all. That is what is enjoined by the first of section 90. These two grounds specified in section 90 are analogous to coercion and mistake of fact which are the familiar ground that can vitiate a transaction under the

jurisprudence of our country as well as other countries.”

19. *The factors set out in the first part of section 90 are from the point of view of victim. The second part of section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reasons to believe that the ‘consent’ was given by the victim in consequence of fear of injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable believe of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under the fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of section 90 which is couched in the negative terminology.”*

11. Similarly, the Hon’ble Apex Court in the case of ***Deepak Gulati Vs. State of Haryana***, reported in ***(2013) 7 SCC 675*** held that -

“There is a distinction between mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused.

Having dealt with above discussed settled legal position, we shift to the allegations levelled in the complaint and proceed to analyse whether the said complaint and the consequential proceedings arising out of it deserves to be quashed or not.

Analysis

12. On visiting the FIR in the case in hand, it is emerging that

applicant herein and complainant-respondent no.2 joined as teachers in same institution for respective subjects on one and the same date. Complaint clearly discloses that respondent no.2 is a mother of two children and thus a married woman. However, it is pertinent to note that details of her husband or the person who fathered her two children, are conspicuously missing from the complaint. For the best reasons known to her, respondent no.2 has suppressed or chosen not to disclose it. Directly she has alleged about accused promising to marry her and take up her all responsibilities and she too seems to have readily accepted the proposal, in spite of she being conscious that she was already married and was a mother of two children. She has imputed allegations that in the backdrop of promise of marriage accused used to forcibly maintain physical relations with her. It is worth noting that, physical intimacy between them was not a solitary incidents, but it seems to have happened on several occasions. Therefore, there is no force in the allegations that accused forced himself on her.

13. It needs to be noted that complainant is an educated and a married lady having two children and therefore definitely must be conscious of the consequences of submitting herself to the accused even before getting married to accused. She is not a gullible woman rather is a qualified teacher who is capable of exercising her conscious decision or discretion, whether to indulge in sexual encounters on a mere promise of marriage. Her complaint does not disclose that she has sought divorce from her first husband or has

permanently separated from him. Therefore, there is serious doubt, as to whether she was competent at all to perform marriage with accused herein.

14. In our considered opinion, on giving serious thought to the allegations raised in the complaint, the relationship between accused and respondent no.2 is nothing but consensual one. It is also worth taking note that, nowhere in the complaint she seems to have insisted accused to marry her before getting intimate with him. Instant complaint has apparently been lodged only on getting knowledge that accused performed second marriage. It is difficult to comprehend that a mother of two children whose previous marriage is not shown to be dissolved, would indulge into repeated sexual encounters with the accused till she is impregnated and neither insists for marriage nor lodges any complaint. On the other hand, she concedes to his suggestion of getting abortion done. With such facts emerging in the case in hand, it is difficult to accept respondent No.2's version that she was raped and cheated on account of false promise of marriage.

15. In the light of above discussion, we do not find it desirable to allow prosecution of applicant herein to go on. With such nature of allegations and above discussion, we are convinced that, it is not a case either of rape or cheating. Rather, it is a fit case wherein there is apparent abuse of process of law. The case is squarely covered by the guidelines no. 1, 3, 5 and 7 of the *Ch. Bhajan Lal (Supra)*. Consequently, applicant succeeds and his application

deserves to be allowed. Hence, we proceed to pass the following order :

ORDER

- (i) The application is allowed.
- (ii) The FIR bearing crime no. 63 of 2020, registered at City Police Station Shirpur, for the offences punishable under sections 376, 420 and 313 of Indian Penal Code, along with consequential charge-sheet bearing no. 30 of 2020 giving rise to Sessions Case No. 57 of 2021 on the file of the learned District and Sessions Judge, Dhule are quashed and set aside.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]