

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

951 CRIMINAL APPLICATION NO. 2053 OF 2020

**GANESH ARJUN SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Applicant : Mr. A. N. Kakade
APP for Respondent nos. 1 & 2 : Ms. P. V. Diggikar
Advocate for Respondent no.3 : Mr. R. V. Gore

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 21st JANUARY, 2022.

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ORDER : (Per Sandipkumar C. More, J.) :-

1. By consent of the parties, heard finally at the stage of admission.
2. The applicant wants to quash the proceeding of Special Case No. 235 of 2020 pending before the learned Additional Sessions Judge, Aurangabad arising out of Crime No. 0048 of 2020, registered with Osmanpura Police Station, Aurangabad for the offence punishable under Section 376, 376(2)(n) of the Indian Penal Code and under Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

3. The FIR in this matter recites that the informant-respondent no.3 got acquainted with the present applicant on Instagram and they started talking to each other. After one month, the applicant told her that he liked her and wanted to meet her. Initially, respondent no.3 refused to meet the applicant but on his persuasion, she met him around 22/23 December, 2019 at about 5.00 to 6.00 p.m. at Aurangabad. Then respondent no.3 went with the applicant in his Breeza car to have an ice-cream. The applicant at that time told her that he liked her and also expressed his wish to marry with her. Thereafter the applicant asked respondent no.3 -informant to meet him at some isolated place. Accordingly, respondent no.3 agreed to meet the applicant at place of her friend Sandhya at Aurangabad in TV Center area. When Sandhya provided them one room from her house, the applicant committed sexual intercourse with respondent no.3 on the promise of marriage. Thereafter, the applicant and respondent no.3 engaged in sexual relationship from time to time. When respondent no.3 asked the applicant about marriage as promised by him on phone, he on 13/03/2020 refused for the same. The applicant allegedly refused to marry with respondent no.3 on account of they being of different caste.

4. The learned counsel for the applicant submits that there was consensual sexual relationship between the applicant and respondent no.3 since December, 2019 till March, 2020 and therefore, it cannot be said that the sexual relationship between the applicant and respondent no.3 amounts to commission of offence under Section 376 of IPC. The learned counsel for the applicant relied upon various judgments as mentioned below :

- I) **Pramod Pawar Vs. The State of Maharashtra and another, in Criminal Appeal No. 1165 of 2019;**
- II) **Kaini Rajan vs. State of Kerala, 2013(9)CPSC53 ;**
- III) **Uday vs. State of Karnataka, 2003 (2)CPSC165 and**
- IV) **Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and others, MUNU/SC/1518/2018.**

5. Thus, the learned counsel for the applicant relying on the observations in the aforesaid judgments submitted that consensual relationship between the applicant and respondent no.3 does not attract any offence as alleged by the prosecution even on the promise of marriage.

6. The learned counsel for respondent no.3 strongly opposed the submission on behalf of the applicant and submitted that though the sexual relationship between the applicant and respondent no.3

lasted for about four months, but it was based on false promise of marriage given by the applicant to respondent no.3. Learned counsel further submits that respondent no.3 had already made aware about her different caste to the applicant before indulging in to sexual relations and therefore, the refusal by the applicant for performance of marriage with her on the said reason, definitely amounts to false promise. Thus, learned counsel for respondent no.3 prayed for rejection of the application.

7. On the other hand, learned APP has also strongly opposed the application and submitted that there are direct allegations against the applicant about such serious offence of rape and therefore, this is not a fit case for quashing of the proceedings.

8. Admittedly, from the FIR, it is evident that respondent no.3 was in friendship of the applicant and thereafter, they engaged in sexual relationship for about four months on so many occasions. However, according to respondent no.3 the applicant committed sexual intercourse with her on false promise of marriage and therefore, she had consented for the same. Learned counsel for the applicant heavily relied on the judgments above. We have carefully gone through those judgments and also police papers and charge sheet on record. The Supreme Court in the case of **Pramod Pawar**

Vs. State of Maharashtra in Criminal Appeal No. 1165 of 2019 arising out of SLP (Cri) No. 2712 of 2019 has discussed the consent given by the victim or prosecutrix in the light of promise to marriage given by the accused. The Supreme Court in the said judgment has also referred the remaining judgments at Serial Nos.2 to 4 and therefore, we find that the judgment in case of **Pramod** (supra) is useful for our discussion in the present matter.

9. On one hand, respondent no.3-informant is claiming that her consent was on the false promise of marriage given to her by the applicant and on the other hand, the applicant is claiming that as respondent no.3 was in consensual relationship with him, no offence as contemplated in Section 375 of IPC is attracted. On careful reading of the observations of Hon'ble Supreme Court in the first judgment i.e. in case of **Pramod** (supra), it reveals that the Supreme Court after considering various earlier judgments in respect of consent in the light of promise of marriage, has summarized the legal position in para no.18 as below :

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect of Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether "consent" was vitiated by a "misconception of

fact" arising out of a promise to marry, two propositions must be established. The 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 the woman's decision to engage in the sexual act".

10. It is quite significant to note that the Supreme Court in the said judgment had in fact quashed the FIR with similar allegation as that of this case. But on careful reading of the facts in that case, it is evident that in that case the complainant and accused knew each other for about six years and were intimate during the said period. Further, they engaged in sexual intercourse over a period of five years even after the appellant accused disclosed to the complainant that he was not ready to marry with her. Thus, even after such disclosure, the complainant in that case had engaged in sexual intercourse with the appellant accused and therefore, the Supreme Court in light of those facts had quashed the FIR in that case.

11. However, if we go through the legal position summarized by the Supreme Court in the said judgment as mentioned above in para no.18, there are two propositions laid down by the Supreme

Supreme Court, which must be established to arrive at a conclusion whether the consent was vitiated by a misconception of fact arising out of a promise to marry. The first is promise of marriage must have been a false promise and second is such false promise itself must be of immediate relevance or bear a direct nexus to the woman's decision to engage in the sexual act. In the instant matter, the applicant appears to be engaged in sexual relationship with respondent no.3 on the promise of marriage and respondent no.3 also on many occasions consented for the same due to that reason only. However, the FIR clearly indicates that respondent no.3 had already told her caste to the applicant before engaging into sexual relationship. Therefore, the refusal from the applicant for performance of marriage with her on the basis of they belong to different castes, prima facie appears a false promise. After such refusal, there was no physical relationship between the applicant and respondent no.3 further. Thus, the facts of this case clearly indicate that whatever acts of sexual intercourse between the applicant and respondent no.3 were because of a clear-cut false promise of marriage given by the applicant to respondent no.3. Thus, the legal position summarized by the Supreme Court in the aforesaid judgment is in fact helpful to respondent no.3 and not to the applicant in the light of facts of the present case. Therefore, we

are not inclined to quash the proceedings as prayed by the applicant. Hence, we pass the following order.

O R D E R

- I) Criminal application is hereby dismissed.
- II) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-