

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2083 OF 2020

Rajendraprasad s/o Gulabrao Taywade
Age: 56 years, Occu. Ex. Seviceman,
R/o. Plot No.81, Firdos Garden, Padegaon,
Aurangabad, Tal. and Dist. Aurangabad. .. Applicant

Versus

1. The State of Maharashtra'
Through the Police Inspector,
Chawani Police Station, Chawani,
Aurangabad, Tq. and Dist. Aurangabad.
2. XYZ .. Respondents

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Mr. C. C. Deshpande, Advocate for applicant.
Mr. B. V. Virdhe, APP for respondent No.1 - State.
Mr. D. S. Ingole, Advocate for respondent No.2 (Appointed through
Legal-aid).

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

**RESERVED ON : 16-09-2022
PRONOUNCED ON : 21-10-2022**

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashment of the First Information Report (for short "FIR") vide Crime No.263 of 2020 dated 21.08.2020 registered with Chawani Police Station, Dist. Aurangabad for the offences punishable under Sections 376,

323 of Indian Penal Code (for short "IPC") as well as the charge-sheet filed on the basis of the investigation of the said crime pending before the learned Judicial Magistrate First Class, Aurangabad.

2. Heard learned Advocate Mr. C. C. Deshpande for the applicant, learned APP Mr. B. V. Virdhe for respondent No.1 - State and learned Advocate Mr. D. S. Ingole for respondent No.2 (Appointed through Legal Aid).

3. It has been vehemently submitted on behalf of the applicant - original accused that present respondent No.2 has filed the FIR. Respondent No.2 is an adult lady, who was married earlier to another person and has son aged 8 years. It appears that her first marriage was unsuccessful, but she had not obtained divorce, yet residing separately from him. She was serving in a company where even the present applicant was serving. Present applicant is Ex-Military man and according to the informant, the applicant has established sexual relationship with her under false promise to marry. She has stated that they got acquainted with each other on 05.07.2019 and thereafter, they used to move at various places. On those occasions, it is stated that photographs were taken and by allegedly giving threats to post those photographs on social media, consent was obtained by the applicant from the informant for

establishing physical relationship. It is stated that the applicant had taken the informant to a lodge near Central S.T. Bus Stand in February, 2020 and had established physical relationship and at that time, he had prepared video. Thereafter, the second occasion was in the month of March, 2020 in a Hotel near railway station, Aurangabad. Thereafter, the applicant had moved the informant in a rented premises in the area of Padegaon since 21.05.2020 and for about three months, he had sexual intercourse with her at the said place. She then says that whenever she used to ask about the marriage, he used to assault her. The applicant is having licensed arm and, therefore, the informant says that she is under fear. She disclosed the entire incident to her parents on 06.08.2020 and then after persuasion by the parents, she has lodged the report.

4. The defence of the applicant is that he is in live-in relationship with the informant and even a written agreement to that effect was entered into on 21.09.2019. In her supplementary statement, now the informant is saying that her signatures on that document were obtained by fraud and by putting her under fear. She has, in fact, in the FIR, suppressed the execution of the said document. Even if we consider the statements of witnesses, at the most they would say that they were together. The applicant is not denying that they had moved together at different places and even he is accepting

that there was physical relationship between him and the informant, however, everything was by consent of the informant and it will not amount to rape. It will not attract the basic ingredients of the offence punishable under Section 375 of IPC and, therefore, it would be a futile exercise to ask the applicant to face the trial.

5. Learned Advocate for the applicant has relied on the decisions in ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others, [2019 AIR (Supreme Court) 327]***, ***Pramod Suryabhan Pawar Vs. The State of Maharashtra and another, [2019 AIR (Supreme Court) 4010]*** and ***Shivshankar @ Shiva Vs. State of Karnataka and another, [2018 Cr.L. R. (SC) 502]***. In all these cases, it has been observed that if the physical relations are with consent, then it will not attract the ingredients of the offence only on the basis of allegations that the man breaches promise to marry. In ***Pramod Suryabhan Pawar (Supra)*** following observations have been made :-

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

In ***Dr. Dhruvaram Murlidhar Sonar (Supra)***, it was also the case of live-in relationship.

6. Per contra, the learned APP appearing for respondent No.1 - State and learned Advocate for respondent No.2, who has relied on the affidavit-in-reply of the informant, opposed the application contending that the alleged consent of the informant itself was obtained under fraud. The consent was obtained on representation that the wife of the applicant has expired and he lives alone. He was searching for the second wife and this fact turned out to be false. When the consent itself is obtained by misrepresentation, then such consent cannot be termed as willful and it would not be within the purview of the ingredients of Section 375 of IPC. Even the threats were given to the informant and still the applicant is giving threats to the informant, which can be seen from the transcripts of the dialogues. The ratio laid down in the authorities cited by learned Advocate for the applicant are not applicable, as in clear terms, the facts are different. The fraud or misrepresentation

is since beginning. All these facts would come before the trial Court only after adducing evidence and, therefore, this is not a fit case where the FIR as well as the entire proceedings should be quashed and set aside.

7. The contents of the FIR are already narrated to substantial extent and, therefore, they are not reproduced. The informant is a 33 years old lady, who was married and has son aged 8. In her FIR, she has stated that she is residing separately from her first husband. She has not whispered about the legal divorce between her and her first husband. Under such circumstance, even if it is accepted that the applicant would have given proposal of marriage or represented to her that he is in search of second wife, whether she could have performed legal marriage with the applicant, itself is a question. Another fact to be noted is that she alleges that the applicant used to visit her place and they used to go at different places before they indulge in physical relationship. It is said that on such occasions, the applicant has taken photographs. She then states that when he had asked for the physical relationship, she refused and then he had given threat that he would make their photographs viral. That means, such threat was allegedly given prior to their physical relations. She had not lodged any complaint with police at that time. Rather, she says that when such threat

was given, she agreed to have sexual relations with the applicant. According to her, that consent was by putting her in fear. No doubt a consent obtained by fraud or putting in fear/coercive action cannot be said to be a "consent". But whether really this situation was there in the present case can be seen from a fact that under Section 91 of Cr.P.C., a notice was given by the investigating officer to the present applicant on 22.08.2020 asking him to produce the agreement/compromise deed of live-in relationship executed between the applicant and the informant and it was through an Advocate. Whether such document could have been procured from the proposed accused under Section 91 of Cr.P.C. by the police itself is another question, but at this stage since that document appears to have been produced by the applicant before the investigating officer, it is forming part of the charge-sheet. Perusal of the said agreement/compromise deed on 21.09.2019 would show that the informant willingly entered into agreement to live-in relationship with the applicant. It is expressed that they are in love with each other and the purpose for which the agreement is reduced into writing is that they are being harassed by the relatives. Now, in her statement under Section 164 of Cr.P.C., the informant says that even this agreement was got executed by putting her under fear. Another document, which has been produced on record and appears to be part of the charge-sheet, is a complaint application made by

the informant and applicant jointly to the Police Inspector, Jawaharnagar Police Station, Aurangabad on 21.05.2020, in which the informant had complained that her parents and brother are physically harassing her. She willingly entered into the live-in relationship with the applicant. Rather it is stated that on 05.07.2019, by exchanging garlands at Ganpati Mandir, Chikalthana, they had married with each other. They had taken legal advise. She has also stated that the applicant is providing money to her as well as her son, but then she complained that her parents are asking money from her and, therefore, she had decided to shift in a rented premises along with the applicant. That means, she had approached the police inspector also and made complaint against her parents and not against the applicant. Now, it appears that the relationship between the applicant and the informant are strained and, therefore, she has lodged such report.

8. As regards the other evidence that has been collected by the investigating officer, it can be seen that the present applicant is not disputing their relationship. Therefore, it is not necessary to scan that evidence also.

9. The ratio laid down in the abovesaid authorities relied by the learned Advocate for the applicant are applicable to the facts of the present case also. From the discussion above referred, this Court is

of the opinion that present case is the case where there was consent to every relationship by the informant with the applicant and, therefore, ingredients of the offence under Section 375 punishable under Section 376 as well as Section 323 of IPC are not attracted. It would be a futile exercise to ask the applicant to face the trial. The case squarely falls within the parameters laid down in ***State of Haryana and others vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]***. Hence, the following order :-

ORDER

I) The application stands allowed.

II) The FIR bearing Crime No.263 of 2020 dated 21.08.2020 registered with Chawani Police Station, Dist. Aurangabad for the offences punishable under Sections 376, 323 of IPC as well as the charge-sheet filed on the basis of the investigation of the said crime pending before the learned Judicial Magistrate First Class, Aurangabad, stand quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm