

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

952 CRIMINAL APPLICATION NO.2003 OF 2021

VIKAS S/O NAGORAO RAWATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Dhananjay M. Shinde.

APP for Respondent/State: Mr. R. D. Sanap.

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CORAM : **SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.**

DATE : 01st July, 2022.

PER COURT:

. This is an application for quashing of the FIR registered at Manatha Police Station, District Nanded, vide C.R. No.81 of 2021 dated 24th July, 2021 and the consequent proceedings in Sessions Case No.4 of 2022 pending before learned Additional Sessions Judge, Nanded, under Sections 376 (1), 376 (2) (n), 417, 506 (2) of the Indian Penal Code.

2 The FIR is lodged by the respondent No.2 on 24th July, 2021. The informant has stated that she was residing with her mother, her younger sister and younger brother. She was working as an

operator in a car show room. She got acquainted with the applicant about three years prior to registration of the FIR. Their friendship turned into a love affair. She has stated that the applicant had promised to marry her. He had asked her to keep physical relations, but she had refused and she had specifically told him that first they should get married and only then they should have physical relations. The applicant assured her that he was going to marry her and that she should not doubt him. About 5 months before lodging the FIR, the applicant called her under some pretext in a field near Manatha lake. She went there. He took her to a room in the field and against her wish kept physical relations. She has specifically mentioned in the FIR that she had resisted, but he did not pay any heed. The informant had got scared and therefore, did not tell this to anybody. About four months prior to lodging of the FIR, he took her to Nanded on his two wheeler and took her to a lodge. He told the employees there that the informant was his wife and obtained a room. In that room again, he suggested that they should have physical relations. Again, she told him that they should have physical relations after their marriage. But he insisted that since he was going to marry her, they should go ahead. On this occasion also he kept physical relations against her wish. He then told her that she should not disclose this fact to anybody otherwise it would have adverse effect. This was repeated on 2-3 occasions at the same lodge. After that, the informant's family had

arranged a meeting to consider a marriage proposal of another boy. But the applicant prevented this. He threatened her and forced her to tell those people not to visit their house. Even thereafter, the applicant used to call her telephonically. About 2 months prior to the FIR, on the pretext that he was hungry and that she should cook food for him, he called the informant to his house. There again, against her wish he established physical relations. After that, about 7-8 days prior to the FIR, she asked the applicant as to when he intended to marry her because her family was asking her to get married. At that time, the applicant told her that he would not marry her. He threatened her that if she complained to police, he would kill everybody from her family. The informant told this fact to her mother, brother and uncle and on this basis the FIR is lodged. The investigation was carried out and the charge-sheet was filed.

3 In the charge-sheet, there are statements of the mother, sister and aunt of the informant. Her aunt has stated that about few days before the FIR, the informant told her that the applicant had kept physical relations on the promise of marriage and then had refused to marry her.

4 The statement of the informant's sister mentioned that about a month prior to the FIR, the applicant had come to their house

and had told her that he would get married with the informant and therefore, they should not consider any proposal for marriage for her. He threatened them if they continued with their efforts to get her married. Similar is the statement of her mother. The informant's statement under Section 164 of the Code of Criminal Procedure was also recorded. There also she had made the same grievance.

5 Learned counsel for the applicant submitted that mere breach of promise will not amount to any offence. The applicant had approached the family of the informant, which shows that he intended to marry the informant. In the medical history given by the informant, she had admitted to her consensual relationship with the applicant. The informant is major. She is doing a job. She is educated. Therefore, she knew of the consequences of her act. It was a voluntary consent and therefore, it was not based on misconception of fact. Learned counsel for the applicant relied on the judgments of the Honourable Supreme Court in the following two cases:

- i) ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another***, reported in, ***(2019) 9 Supreme Court Cases 608***; and
- ii) ***Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and another***, reported in, ***2021 SCC OnLine SC 181***.

6 Learned APP opposed this application. He submitted that the consent was obtained on false promise of marriage. The conduct of the applicant before the incident and after the physical relations is important. The offence is made out. In fact her statement shows that the physical relations were kept against her wish. He, therefore, submitted that this is not a case where the proceedings should be quashed. The offence will have to be tested during full-fledged trial.

7 We have considered these submissions. The FIR of the informant is clear enough. She has stated that on the first occasion and again on subsequent occasions, every time the applicant had promised that he would marry the informant. She was called to his house and to the room in the field on some false pretext. She has categorically stated that he kept physical relations with her against her wish. She has specifically told him that they should have physical relations only after the marriage. Finally when her family was asking her to get married, she again asked the applicant. At that time, he flatly refused to marry her and in fact threatened her that if she made a police complaint, he would kill everybody. He had prevented her and her family from going ahead with any marriage proposal. The statements of the mother and sister of the informant also show that the applicant had prevented the informant's family from getting the

informant married. Subsequently, he refused to marry her. He had exploited the informant. The conduct of the applicant shows his dishonest intention right from the inception of the offence. His subsequent conduct cannot be ignored. Absolutely no possible reason was given by the applicant to the informant for refusing to marry her. That means he only wanted to exploit her on the false promise of marriage and the informant was a victim of his planning. As far as the argument that the medical history shows consensual relationship is concerned, it is not correct from the record. The medical history in fact mentions that the informant had told the medical officer that the applicant had forcibly kept physical relations with her. Therefore, even that argument has no substance.

8 Learned counsel for the applicant relied on the aforementioned two Supreme Court judgments. But the facts in those judgments were quite different. In the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another*** (supra), the complainant and the accused were knowing each other from 2004. In 2008, the accused proposed marriage and assured her that their belonging to different castes would not be a hindrance. Throughout 2010, the accused in that case visited the complainant on multiple occasions and they engaged in sexual intercourse. The complainant visited the accused multiple times in 2011. Each of these visits lasted four to five

days during which the complainant resided with the accused and they engaged in sexual intercourse. During these visits, the complainant enquired about marriage and the accused responded in the affirmative. In December 2011, the accused visited the complainant and resided in her house for four days. In 2013-14, the complainant and accused jointly visited the hospital multiple times to check whether she was pregnant. They regularly engaged in sexual intercourse during this period. In January 2014, the accused had raised concerns about marrying the complainant on the ground of her caste. Even thereafter, there was physical relations between them. In October 2015, the accused had sent a message commenting on her caste and even thereafter, they continued to have physical relations. Finally when the complainant in that case came to know that the accused in that case would not marry her, she lodged the complaint. The facts in that case speak for themselves. The relationship was long and was going on for many years. In spite of clear reluctance shown by the accused for getting married, the complainant in that case continued to have physical relations and therefore, the Honourable Supreme Court held that the complainant and the accused had met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant. The accused

had expressed his reservations about marrying the complainant and even thereafter, there was sexual intercourse between them. In this background, it was held that no offence under Section 375 of the Indian Penal Code is made.

The facts in that case are entirely different from the facts of the present case. Learned counsel's reliance on this judgment does not help this case at all. In the present case, the relationship was not that long and his subsequent conduct as mentioned earlier shows his dishonest intention right from the inception. On every such occasion, in the present case, the complaint was emphasising that they should get married first and yet he was forcing himself to have physical relationship. Therefore, the ratio of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another*** (supra) will not be applicable to the present case.

9 In ***Pramod Suryabhan Pawar's*** case (supra), a reference was made to another judgment in the case of ***Anurag Soni Vs. State of Chhattisgarh*** as reported in ***(2019) 13 SSC 1***. In that judgment, it was observed that, if it is established and proved that from the inception the accused who gave promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a

misconception of fact as per Section 90 of I.P.C. and in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of I.P.C. and can be convicted for the offence under Section 376 of I.P.C.”

These observations are applicable to the present case. Full fledged trial is necessary.

10 As far as the case of ***Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and another*** (supra) is concerned, again the facts were very different. In that case, the complainant had stated that for the past one and a half years, the accused use to tell her to marry her. She got influenced by his talks. She voluntarily developed relationship of husband-wife with him. After that, the accused and his family members were refusing to marry her and on that basis the FIR was lodged. The Honourable Supreme Court held that there were no allegations to the effect that the promise to marry was false at the inception. On the contrary, from the FIR, it appeared that it was subsequent refusal on the part of the accused to marry the complainant, which gave rise to registration of the FIR.

Again the facts in this case are vastly different. The complainant in that case had admitted that she voluntarily developed relationship of husband-wife with the accused and only subsequently,

the accused therein had refused to marry her. In the present case before us, it never was the case that the informant had treated the applicant as her husband. In fact, the applicant saw to it that she did not get married with anybody till his desire was fulfilled. Only after exploiting her on those occasions, he finally refused to marry her for no reasons. Therefore, it cannot be said that the applicant had no intention to deceive her right from the inception. His subsequent conduct and the entire history of their relationship shows that the applicant was never honest in his intention to marry her. He always called her to his house and at different places on some false pretext and in spite of her clear resistance and strong indications not to have physical relations, he forced her to keep those relations on the false promise of marriage. Thus, this is a case where trial needs to proceed and the informant needs to give her side of story, which will have to be tested during full-fledged trial. This is not a case where trial can be stopped at the inception by quashing the proceedings. In view of this discussion, no case for quashing of the proceedings is made out. The offence is serious. There are clear allegations against the applicant. The application is therefore, dismissed.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

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