

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 CRIMINAL APPLICATION NO. 2173 OF 2020

VIKRAM S/O ASHOK GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Adhav D. R.
APP for Respondent No.1-State : Mr. S. D. Ghayal
Advocate for Respondent No.2 : Mr. D. A. Madake (appointed)

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 12th JANUARY, 2022

PER COURT:-

1. Heard finally with consent at admission stage.
2. the applicant-accused in seeking quashing of the proceedings bearing R.C.C. No. 245 of 2020 in connection with Crime No. I-29 of 2020 for the offence punishable under Section 376, 323, 506, 109 and 34 of IPC.
3. Learned counsel for the applicant submits that even if the complaint is accepted as it is, no case is made out against the applicant. Learned counsel submits that respondent no.2-informant is a married woman and in the year 2019, she had fallen in love with

the present applicant. In the month of January 2019, when her husband had gone for work at some other place, the informant herself had called the present applicant in her residential house and thereafter there were consensual relations between them. However, thereafter, the husband had suspected about it. Consequently, in the month of August 2019, respondent no.2-informant had gone to her parents' house. On 26.08.2019 at about 09.00 a.m., the applicant allegedly made a phone call to her and thereafter both of them went to Alandi and performed marriage in one Joshi Mangal Karyalaya in presence of two witnesses. Further, they had started residing at village Pargaon Khandala, District Satara in one rented room. The prosecutrix has for no reason alleged that the applicant has performed sexual intercourse with her against her will. Learned counsel submits that the complaint came to be filed on 14.01.2020 and the supplementary statement of respondent no.2-informant came to be recorded on 17.01.2020 wherein she has taken a U-turn and made allegations against the applicant to the effect that he has snapped her photographs while she was taking bath and on the basis of those photographs, has committed rape on her by threatening her. It is also alleged that the applicant, by giving threats to kill her son aged one and half years, has committed rape on her.

4. Learned counsel for the applicant submits that at the time of passing of bail order dated 13.03.2020 in Bail Application No. 197 of 2020, there is no reference to this supplementary statement. Learned counsel submits that it is doubtful as to whether the supplementary statement dated 17.01.2020 was in existence at the time of passing of the order dated 13.03.2020 by this Court.

5. Learned counsel appointed to represent respondent no.2-informant submits that the informant in her supplementary statement has made serious allegations against the applicant. At this stage, no inquiry can be conducted about the genuineness of those allegations. However, there is a triable case against the applicant. There is no substance in this criminal application and the same is liable to be dismissed.

6. We have also heard learned APP for the State. We have inquired learned APP as to whether the mobile handset of the applicant-accused was seized and whether any investigation has been done of his mobile handset. Learned APP submits that though the mobile handset of the applicant-accused was seized during investigation, however, there is no further investigation in respect of the said handset. Learned APP submits that in terms of the

supplementary statement of respondent no.2-informant, there is a triable case against the applicant. This application is liable to be dismissed.

7. We have carefully perused the charge-sheet, particularly the complaint of respondent no.2-informant. It appears from the allegations made in the complaint that there were consensual relations between respondent no.2, who is a married woman, and the applicant. On the other hand, as stated in the complaint dated 14.01.2020, respondent no.2-informant had called the applicant at her residential house in the absence of her husband and then they had sexual intercourse by consent. There is no reference at all about any threats given by the applicant. We have also gone through the statement of the husband of respondent no.2-informant and the other relatives from her husband's side. The husband of respondent no.2-informant and her father-in-law and mother-in-law have stated that respondent no.2-informant used to talk with the applicant on phone. According to them, respondent no.2-informant has informed to them about her relations with the applicant. Though respondent no.2-informant has left her parents' house and joined the company of the applicant, there is no statement of the parents of respondent no.2-informant.

8. We have carefully gone through the bail order dated 13.03.2020 in Bail Application No. 197 of 2020. This Court (Coram : Mangesh S. Patil, J.) has released the applicant on bail by observing that considering the allegations in the FIR coupled with the fact that even a statement of the prosecutrix has been recorded under Section 164 of Cr.P.C., the applicant cannot be allowed to be confined in jail. In the entire bail order there is only reference to the allegations made in the complaint dated 14.01.2020. Even the learned APP that time has not referred the supplementary statement of respondent no.2-informant allegedly recorded on 17.01.2020.

9. Apart from this, even if the allegations made in the complaint are read with the supplementary statement, to continue with the prosecution would be abuse of the court process. There were consensual relations between the applicant and respondent no.2-informant. There are no allegations whatsoever in the complaint dated 14.01.2020 indicating thereby that the applicant committed rape on respondent no.2-informant. So far as the allegations made in the supplementary statement are concerned, there is nothing in the charge-sheet to substantiate those allegations except bare statement of respondent no.2-informant. Further, no one from the husband's side has supported the informant in any manner even though the

informant allegedly joined the company of the applicant under threats. Thus, considering the entire aspect of the case, in our considered opinion, there is no triable case against the applicant. Hence, the Criminal Application is hereby allowed in terms of prayer clause "B". The Criminal Application is accordingly disposed off.

10. We quantify the fees for the appointed counsel at Rs.3,000/- (Rupees Three Thousand only) to be paid by the High Court Legal Services, Sub-committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)