

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL APPLICATION NO. 2884 OF 2021
WITH APPLN/2941/2022 IN APPLN/2884/2021

KIRAN S/O UTTAM MASKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Pravin Waghmare h/f Mr. Pravin Kamble
APP for Respondent No.1-State : Mr. S. J. Salgare
Advocate for Respondent No.2 : Mr. R. J. Nirmal (appointed)

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

DATED : 12 OCTOBER 2022

PER COURT :-

1. Criminal Application No. 2941 of 2022 for production is allowed.
2. We have heard both the sides extensively.
3. The applicant is seeking quashment of crime no. 345 of 2021 registered with Shivaji Nagar Police Station, Nanded for the offence punishable under Section 376(2)(n) of the Indian Penal Code on an FIR lodged by the respondent no.2 herein.

4. Respondent No.2 alleges that she was already married and had disclosed this fact to the applicant. Still, he promised to marry her and established sexual relations but subsequently resiled from his promise.

5. The learned Advocate for the applicant submits that accepting the averments in the FIR on their face value, the respondent no.2 was already married and the marriage between the applicant and her was not legally possible. It cannot be said to be 'misconception of fact' or the applicant having subjected her to some misrepresentation. He would further submit that respondent no.2 had willingly been in sexual relation with the applicant. Even she had filed a proceeding against him under Section 125 of Cr.P.C. claiming maintenance in the Family Court at Nanded bearing petition no. 30 of 2022 averring that she was having these illicit relations since 2013. She also asserted about a marriage between the two having been solemnized on 08.11.2019 and all the relatives of both the sides were aware of their relations. He would submit that even the FIR has been lodged with a vengeance when both of them parted ways. It would be sheer abuse of the process of law if the applicant is made to face the trial on the basis of such concocted FIR.

6. The learned APP and the learned Advocate Mr. R. J. Nirmal for respondent no.2 strongly oppose the application. They submit that at this juncture, no threadbare scrutiny of the material should be undertaken. The FIR specifically alleges about the applicant having promised to marry and subsequently resiled from the promise. She was subjected to misrepresentation and the applicant has taken advantage of her plight to satisfy his lust. A fair opportunity needs to be given to the Investigating Officer and the prosecution to establish the offence.

7. The Supreme Court in a catena of cases has had an occasion to respond to similar set of facts wherein a man and a woman indulge in consensual relationship for number of years and the FIR is lodged by the woman after they part ways for whatever reasons. In the case of ***Pramod Suryabhan Pawar v. State of Maharashtra and Another; (2019) 9 SCC 608***, in para 18, the Supreme Court has observed as under:

“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."

8. Even according to the allegations in the FIR, in spite of being aware that she was already married, she had established sexual relations with the applicant and now she is alleging about he having promised her to solemnize marriage and under that pretext, has indulged into sexual relationship. When she was already married and when the marriage between the two was not possible, it cannot be said that the applicant had given some false promise of marriage or had made some misstatement of fact.

9. Apart from the above state of affairs, as is pointed out by the learned Advocate for the applicant, the respondent no.2 has also filed a proceeding for maintenance under Section 125 of Cr.P.C. against the applicant in the Family Court at Nanded, wherein she claimed about the marriage between the two having taken place on 08.11.2019. In the averments in that application, she has also specifically asserted that she was having illicit relations with him

since 2013 and the relatives of both the sides were aware of it since inception.

10. In view of such peculiar state of affairs, according to us, it would be sheer abuse of the process of law to allow prosecution of the applicant.

11. The case is squarely covered by the guidelines in the matter of *State of Haryana and others v. Ch. Bhajan Lal and others* ; AIR 1992 SC 604.

12. The application is allowed.

13. Crime No. 345 of 2021 registered with Shivaji Nagar Police Station, Nanded for the offence punishable under Section 376(2)(n) of the Indian Penal Code is quashed and set aside.

14. Mr. R. J. Nirmal, learned Advocate was appointed to represent respondent no.2. The High Court Legal Services Sub Committee to pay his fees as per rules.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]