

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

CRIMINAL APPLICATION NO. 2305 OF 2021

Shrikant s/o Vikram Ingole,
Age : 27 years, Occu. Service,
R/o. Savergaon Bangla,
Tq. & District Hingoli.

...Applicant

Versus

1. The State of Maharashtra,
2. Police Station In-charge,
MIDC Waluj Police Station,
Waluj, Aurangabad.

3. XYZ

...Respondents

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Mr. C. D. Fernandes, Advocate for the Applicant
Mr. S. D. Ghayal, APP for respondent/State
Mr. F. R. Tandale, Advocate for respondent no. 3

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

RESERVED ON : AUGUST 19, 2022
PRONOUNCED ON : SEPTEMBER 19, 2022

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.]: -

1. By invoking the inherent powers under Section 482 of the Code of Criminal Procedure [hereinafter referred to as 'Cr.P.C.'], the applicant has prayed for quashment of the FIR lodged against him and by way of amendment, after filing of the charge-sheet, the entire proceedings also.

2. The applicant is the original accused. Present respondent no. 2 is the original informant-prosecutrix, who filed FIR No.760/2021 against the present applicant with MIDC Waluj Police Station for the offences punishable under Sections 376(2)(n), 323, 504, 506 of the Indian Penal Code. Now the investigation is over and R.C.C. No. 381 of 2021 has been filed before learned Judicial Magistrate First Class, Aurangabad.

3. Learned advocate for the applicant has submitted that perusal of the FIR as well as the entire charge-sheet would show that the informant who is a major lady, was in consensual relationship with the applicant. Her husband had expired in 2013 and she has two children. She was working in the same company where the applicant was working. She then states that the applicant used to take tiffin from her and then the acquaintance developed. According to her, the applicant had given some false information about himself and by giving promise to marry, had established sexual relationship. He had also taken an amount of Rs.3.00 lakhs from the prosecutrix on some or the other pretext and continued to have sexual relationship with her. When she started asking him as to when he is going to perform marriage with her, he used to avoid. Thereafter, she came to know on 09.04.2021, from the younger brother of the applicant that, the applicant is performing marriage with another girl. The informant had even gone to the venue of the marriage and when asked as to why he is not performing marriage with her, he asked her to leave the place and also promised that he would return her amount. He had undertaken to bear the expenses of education of her children and she

then states that she returned home. But thereafter also, when he did not keep promise, she lodged the report. These contents would show that the relationship between them was mutually agreeable. The medical evidence is not supporting the prosecution. The applicant is not denying the relationship but since it was consensual, it does not fulfill the ingredients of Section 375 of the Indian Penal Code. Statements of witnesses would clearly show that the sexual relations between the applicant and the prosecutrix were consensual. Further the statement of the daughter of the prosecutrix shows that since the amount has not been returned by the accused, informant has lodged the FIR. Her statement rather discloses that even the younger brother of the applicant was residing with them and when the applicant had met informant after the lockdown in 2020, the prosecutrix put a proposal before applicant that either he should return the amount of Rs. 3.00 lakhs or give permission for the marriage between her daughter and the brother of the applicant. In view of this proposal, the daughter of the prosecutrix as well as brother of the applicant gave consent for the marriage. Similar statement has been given by the son of the prosecutrix. It would be futile exercise to ask the applicant to face the trial when the basic ingredients of the offence are not made out.

4. Learned advocate for the applicant has relied on **Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and Ors.** reported in AIR 2019 SC 327, wherein it has been observed in paragraph nos. 8 and 20, which reads thus;

8. 'It was well settled that, exercise of powers under Section 482 of the Cr.P.C. is the exception and not the rule. Under this

section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure ends of justice. But the expressions "abuse of process of law" or "to secure ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.'

20. 'There was a clear distinction between rape and consensual sex. Court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any *mala fide* intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the Indian Penal Code'.

5. Further reliance has been placed on **Pramod Suryabhan Pawar Vs. The State of Maharashtra and Ors.** Reported in AIR 2019 SC 4010. It has been observed thus;

16. 'Where the promise to marry was false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there was a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a

promise could not be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it.'

20. The allegations in the FIR did not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There was no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure to fulfill his promise made in 2008 not be construed to mean the promise could itself was false. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements were accepted in totality, no offence under Section 375 of the IPC has occurred.'

6. Further reliance has been placed on **Sonu vs. State of Uttar Pradesh and Ors.** reported in AIR 2021 SC 1405, which is on the similar line.

7. Per contra, learned APP and learned advocate for respondent no. 3 – original informant strongly opposed the application and submitted that the contents of the FIR which are supported by the statement of the prosecutrix under Section 164 of the Cr.P.C. would clearly show that initially faith was generated by the applicant by his acts and thereafter when faith was reposed in him, promise to marry followed and then the physical relations have been established. That was also further followed by taking money from the prosecutrix. The applicant had every knowledge that he will not be able to fulfill the promise which he is giving to the prosecutrix. The trial will clarify the further position. The applicant has not returned the said amount also and, therefore, it may lead to addition of another offence also.

This cannot be said to be that rarest of the rare case where the inherent powers of this Court should be exercised.

8. In view of the fact that the contents of the FIR are already narrated, they are not reproduced but suffice it to say that the informant–prosecutrix is a 35 year old lady having two daughters and a son. If we consider the age of the daughter when her statement was recorded, it is 17 years. Another daughter is aged 15 years. Her husband had expired in 2013 and she came in contact with the applicant in 2015. The chronology is then required to be considered. She has stated that she had helped the applicant when he became ill. She had given the medical treatment and care after operation also. According to her, some different story was told about the family background by the applicant but then the applicant had told her that she should allow him to reside with her as he wanted to appear for the UPSC exam and after the exam is cracked successfully, he would perform the marriage. It appears that she permitted him to stay with her and then they had sexual intercourse. Under the pretext that he wants to go to Delhi for UPSC class, he had taken from her an amount of Rs. 3.00 lakhs. He used to come from Delhi occasionally and according to her, they used to have physical relations. After one year, he returned and he was diagnosed with Tuberculosis (T.B.). Again the informant says that she had looked after him. The FIR has been lodged in 2021. The relationship had started from 2015. How much she could have relied upon him is a question but then her FIR would indicate that periodically whenever he used to come, there used to be physical relations between them.

9. Statement of witnesses would show that the witnesses who were residing in the neighbourhood were given an impression that the applicant and the informant would be performing marriage. Then there are statements of the children of the prosecutrix. Statement of the elder daughter of the prosecutrix would show that she was not residing with her mother but whenever she used to come to meet her mother, the mother would introduce the applicant as her brother. Then the daughter states about the proposal put by the applicant regarding the marriage between her and the brother of the applicant, which appears to have been accepted by the daughter. When and in what manner the brother of the applicant was introduced is a question as there is absolutely no reference to the same in the FIR as well as statement of prosecutrix under Section 164 of the Cr.P.C. It appears that another daughter who is aged 15 years and son aged 12 years were residing with the relative of the prosecutrix. Prosecutrix has not stated as to why the children were not residing with her but then both these witnesses have also stated that they were knowing the applicant who used to come to their house and reside with them but it appears that the applicant was never introduced to them as the person who would marry the mother. Another daughter in clear terms says that her elder sister is going to perform marriage with the brother of the applicant. Therefore, taking into consideration all these aspects, it appears that the relationship between the applicant and the prosecutrix was consensual in nature. The ratio laid down in the aforesaid authorities is definitely applicable here.

10. From the entire reading of the FIR as well as the proceedings, we can say that the ingredients of the offences with which the applicant has been chargesheeted are not attracted at all. When the ingredients are not attracted or in other words if the offences are not even prima facie made out against the applicant after considering the entire material; it would be the futile exercise to ask the applicant to face the trial. The inherent powers of this Court under Section 482 of the Cr.P.C. will have to be exercised under these circumstances.

11. Recently, in **Wyeth Limited and Ors. Vs. State of Bihar and Anr.** reported in 2022 Live Law (SC) 721, (decided on 11.08.2022), the Hon'ble Supreme Court has held "if no offence is made out by a careful reading of the complaint, the complaint deserves to be quashed". Though the said case was arising out of a commercial transaction, those observations are applicable to this case also. Hence, following order.

ORDER

[i] The Criminal Applications stands allowed.

[ii] The FIR vide C. R. No. 760/2021 registered with M.I.D.C. Waluj Police Station, Aurangabad and the charge-sheet vide R.C.C. No. 381/2021 before Judicial Magistrate First Class, Aurangabad under Section 376(2)(n), 323, 504, 506 of the Indian Penal Code as well as if it has been committed to the Court of Sessions then the proceedings before the Sessions Court stand quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE