

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

CRIMINAL APPLICATION NO. 2423 OF 2020

Shaikh Pasha s/o Shaikh Hasham,
Age 39 years, Occ. Agri,
R/o Telgaon Naka, Idgah Road,
Beed Tal. & Dist. Beed.

... Applicants.

Versus

1. The State of Maharashtra,
Through Police Inspector,
Peth Beed Police Station,
Taluka & District Beed.

2. XYZ

... Respondents

.....

Mr. Amol R. Gaikwad, Advocate for the Applicant.

Mr. R. D. Sanap, APP for Respondent No.1-State.

Mr. Chaitanya V. Dharurkar, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 06.12.2022

PRONOUNCED ON : 19.12.2022

JUDGMENT (ABHAY S. WAGHWASE, J.) :

1. The FIR at the instance of respondent no.2 bearing No. 182 of 2020 registered with Peth Beed Police Station, Taluka and District Beed for the offence punishable under Sections 376 and 506 of the Indian Penal Code (for short, "IPC") and the consequential proceedings arising out of it, are both sought to be quashed by the applicants herein praying to invoke inherent

powers of this Court under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.").

FACTS IN BRIEF

2. Respondent no.2 set law in motion informing Peth Beed Police Station that the accused-applicant was a friend of her husband and was regularly accompanying her husband to their house. Accused-applicant was taking chances to talk to her on one or other count. According to informant, in September-October 2015, finding her alone in the house, he entered the house on the pretext of some talks and then threatened her and had forcible intercourse with her. According to her, because of the threats, she did not inform anyone. For the entire year 2015-2016, taking disadvantage of her loneliness in house, he used to have forcible sexual intercourse. According to her, her husband suspected about it and therefore, when he questioned her, she disclosed him that accused-applicant used to have forcible sexual intercourse with her. On getting knowledge about it, her husband finally gave her divorce on 21.08.2016. Thereafter, she claims that accused-applicant assured to marry her and took her to an Advocate and some writing work was done on a bond paper. Thereafter, assuming her to be wife of applicant, she moved with him to various places. According to her, they both lived together and posed themselves to be husband and wife. Subsequently, he started avoiding her. Thereafter, apart from seeking maintenance, she lodged the above FIR on the strength of which, Peth Beed Police Station registered crime

for above offence and police machinery swung into action and carried out investigation and filed charge-sheet.

The above crime as well as charge-sheet arising out of the same, both are now sought to be quashed at the hands of this Court by way of instant proceedings.

SUBMISSIONS

3. Learned counsel for the applicant, in support of relief, has pointed out that informant was already a married lady with children. That there is no dispute that present applicant was friend of her husband. That initially there was mere acquaintance, but subsequently there were several consensual sexual encounters between them. There was no threat or forcible sexual intercourse by the applicant with her. Rather according to him, all episodes were with consent. He submitted that present attempt of lodging false FIR is with mere intention to blackmail the applicant. That, informant is habitual blackmailer. Even her father has admitted about her said conduct. He pointed out that even present applicant had instituted proceedings for offence under Section 420 of the Indian Penal Code (for short, "IPC") against her. He took us through the papers to that extent placed on record and would add that probably getting annoyed by the same, with oblique motive, instant FIR has been lodged. He also submitted that several proceedings were instituted by the informant but she herself withdrew the same. That there was no offence as alleged in the FIR

and as the same is with ill motive and after inordinate delay of two years, he submits that, in the light of such material on record, the said FIR and the investigation in consequence of it needs to be quashed and set aside.

4. While opposing the above application, learned APP would submit that the offence is serious. On the pretext of promise to marry, the applicant had indulged in several sexual encounters by threatening her. He submits that taking disadvantage of loneliness of the informant, the applicant, who was friend of her husband, threatened and had forcible relations with her. When this came to the knowledge of her husband, he gave her *talaq*. It is pointed out that thereafter applicant assured to marry her but did not keep his promise and time and again, had forcible relations with her. That, FIR is full of allegations about forcible sexual intercourse. There is no reason to disbelieve the informant. According to him, there was no consent at any point of time. He submits that as the applicant backed off from his promise, informant was constrained to file FIR. Investigation is over. According to learned APP, there is sufficient material for trial and hence he prays to dismiss the application.

5. Learned counsel for respondent no.2 also opposed the application on similar grounds emphasizing that taking disadvantage of being friend of husband of informant, applicant-accused ravished her several times, initially by threatening and subsequently, taking disadvantage of her loneliness and

then as a divorcee. That, the informant has narrated all the instances in detail in her FIR. Investigation was carried out and the same is completed which also reveals complicity of the applicant. Therefore, with such serious allegations, it is his submission that applicant must face trial and hence he prays to dismiss the application.

6. Before advertng to the penal section for which the applicant is booked, it would be appropriate to give brief account of settled legal position and the landmark judgments on the point of scope and exercise of the inherent power under Section 482 of Cr.PC.

In the landmark case of *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*, reported in *(2007) 12 SCC 1*, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.PC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under section 482 of Cr.PC. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the

court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

In the case of ***Mahendra K.C. Vs. State of Karnataka and Another;*** (2022) 2 Supreme Court Cases 129, the Hon’ble Apex Court in para No.19 observed as under:

“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In ***State of Orissa v. Saroj Kumar Sahoo; (2005) 13 SCC 540***, a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

7. We have heard each side to their satisfaction. We have also carefully examined the allegations levelled in the FIR and also the material gathered by the investigating machinery upon investigation. There is no dispute that the applicant was friend of informant's husband and a regular visitor to informant's house. According to the informant, applicant used to seek opportunities to approach her and advanced her on the pretext of talking and subsequently, it is alleged that once finding her alone, by issuing threats he forcibly had sexual intercourse with her. Informant claims that out of fear she did not disclose it to anyone and therefore, taking disadvantage of it, accused repeatedly indulged in forcible intercourse with her.

The FIR shows that such relations which commenced from somewhere around September-October 2015, had lasted till lodgement of the FIR. No doubt, the informant has given instances of places where he took her, however, it is to be borne in mind that in spite of being allegedly ravished during subsistence of her marriage, she has not informed it to her husband. It seems that only when her husband suspected about her conduct and behaviour, at such time she seems to have disclosed about forcibly being raped. According to her, because of it, her husband gave her divorce on 21.08.2016. At such point of time, informant claims that, present applicant assured to marry her. He thereafter took her to an Advocate and some writing work was done on a bond paper. Informant claims that after such procedure was followed, she believed

herself to be wife of present applicant.

It is to be noted that she was already a full grown lady who was mother of children and moreover a divorcee. Therefore, it is surprising to find her state in FIR that she believed herself to be wife of the applicant and thereafter spend further with him. It seems that thereafter, there is no utterance about she being forced upon by the applicant. Rather, she claims that she lived with him and they posed themselves as husband and wife and physical intimacy continued for more than one and half year or so. She claimed maintenance from applicant in the capacity of his wife.

8. Specific case tried to be put forth by learned counsel for the applicant is that, as the applicant lodged a complaint against the informant for cheating, the instant FIR is a counterblast to the same. Documents to that extent are also finding place in the papers before us. Such submissions are not countered nor refuted by learned counsel for the informant.

SUMMATION

9. As discussed above, it is clearly emerging that except initial sexual encounter which allegedly took place in September-October 2015, subsequently there are no allegations about being threatened or forcibly ravished. Leaned APP as well as learned Advocate for the informant would urge that accused applicant promised to marry informant and believing him,

she spend time with him, however, applicant accused did not keep his word and therefore FIR was lodged. Thus, the fundamental ground raised before us is that only because of promise of marriage, informant had submitted herself to accused.

10. In the light of such submissions, it would be profitable to refer to the ruling of the Hon'ble Apex Court in the case of **Sonu alias Subhash Kumar v. State of Uttar Pradesh and another** ; 2021 SCC OnLine SC 181. In said ruling, in para 8 to 10, there are observations in the backdrop of seeking sexual favours after assuring to marry. We quote the said observations which are as under:

“8. The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

- (I) The relationship between the appellant and the second respondent was of a consensual nature;*
- (ii) The parties were in the relationship for about a period of one and a half years;*
- and*
- (iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.*

9. In *Pramod Suryabhan Pawar (supra)*, while dealing with a similar situation, the principles of law which must govern a

situation like the present were enunciated in the following observations:

“Where the promise to marry is 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 is a “misconception of fact” that vitiates the woman’s “consent”. On the other hand, a breach of a promise cannot 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...”

10. *Further, the Court has observed:*

“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.”

11. Bearing in mind the above settled legal position and reverting to the facts of the case in hand, we are of the considered opinion that here also, the informant has alleged that applicant-accused assured to marry her. Therefore, as such, there was no promise to marry at all. In the light of such material on record, it is improper to attribute any false promise or cheating by promising

to marry and thereafter seeking consent to maintain physical relations. On taking survey of entire material available before us, we are more than convinced that whatever intimacy or relations and sexual encounters allegedly took place between informant and applicant and moreover, which had spread for a span of almost two years, were nothing but consensual. The FIR about the instances which began in September-October 2015 has been reported to the police directly on 05.07.2020 i.e. almost after four to five years. The informant herself has admitted that she lived and moved with the applicant as his wife. Consequently, there is room to infer that the FIR is with oblique motive and there is substance in the case of applicant that the FIR is offshoot of FIR at his instance against informant for commission of offence under Section 420 of IPC.

12. Time and again the Hon'ble Apex court had reiterated that powers under Section 482 of Cr.P.C. must be exercised in two contingencies, i.e. *firstly*, to prevent the abuse of process of law and *secondly*, for securing the ends of justice. In the light of such precedent, here we find the case in hand also to be *prima facie* disclosing initiation of criminal proceedings which apparently amounts to abuse of process of law. If such proceedings are allowed to be continued, it would definitely render injustice to the applicant. Therefore, for securing the ends of justice, we are inclined to grant the relief as prayed and accordingly proceed to pass following order:

ORDER

- I. The application is allowed in terms of prayer clauses [B] and [B-1].
- II. The application is accordingly disposed off.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE