

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

930 CRIMINAL APPLICATION NO.3158 OF 2021

SHIVSHANKAR PURUSHOTTAM INGLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. M.B. Sandanshiv, Advocate holding for
Mr. S.Y. Shinde, Advocate for applicant.
Smt. P.V. Diggikar, A.P.P. for respondent No. 1- State.
Mr. Subhash Nade, Advocate for respondent No. 2.

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CORAM : **V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 5th May 2022.

P.C. :

1. Heard finally with consent at the admission stage.
2. The applicant is seeking quashing of the proceedings bearing Sessions Case No. 305/2021 pending before the Sessions Court, Aurangabad for the offences punishable under Sections 376 and 504 of the Indian Penal Code arising out of F.I.R. bearing Crime No. 81/2020 registered with Kranti Chowk Police Station, Aurangabad on the ground that the parties have arrived at amicable settlement.

3. Learned Counsel for the applicant and learned Counsel appearing for respondent No. 2 submit that respondent No.2 knew each other from the year 2016. There was a love affair between them. There was consensual physical relations between them. However, due to certain unavoidable circumstances, the applicant could not perform marriage with respondent No. 2. Learned Counsel for the parties submit that the applicant and respondent No. 2 are belonging to different castes and hence both the families are not giving consent to the marriage. Consequently, out of misunderstanding the respondent No. 2 has lodged complaint against the applicant. Learned Counsel for the respondent No.2 submits that respondent No. 2 has filed consent affidavit to that effect and in terms of the settlement between them, she is not interested to prosecute the complaint / F.I.R.

4. We have also heard learned A.P.P. for respondent No. 1 – State.

5. We have carefully gone through the allegations made in the complaint. It appears that the aforesaid F.I.R. came to be registered on the basis of the complaint lodged by

present respondent No. 2. It has been specifically stated in the complaint that the applicant and respondent No. 2 had fallen in love with each other and the applicant had given her the promise of marriage. There were consensual sexual relations between them for the period from 2016 till 18.03.2020. It has been alleged in the complaint that the applicant has given false promise of marriage to respondent No.2 and under that false promise of marriage, the applicant had committed rape on her from time to time. However, at present the parties have arrived at amicable settlement. As per the affidavit filed by respondent No. 2, the applicant could not perform the marriage with respondent No. 2 due to certain unavoidable circumstances. Respondent No.2 has also accepted the same and further stated in the affidavit that due to different castes both families are not ready for their marriage. Respondent No.2 is at present 22 years of age. Even in the year 2016 she was major, since the charges under the provisions of the Protection of Children from Sexual Offences Act have not been levelled against the applicant in the charge-sheet.

6. In the case of *Pramod Suryabhan Pawar vs. State*

of Maharashtra reported in **(2019) 9 SCC 608**, the Supreme Court in para 18 has made the following observations :

“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.”

7. In the instant case, respondent No. 2 has accepted in her affidavit that the applicant has not given false promise of marriage, however, he could not perform the marriage due to some unavoidable circumstances. Respondent No.2 is a major girl and she understands the consequences of her consensual relations with the applicant right from year 2016 till 2020.

8. In the case of ***Gian Singh vs. State of Punjab and***

others, reported in **(2012) 10 SCC 303**, in para 48 the Supreme Court has referred the view taken by the five-Judge Bench on the Punjab and Haryana High Court in *Kulwinder Singh and others vs. State of Punjab and another* to consider the question as to whether the High Court has power under Section 482 of Cr.P.C. to quash the criminal proceedings or allow the compounding of the offences in the cases which have been specified as non-compoundable offences under the provisions of Section 320 of Cr.P.C. Further, the Supreme Court has also referred few decisions on this point and also referred the guidelines framed in the case of *Kulwinder Singh and others vs. State of Punjab and another*. Guideline No. 21 (e) which is relevant for the present discussion, is reproduced below :

“21. (e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-

compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable”.

9. In terms of clause (e), the Supreme Court has considered certain categories of the offences which falls under the prohibited category to exercise the powers under Section 482 of Cr.P.C. for quashing on settlement. The Supreme Court has classified the offence of rape in the prohibited category. However, in clause (e) the Supreme Court has specified that if there are clear-cut allegations of rape, then the same are also fall in the prohibited category. In the instant case, there were consensual sexual relations between the parties and the applicant could not perform the marriage with respondent No. 2 due to certain unavoidable circumstances. Respondent No. 2 has also accepted that there was no false promise of marriage.

10. Thus, considering the entire aspect of the case and in view of the ratio laid down in the above-cited cases, we are inclined to quash the proceedings on settlement. We are satisfied that the parties have arrived at settlement voluntarily. Hence, the following order.

ORDER

- (i) Criminal Application is allowed in terms of clause [B] subject to costs of rs. 10,000/- (Rupees Ten Thousand) to be deposited before this Court within four weeks. On depositing the costs before the Court, the same shall be paid to the Library, Advocates Association of High Court Bombay, Bench at Aurangabad.
- (ii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)