

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.363 OF 2022

Rushikesh Vasantryao Kumbhar,
age 36 years, Occ.Service,
R/o.Vinayak Nagar, Islampur, Tal.Walava,
District Sangli.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satyavrat Joshi i/by Mr.Nitesh J. Mohite, Advocate for applicant.
Mr.Arfa Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd September 2022

PC :

1. The applicant is aggrieved by order dated 22nd August 2022 passed by learned Additional Sessions Judge, Sangli in Sessions Case No.32 of 2016 thereby rejecting the discharge application preferred by the applicant.

2. The case of prosecution is that the prosecutrix was working in Panchayat Samiti at Jath. Applicant was working as Agricultural Officer. There was acquaintance between both of them, which turned into love affair. The co-accused Basavraj Handgi was working as Peon in department of applicant. The victim has alleged that applicant-accused had assured that he would marry her. She allowed him to have physical relationship under the impression that he would perform marriage with her. On 7th July 2014 the applicant performed marriage in presence of relatives of both the sides at the residential premises of victim. They continued to reside together and had physical relationship on several occasions. In 2015 the applicant

was in search of bride for him and his marriage was fixed with another girl. The victim came to know about the fraud practiced upon her and she questioned the applicant. She was threatened by the applicant of dire consequences. She lodged the first information report on 1st August 2015 with Jath Police Station for offences under Sections 376(2)(K)(L)(N), 420, 494, 506 of Indian Penal Code. Investigation was conducted. Statements of witnesses were recorded. On completing investigation charge sheet was filed under Sections 376(2)(K)(L)(N), 420, 494, 506, 403, 406, 417, 201 of Indian Penal Code.

3. The applicant preferred application for discharge before the Court of Session u/s.227 of Code of Criminal Procedure. Vide order dated 22nd August 2022 the learned Additional Sessions Judge, Sangli rejected the said application. While rejecting the said application it was observed that applicant had no intention to marry the victim. Applicant arranged to delete the photographs of his marriage with victim from her mobile with the help of accused no.2. The applicant had practiced fraud upon the victim. On 7th July 2014 he managed the so called marriage ceremony but in fact it was not legal marriage, otherwise the applicant would not have resiled from his promise or status as husband of the victim. Since beginning the applicant maintained sexual relations with the victim with fraudulent intention. There are sufficient grounds to proceed against applicant for the offence of rape committed upon the victim.

4. Learned advocate for applicant submitted that no offences are committed by accused-applicant. The Sessions Court has committed an error in rejecting the application for discharge. The charge

against applicant is ground-less and it is not a fit case to proceed against the applicant. He deserves to be discharged from the proceedings. Upon perusal of the FIR and statements of witnesses and documents on record it reveals that complainant was in love with applicant and they they were married on 7th July 2014 in presence of family members. Section 376 of IPC is not attracted. There is no evidence against applicant which suggest that applicant has committed any alleged crime registered against him. The case of prosecutrix is that relationship was consensual. They stayed together. They performed marriage. Hence, the offence u/s.376 of IPC or any other offence registered against applicant are not applicable.

5. Learned APP submitted that at the stage of discharge the Court is required to see that prima facie case is made out. Learned Sessions Judge has rightly rejected the application for discharge. The applicant had played fraud upon the victim. Under the pretext of marriage she was induced to have physical relationship. The conduct of applicant would establish that he had no intention to live married life with victim. He deliberately deleted photographs from the cell phone of victim. The grounds urged by applicant-accused cannot be considered at this stage.

6. The accused no.2 Basavraj Handgi was charged for the commission of offence u/s.201 of IPC alleging that he was working as Peon in the Government Department of accused no.1 and under directions of accused no.1, he took cell phone of victim on 19th December 2014 and did not return it to her. The said accused in connivance with accused no.1 (applicant), with a view to screen the

evidence, took the cell phone from the victim and deleted the photographs of their marriage from the cell phone and did not return the cell phone to the victim. He preferred application for discharge before Sessions Court. The said application was rejected. He had approached this Court by preferring Criminal Revision Application No.251 of 2018. The said application was rejected vide order dated 11th July 2019. While rejecting the said application it was observed that investigating agency has applied Section 201 of IPC qua accused no.2 for surfacing evidence in connivance with accused no.1. Perusal of supplementary statement dated 19th September 2015 of the victim would prima facie indicate that said accused is likely to face charge u/s.420 of IPC.

7. The FIR was registered at the instance of victim on 1st August 2015. It is alleged that she got acquainted with applicant. Both of them were government employees. The applicant expressed his love for her. Both of them fell in love. Their affair was known to accused no.2 Basavraj Handgi who was working as Peon in the government department. The applicant promised the victim that he would marry her. They started residing together. The applicant maintained physical relationship with the complainant without her consent. She insisted for marriage. On 7th July 2014 they performed marriage in the house of victim in the presence of some relatives. The relatives of applicant were not present at the time of marriage. The applicant had continued physical relationship with victim. The victim insisted that the applicant should inform about their marriage to his relatives. He avoided to do so. The victim came to know that applicant is looking out for bride for performing marriage. She questioned him. He started avoiding her. The victim learnt that marriage of applicant

was fixed with one Snehal Kumbhar. She questioned the applicant. He abused her. He told the victim that he used her for physical relationship. He kept on threatening her. The victim informed about their marriage to relatives of the girl with whom the applicant was to perform the marriage. The marriage was broken. Subsequently the victim came to know that applicant eloped with same girl and performed marriage. He kept on threatening the victim. The FIR was registered. The statements of witnesses were recorded. Role of accused no.2 was revealed. Charge sheet was filed.

8. Learned Sessions Judge has rightly rejected the application for discharge. The charge sheet indicate that applicant kept on promising the victim that he would perform marriage with her. Although the victim had stated that marriage was performed in the house, the accused cannot take benefit that offence under Section 376 of IPC is not made out. The legality of said marriage is in question. This fact would be proved during trial. The applicant has played fraud upon the victim. He induced her to have physical relationship with him. They stayed together under the impression that applicant would marry her or that he would marry her at her residence. The Investigating Officer has recorded statements of various witnesses. The accused no.2 and applicant had destroyed the evidence by taking cell phone of victim. The application preferred by accused no.2 who was basically charged for offence u/s.201 of IPC, has been rejected by this Court. The law relating to discharge from criminal prosecution is well settled. Court while considering the question of framing charge u/s.227 of Cr.PC has to see whether prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the

accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. At the stage of discharge the Court is not required to make a roving enquiry.

9. In the present case, prima facie case is made out against applicant-accused. Learned Sessions Court has assigned reasons for rejecting the application for discharge. I do not find any reason to set aside the impugned order. Hence, I pass following order :

ORDER

(i) Criminal Revision Application No.363 of 2022 is rejected and disposed off accordingly.

(PRAKASH D. NAIK, J.)

MST