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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4267 OF 2021**

Ashok Babasaheb Londhe ... Petitioner
Versus
The State of Maharashtra and others ... Respondents

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Mr. Sachin Thorat for the Petitioner.
Mrs. M.H. Mhatre, APP for the Respondent/State.

.....

**CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED : 26 JULY 2022

P.C. :-

1. By this petition, the Petitioner is seeking to quash the FIR bearing C.R. No. 33 of 2021 registered at Manpada Police Station, Thane against the Petitioner for the offence punishable under Sections 376-A, 376(2)(n) and 417 of the Indian Penal Code (for short 'IPC').

2. The Respondent No.2- Complainant filed the FIR stating that she was working as Librarian in the College and there she met the Petitioner, thereafter friendship grew and the Petitioner had promised that he would marry her. It is also stated that the Complainant had told her husband about the relations with the Petitioner and the Petitioner had promised that he would take care of her. Thereafter, she

had narrated the incident occurred on 21 December 2020, which according to the Complainant, the Petitioner committed forceful sexual intercourse. Thereafter, FIR was lodged under Sections 376-A, 376 (2)(n) and 417 of the IPC.

3. The learned Counsel for the Petitioner submitted that there is disparity in age between the Complainant and the Petitioner and the case is not believable. It is submitted that the Complainant was married and therefore there is no question of Respondent No.2 being deceived on the promise of marriage. The learned Counsel submitted that bare perusal of FIR would show that the relationship was with consent and the ingredients of offence as alleged are not made out. The learned Counsel relied upon the decision of the Supreme Court in case of *Sonu @ Subhash Kumar vs. State of Uttar Pradesh*¹.

4. In the FIR, the Complainant has stated that she has told about the relations with the Petitioner to her husband and the Petitioner had promised that he would take care of the Complainant. This is coupled with the fact that the Complainant and her husband had filed petition for divorce by mutual consent bearing Petition No. 726 of 2020 in the Court of Civil Judge, Kalyan. It is stated therein that from 19 May 2019, the Complainant and her husband were staying separately ; their marriage had remained only on paper and they were

1 Criminal Appeal No.233 of 2021 decided on 1 March 2021

accordingly, applied for divorce by mutual consent. After this petition was filed on 28 September 2020, the incident of 21 December 2020 has been alleged. Therefore, the allegation made in the FIR that it was on the promise of marriage is entirely plausible as the Complainant and her husband living separately and they had already moved the petition for divorce jointly and therefore, on the promise of marriage with the Petitioner, the Complainant had given consent as stated in the FIR.

5. As regards the decision in case of *Sonu @ Subhash Kumar* relied upon by the Petitioner, the fact situation is different. In this case, no allegation to the effect that promise to marry given to the girl was false at the inception. In that case certain incident that took place because of which, the accused therein had refused to marry. In those circumstances, the Supreme Court construed the facts of the case and recorded the finding that the relationship of consensual nature do not fall within the ambit of Section 376 of IPC. In the present case, as stated above, it cannot be said that no cognizable offence is made out at all. The arguments of the Petitioner would be considered at the time of trial. Hence, Writ Petition is dismissed.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)