

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 292 OF 2021

Siddharth Kesharao Dhone,
Aged about 25 years, Occ.
Service, R/o. Khapri, Tah.
Karanja, District Wardha.

.....APPLICANT

Vs.

1. State of Maharashtra, through
Police Station Officer, Police
Station, Arvi, District Wardha
2. XYZ
Crime No.456/2020
Police Station, Arvi, Tah. Arvi,
Dist. Wardha.

..... NON-APPLICANTS

Mr. M.M. Ghatode, Advocate for the Applicant.
Mr. T.A. Mirza, Additional Public Prosecutor for the Non-applicant/State.
Mrs. Rani Nitaware, Advocate for the Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 24.03.2022

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of

First Information Report bearing No.456/2020 dated 07.11.2020 registered with non-applicant No.1 – Police Station for the offence punishable under Sections 376(1), 417 and 506 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with accusations that non-applicant No.2 was in love relationship with the applicant No.1 from 2018. It is alleged that the applicant had forcible sexual intercourse with the non applicant no.2 on promise of marriage. It is alleged that the non-applicant No.2 got married thereafter with one Chandrashekhar Shankarrao Ingle. It is alleged that even thereafter, the non applicant No. 2 had physical relationship with the applicant. The First Information Report came to be registered against the applicant on the ground that the applicant failed to fulfill promise of marriage with non-applicant No.2.

5. The applicant has, therefore, challenged registration of the First Information Report by way of filing present application. This Court on 18/02/2021 issued notice to the non-applicant No.2 subject to deposit of Rs.2000/-. Learned Advocate for the applicant states that the amount of Rs.2000/- had already been deposited by the applicant.

6. The non-applicant No.1 – Investigating Agency filed reply stating that there is sufficient material against the applicant which constitutes ingredients of the offence. The non-applicant No.1 has also filed reply.

7. During pendency of the present application, the applicant and non-applicant No.2 have amicably resolved their dispute and the non-applicant No.2 has filed her reply dated 29.11.2021 stating that she has no objection for quashing the First Information Report against the applicant. This Court, on 29.11.2021 directed the petitioner to deposit amount of Rs.10,000/- towards costs and also exempted the non-applicant No.2 from her presence as she was interviewed on that day by this Court. It is stated that in accordance with the order dated 29.11.2021, the applicant had deposited costs of Rs.10,000/- in this Court.

8. We have carefully considered the allegations in the First Information Report along with the reply filed by the non-applicant No.1- Investigating Officer. On careful perusal of reply, it appears that the applicant was in love relationship with the non-applicant No.2 for considerably long time. It appears that in the meantime, non-applicant No.2 got married and thereafter also, the applicant and non-applicant No.2 had physical relationship.

9. In the case of ***Pramod Suryabhan Pawar vs State of Maharashtra and another*** reported in ***(2019) 9 SCC 608*** , while dealing with similar situation, the principles of law which must govern a situation like the present application were enunciated in the following observations.

“16. 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...”

Further, the Supreme Court has observed:

“18. 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.”

10. In view of the authoritative pronouncement of the Hon'ble Apex Court, it appears that the allegations in the First Information Report along with material which has been produced along with reply of non-applicant No.2 shows that the essential ingredients of the offence alleged against the applicant are not fulfilled.

11. The decision of the Hon'ble Apex Court in the case of *Narinder Singh & others Vs. State of Punjab & anr.* reported in *(2014) AIR SCW 2065*, makes it clear that the Court cannot decline to quash the First Information Report merely because the First Information Report incorporates a particular provision which is a serious offence or offence against society. The Court has to make an endeavour to find out whether the information in the First Information Report indeed discloses the ingredients of such offence and the Court can accept the settlement and quash the report/charge-sheet only after the Court is of the opinion that such an offence is unnecessarily incorporated in the First Information Report/charge-sheet.

12. From the perusal of the First Information Report and the material produced in the Court, we are satisfied that the ingredients of the offences under Sections 376(1), 417 and 506 of the Indian Penal Code are not fulfilled. Further, since the

applicant and non applicant No.2 have mutually resolved their dispute, chances of conviction are bleak.

13. In view of the judgment of the Hon'ble Apex Court in the case of Pramod (supra) and Narendra Singh (supra) and the amicable settlement of dispute between the applicant and non-applicant no.2, we are satisfied that there is no impediment in quashing the First Information Report registered against applicant.

14. We therefore pass following order :

First Information Report bearing No.456/2020 dated 07.11.2020 registered with non-applicant No.1 – Police Station against the applicant for an offence punishable under Sections 376(1), 417 and 506 of the Indian Penal Code is quashed and set aside.

The amount of Rs.10,000/- which has been deposited by the applicant in pursuance of order dated 29.11.2021 shall be transferred to the account of High Court Legal Services Sub Committee, Nagpur.

Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.