

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

Criminal Application (APL) No.93 of 2022

Rupesh S/o Laxman Landge

Versus

State of Maharashtra and another

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri G.B. Hemke, Advocate for Applicant

Shri S.D. Sirpurkar, Additional Public Prosecutor for Non-Applicant
No.1 – State.

Shri V.R. Borkar, Advocate for Non-Applicant No.2.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 22nd JUNE, 2022

1. Heard.

2. The applicant is seeking quashing of the crime registered against him for the offence punishable under Section 376(2)(N) of the Indian Penal Code, initially at Police Station Gondia and later on at Police Station Ganeshpeth, Nagpur.

3. There are two grounds taken by the applicant, as submitted by his learned counsel. According to him, no offence of rape is *prima facie* made out against the applicant, as the complainant, an adult woman, was in a relationship with the applicant in the year 2015, and in the year 2016, she learnt about the marital status of the applicant and yet she continued the physical relation with him and this shows that the episodes of sexual intercourse that had happened between the two were the result of consensual act on the part of both the parties.

4. The learned Additional Public Prosecutor for the non-applicant No.1- State submits that the complainant was acting under misconception of fact, as there is specific allegation that the complainant gave her consent to engage herself physically with the applicant on the basis that the applicant made the complainant to believe that he was unmarried and would, on one day, marry with her. In such a case, the learned Additional Public Prosecutor further submits that the trial on merits is necessary. He seeks reliance upon the law laid down in the case of *Pramod Suryabhan Pawar v. State of Maharashtra and another*, reported in *AIR 2019 SC 4010*.

5. In the case of *Pramod Suryabhan Pawar*, cited supra, referring to the case of *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, reported in *AIR 2019 SC 327*, the Apex Court held that an inference as to consent can be drawn if only based on evidence or probabilities of the case. It also held that the material available on record shows that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the Indian Penal Code and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the Indian Penal Code and can be convicted for the offence under Section 376 of the Indian Penal Code.

In the present case also, the intention not to perform the marriage with the complainant can be *prima facie* drawn from the fact that it was impossible for the applicant to perform the marriage with the complainant at the time when he had sexual intercourse with her,

because of the fact that at that time the applicant was already a married person. In fact, later on, the applicant had also admitted his marital status, but went on to mislead the complainant by saying that his wife was suffering from a serious ailment of Leukoderma and she could die any time and that after her death he would perform the marriage with the complainant. Such an assurance, falsely given to the complainant, would only aggravate the offence of rape which appears to have been *prima facie* committed by the applicant. Therefore, there is no gainsaying for the learned counsel for the applicant that there is no material available on record which does not establish *prima facie* an offence of rape against the applicant.

6. The second ground taken by the applicant is that of an amicable settlement between him and the complainant. The learned counsel for the complainant, who is the non-applicant No.2 here, also admits this fact. In support of this, he invites our attention to the reply filed by the non-applicant No.2 in which it is stated that the non-applicant No.2 having reached an amicable settlement with the applicant, has no objection if this application is allowed and the offence of rape registered against the applicant is quashed and set aside.

7. Arriving at such an amicable settlement and giving of no objection by the complainant in this manner is of no consequence for the reason that the offence of rape is not a private offence and it squarely falls within the public domain and, therefore, it is the duty of this Court to consider the seriousness of the allegations and the possible consequences that may arise on completion of the trial.

8. In the case of *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another*, reported in

(2017) 9 SCC 641, the Apex Court held that the nature and gravity of the offence must have been given due regard and it is further observed that heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. It further held that such offences are, truly speaking, not private in nature but have a serious impact upon society. It is also observed that in such cases the decision to continue with the trial is founded on the overriding element of public interest in punishing persons for serious offences. The relevant observations made in the judgment appear in Para 16.6, which is reproduced, for the sake of convenience, as under :

“16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”

9. In the case of *State of Madhya Pradesh v. Laxmi Narayan and others*, reported in (2019) 5 SCC 688, also, a similar law has been laid down by the Apex Court. The Apex Court held that the criminal proceedings arising out of commercial transactions or matrimonial or family disputes when having overwhelmingly and predominantly civil character may be quashed when the parties have resolved entire

dispute amongst themselves. It is further held that such power cannot be used in respect of heinous and serious offences of mental depravity or offences like murder, rape and dacoity, etc., and such offences are not private in nature and have a serious impact on society.

10. The law so laid down by the Apex Court in the aforestated cases, in our considered opinion, applies to the facts and circumstances of the case discussed earlier and, therefore, in our view, this is not a fit case for interference with the registration of crime, it's investigation and prosecution of the applicant as a result of the investigation made against him.

11. The criminal application, therefore, stands dismissed.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar