

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 120/2019.

Mangesh Bhivaji Bhagwat,
Age 36 years, Occupation - Engineer,
resident of Housing Board Colony,
Vaishali Nagar, Nagpur.

... **APPLICANT.**

VERSUS

1.The State of Maharashtra,
through PSO of Police Station
Panchpaoli, Nagpur,
District Nagpur.

2.Amrapali wd/o Prashant Bhoyar
@ Namrata wd/o Munna Bhagat,
Age 46 years, Occupation- Nil,
resident of Plot No.63, C/o. Ashok
Amesar, Sujata Nagar,
Nagpur, District Nagpur.

... **NON-APPLICANTS.**

Mr. P.W. Mirza, Advocate for the Applicant.
Mr.H.D. Dubey, A.P.P. for Non-applicant No.1.
Ms.L.Y. Malewar, Advocate (Appointed) for Non-applicant No.2.

CORAM : VINAY JOSHI, J.

DATE : JULY 13, 2022.

ORAL JUDGMENT :

Heard. Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. This is an application filed under Section 482 of the Code of Criminal Procedure by which the applicant (hereinafter referred to as “**the accused**”), who is arrayed as an accused in an offence punishable under Section 376, 417, 323, 504 and 506 of the Indian Penal Code seeking quashing of the complaint. The complaint is sought to be quashed on the ground that the process of Court has been abused by the complainant with oblique motive. The criminal complaint is conspicuously attended with malafides and the process is malicious, hence, the same is to be quashed to secure the ends of justice.

3. The non-applicant no.2 (hereinafter referred to as “**the complainant**”), is a widow with a child. She claims to have got acquainted with the accused some where in the year 2014. Their

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casual acquaintance has turned into intimacy in which the accused has gained her confidence. They frequented with each other at various places like parks, theaters etc. The accused made a promise that he would marry the complainant and desired to have physical relations with her. On assurance of marriage, they had sexual relations regularly. The accused promised that he would marry the complainant as and when he gets a job. The complainant alleges that time and again the complainant lady lived at his house. She stated that in the year 2014 itself, the accused took her to a lodging house at Ramtek and had sexual relations. In the year 2016 also he took a room in lodging house, where they had sexual relations.

4. According to the complainant, some where in the year 2015, the accused got a job in a highly reputed company namely "Arya Cars" situated at Pardi Naka, Nagpur. The complainant requested to the accused to marry, but, under one or the other pretext he avoided. According to the complainant, the said state of affair continued upto November, 2018. In the meantime they had physical relations on umpteen time. The complainant states that on 02.09.2018, the accused has blocked her phone and flatly refused to

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marry. There was an incident of ruckus for which she filed a written report with the police on 15.09.2018. The complainant states that she has also filed a report about sexual intercourse on false promise, however, the police did not took cognizance, therefore, the private complaint in the Court of the Judicial Magistrate First Class.

5. In the backdrop of the aforesaid allegations, the accused has invoked the inherent powers of this Court by contending that the continuation of the criminal prosecution is a clear abuse of the process of Court. It is submitted that in the situation it is in the interest of justice to quash the entire prosecution to secure the ends of justice. The learned Counsel appearing for the accused would submit that the contents of the complaint even if taken on their face value and accepted in its entirety, it do not prima facie constitute an offence against him. It is submitted that the allegations made in the complaint are absurd and highly improbable. It is submitted that the falsity lies with the complainant lady since inception. It is submitted that though the complainant lady was near about 40 years of age, she has wrongly mentioned her age as 27 years in the complaint to match the situation. In order to support said submission, the

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learned Counsel appearing for the accused has pointed towards the copies of orders as well as verification part of the Writ Petition No.3780/2012, filed by the complainant wherein she has stated her age as 40 years in the year 2012.

6. It is argued that the complainant lady was a widow with a child. She was 40 years of age at the relevant time. As against this, the accused was a bachelor and therefore, there was no possibility of sexual exploitation on promise to marry. There was vast age difference, as the complainant lady was 10 years older than the accused. It is argued that at the most it is a case of consensual relationship which cannot be termed as a criminal offence.

7. In order to falsify the contents of the complaint, it is argued that as per the complainants' own case the accused had sexually exploited her by stating that he would marry as and when he would get job. It is pointed out that as per the complainants own case, in the year 2015 itself the accused got a lucrative job. However, still the relationship continued for next three years. It is submitted that the said aspect which is part of the complainant itself

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falsify that under promise to marry they had relationship. It is argued that if relationship was under promise to marry after getting a job, in that case the complainant would have insisted for marriage in the year 2015, and on refusal would have disassociated herself. I find considerable force in the said contention, as in normal course if accused has refuted from his word, then there was no reason for the complainant to continue the relationship for next three years.

8. The learned Counsel for the accused also criticized the conduct of the complainant lady. She suppressed her real age in the complaint to equate her age with the accused to further the case of false premise. The accused has produced copy of the order passed by this Court in Letters Patent Appeal No.2079/2013, copy of Writ Petition No.3780/2012 to impress that those proceedings were filed by the complainant in her erstwhile name. There are observations in that proceeding that due to mis-behaviour the complainant lady was sacked from her service and there were pending criminal proceedings against her. True, the said aspect does not have a direct nexus with the issue involved in the present case, however, on the point of conduct the said material is pressed into service.

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9. The learned counsel for the accused would submit that in order to establish the case of misconception of facts, something more is required and it has to be shown that false promise has direct nexus. The accused has relied on the decision of this Court in case of **Babasaheb Bhimrao Mogle .vrs. State of Maharashtra – AIR Online 2021 Bom. 3620**, to contend that story of false promise is unbelievable when there was long standing relationship. He further relied on the decision of Supreme Court in case of **Sonu @ Subhash Kumar .vrs. State of Uttar Pradesh – AIR Online 2021 SC 120**, wherein it is observed that in case of relationship of consensual nature, inference about false promise since inception cannot be drawn. The accused has further relied on the off quoted decision of the Supreme Court in case of **Pramod Suryabhan Pawar .vrs. State of Maharashtra – AIR 2019 SC 4010**, in which while considering the similar issue, the Supreme Court has observed that a mere breach of promise cannot be said to be a false promise. While summarizing the position it has been ruled that the promise of marriage must have been a false promise given in bad faith and with no intention of

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being adhered, and the promise must have reasonable nexus with the women's decision to engage in the sexual act. On similar line he relied on the decision of the Supreme Court in case of **Shivshankar @ Shiva .vrs. State of Karnataka and another – (2019) 18 SCC 204**, wherein the relationship continued for 8 years and in such a situation, the plea of offence of rape has been turned down.

10. On the other hand, the learned Counsel appearing for the complainant has strongly opposed this application. It is argued that reading of the complaint itself points out serious allegations about a cognizable case. I was taken through the contents of paragraph nos.5 and 6 of the complaint to contend that the accused knowingly exploited her, and also committed breach of trust. It is argued that when the complaint makes out a case of offence of cognizable nature, the investigation must be carried out. The Court shall not invoke inherent jurisdiction to throttle the process of law at the threshold. The learned Counsel for the complainant has relied on the decision of Supreme Court in case of **Neeharika Infrastructure Pvt Ltd. .vrs. State of Maharashtra and others – 2021 SCC Online SC 315**, to submit that guidelines have been issued to indicate as to how

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the Court shall exercise its inherent jurisdiction. Reliance is also placed on the decision of this Court in case of **Rajesh Sankarsan Tripathy .vrs. State of Maharashtra and another – 2020 All MR (Cri) 2057**, to contend that in similar situation Division Bench of this Court has declined to quash the proceedings. On similar line, my attention is invited to the observations of the Supreme Court in case of **Veena Mittal .vrs. State of Uttar Pradesh and others – Criminal Appeal No.122/2022 decided on 24.01.2022**, wherein it is observed that if the first information report attracts the allegations of an offence of cognizable nature, then the Court is not justified in exercising its inherent jurisdiction.

11. To counter the submission the learned Counsel appearing for the accused has relied on the celebrated decision of Supreme Court in case of **State of Haryana and others .vrs. Bhajanlal and others – 1992 Supp (1) SCC 335**, wherein it is observed that the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of the process of Court or to secure the ends of justice. He

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has attracted my attention towards the parameters laid down by the Supreme Court in said case. While elaborating the scope and nature of inherent power, it is observed that where the allegations made in the first information report or complaint are so absurd and inherently improbable that no prudent person can reach to a just conclusion that there is sufficient ground for proceeding against the accused, then it is to be quashed. Further it is observed that where the criminal proceedings is manifestly attended with malafides and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the same should not be proceeded further. These parameters would squarely apply to the facts of this case.

12. Reverting to the facts of the case, the complainant lady is quite matured 40 years of age, having a child. On the other hand, the accused is stated to be 10 years younger than the complainant. They have long standing relationship for near about 4 years. Though the accused had secured a job in the year 2015, for which he has allegedly delayed the marriage, however, still the relationship

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continued thereafter. A holistic reading of the things prominently indicates that the relationship was out of affection or it can be termed as a love affair. The story as narrated by the complainant is inherently improbable that for years together under the promise to marry the accused has exploited her. It would be an abuse of the process of the Court to allow any action which would result in injustice. The inherent powers are invested with the Court with the purpose and object of advancement of justice. In case the process of Court is sought to be abused, then such attempt shall be thwarted at the threshold. The facts primely persuades to step in to prevent the abuse of the process of the Court.

13. In the result the applicant succeeds. The criminal proceedings namely Criminal Complaint No.3662/2018 pending on the file of the Judicial Magistrate First Class, Nagpur is hereby quashed and set aside.

14. Fees for the appointed Counsel for the non-applicant no.2 be paid as per rules.

JUDGE