

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

CRIMINAL APPLICATION (APL) NO.635/2021

Jitendrakumar s/o Ramadhar Chandrawanshi .vs. State of Maharashtra
and Others.

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

Court's or Judge's orders

Mr. V. S. Mishra, Advocate for applicant.
Mr. M. K. Pathan, A.P.P. for non applicant-State.

CORAM : ROHIT B.DEO & ANIL L. PANSARE, JJ.

DATE : 27.09.2022

The applicant has put forth following
substantive prayer:

“(a) Quash and set aside the Charge sheet dated 17.02.2020 vide Charge Sheet No. 29/2020 registered by Non Applicant No.1 Police Station, Gondia City, District Gondia in Crime No.660/2019 for the offence punishable under Sections 376 (2) (n), Section 417, 506 of the Indian Penal Code, 1860 read with section 3 (1) (R) (S) (w) (i), 3 (2) (5) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.”

2. The first information report indicates that poor lady (non applicant no.2), who is resident of Waraseoni, Madhya Pradesh came to Gondia in April, 2019 and was

working as Manager with a hotel named as Hotel Rice City, Gondia on monthly payment of Rs.5,000/-. On 15.04.2019, the applicant stayed in the hotel and got acquainted with the non applicant no.2. While leaving the hotel, he obtained her mobile number and established contact with her. The applicant then assured her of Government job and asked her to share documents on mobile. Accordingly, non applicant no.2 shared the documents. Thereafter, the applicant asked her to leave the rented room she was residing at, on the ground that he will arrange a separate room for her residence. He also asked her to start business.

3. Accordingly, on 01.05.2019, the non applicant no.2 left her earlier room and shifted to the room arranged by the applicant. The applicant then met her in the room and informed her that he is married and has two children. He further stated that his wife does not reside with him and is residing at her parental house at Chindwada. He then proposed her for marriage, to which, non applicant no.2 denied by saying that she suffers from Sickle cell. However, the applicant persuaded his desire of getting married by saying that he will arrange medicines.

4. On 25.05.2019, the applicant came to the room with saree and ring for her. The applicant then with little persuasion and upon promise of marriage, had a physical relation with her. He continued to do so till 25.07.2019.

Non applicant no.2 fell sick because of the physical relations so established. She got admitted in hospital on 30.07.2019. The applicant deposited Rs.4,000/- in the account of non applicant no.2, for her treatment.

5. The non applicant no.2 then inquired with the applicant as to when to get married, to which the applicant said that he belongs to Brahmin caste and non applicant no.2 belongs to Mahar caste, which is a Scheduled Caste. Therefore, he denied to marry her. The applicant then came to the room of non applicant no.2 and took away the saree and ring that was brought by him and also threatened her of dire consequences, if the incident is disclosed to anyone.

6. This is how the non applicant no.2 has narrated her sufferance to the police on 11.12.2019. The investigation officer having collected the incriminating material against the applicant has filed charge-sheet, which has been challenged before us.

7. The present case is a case of complete exploitation of a vulnerable lady. The applicant is a married person. He literally lured the non applicant no.2 to satisfy his lust on the pretext of marriage so also giving Government job and then obtained documents from her, by which the applicant could be said to have got knowledge of social status of non applicant no.2 as belonging to the

Scheduled Caste. Taking advantage of the situation, he established physical relations with non applicant no.2 and having successfully satisfying his lust for two months, has refused to marry her on the ground of he belonging to Brahmin community and she belonging to Mahar, Scheduled Caste.

8. On the point of consent, in ***Pramod Suryabhan Pawar V/s State of Maharashtra and Another, (2019) 9 Supreme Court Cases 608***, the Hon'ble Supreme Court has held that where promise to marry is false and intention of maker at the time of making promise itself was not to abide by it but to deceive woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates woman's "consent". It is further held that a breach of promise, however, cannot be said to be a false promise. There is a distinction between false promise given on understanding by maker that it will be broken, and breach of promise which is made in good faith but subsequently not fulfilled. Thus, in the case of false promise the consent of a woman under Section 375 of Indian Penal Code is vitiated on ground of a "misconception of fact" where such misconception was basis for her choosing to engage in said act.

9. If the allegations are tested on the touchstone of the above ruling, what appears to us, though *prima*

facie, is that the present case falls in the category of false promise. The applicant was aware that the non applicant No.2 belongs to Mahar community. He established physical relationship with her on the pretext of marriage and giving Government job. Having satisfied his lust, he refused to marry her on the ground of her social status as belonging to the Scheduled Caste. The relations continued only for about two months. Considering the conduct of the applicant, it appears to us that the applicant never intended to marry non applicant no.2 and therefore the consent given by non applicant no.2 is vitiated.

10. We are, therefore, not inclined to grant any relief to the applicant under Section 482 of the Cr.P.C. There is thus, no merit in the application.

The application is, therefore, rejected.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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