

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

CRIMINAL APPLICATION (APL) NO. 400 OF 2019

1. Bhagwan s/o. Bhanudas Khatke,
Aged 24, Occ. Student.
2. Krushna Ramdas Gawade,
Age 39 Yrs., Occ. Agriculturist.
3. Arjun s/o. Ramdas Gawade,
Age 36 Yrs. Occ. Agriculturist.
4. Bhanudas Shaligram Khatke,
Aged 42 Yrs., Occ. Agriculturist.
5. Sau. Lata w/o. Bhanudas Khatke,
Age 40 Yrs. Occ. Agriculturist.
6. Shaligram s/o. Shrirang Khatke,
Age 65 Yrs. Occ. Agriculturist.

All residents of Pala, P. S. Hiwarkhed,
Tq. Khamgaon, Distt. Buldana.

---APPLICANTS

---VERSUS---

1. State of Maharashtra,
through P. S. O. Shegaon,
Tq. Shegaon, Distt. Buldana.
2. Ku. Pooja d/o. Anil Wayse,
Aged 22 Yrs. Occ. Student,
R/o. Shirala, Tq. Khamgaon,
Distt. Buldana.

---NON-APPLICANTS

Mr. Abhay Bhide, Advocate for the Applicants.
Mr. M. K. Pathan, Additional Public Prosecutor for the Non-applicant/State.
Mrs. Prajakta Chaudhari, Advocate for the Non-applicant No.2.

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

DATE : 22.03.2022.

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 applicants are challenging registration of First Information Report bearing No.118/2019 dated 13.03.2019 registered with non-applicant No.1 – Police Station for the offences punishable under Sections 376, 376(2)(n), 323, 500, 504, 506 read with Section 34 of the Indian Penal Code.
4. The First Information Report came to be registered against the applicants with the accusations that Non-applicant No.2 was in love relationship with the applicant No.1. It is alleged that by promising marriage, the applicant No.1 took the non-applicant No.2 to Gulmandi, Aurangabad on 2 to 3 occasions and had forcible sexual intercourse. It is alleged that the applicant Nos. 2 and 3 disapproved the said relationship of the applicant No.1 with the non-applicant No.2. It is alleged that the applicant Nos. 4 and 5 were mounting pressure on the non-applicant No.2 and giving threats to her and her parents. It is alleged that

applicant Nos. 5 and 6 had spread rumors about the abortion of the non-applicant No.2 and defamed her.

5. The applicants have therefore challenged registration of the First Information Report by way of filing present application. This Court on 18/04/2019 issued notice to the non-applicants and by way of interim order, directed not to file charge-sheet without leave of this Court.

6. The non-applicant No.1 – Investigating Agency filed reply stating that the material collected by the Investigating Agency shows that the applicant No.1 developed sexual relations with the non-applicant No.2 on false promise of marriage and the applicants made demand of Rs.8,00,000/- to harass the non-applicant No.2. It is stated that the Investigating Agency has ample material to show the involvement of the applicants in the present offence.

7. The non-applicant No.2 also filed her reply giving details of her relationship with the applicant No.1. It is stated that she was in relationship with the applicant No.1 from 2017 till the registration of the First Information Report. She stated that there is sufficient material on record to show the involvement of the applicants in the offence alleged against the applicants.

8. Mr. Abhay Bhide, learned Advocate appearing for the applicants relied upon the judgment of Hon'ble Apex Court in the case of *Pramod Suryabhan Pawar vs State of Maharashtra and another* reported in (2019) 9 SCC 608 to submit that the relationship between the applicant No.1 and non-applicant No.2 was consensual in nature. He submitted that a bare reading of the First Information Report would indicate that there was absolutely no intention on the part of the applicant No.1 when he entered into the relationship not to marry with non-applicant No.2 nor can it be even suggested that the promise to marry was false. Hence, he submitted that the ingredients of the offence alleged against the applicants are not fulfilled, even if, they are taken on their face value.

9. On the other hand, Mrs. Prajakta Chaudhari, learned Advocate appearing for the non-applicant No.2 and Mr. M. K. Pathan, learned A.P P for the State supported the continuation of prosecution stating that the First Information Report would indicate that the relationship was on the basis of false promise to marriage.

10. On the basis of the rival submissions and with the assistance of the learned Advocates for the parties, we have perused the First Information Report and replies filed by the non-

applicants. The First Information Report specifically records that the applicant No.1 had developed friendship with the non-applicant No.2 and then he assured that he would marry her. The First Information Report then records that the applicant No.1 and non-applicant No.2 developed a physical relationship which was spread over for 1 ½ years i.e. from 01.11.2017 till 13.03.2019.

11. The contents of the First Information Report as well as replies filed by the non-applicants, leave no manner of doubt on the basis of allegations as they stand three important features emerged :

- i] The relationship between the applicant No.1 and the non-applicant No.2 was of a consensual nature,
- ii] The applicant No.1 and the non-applicant No.2 were in relationship for about more than 1 ½ years and,
- iii] Subsequently, the applicant No.1 had expressed disinclination to marry non-applicant No.2 which led to the registration of the First Information Report.

12. In the case of **Pramod Suryabhan Pawar** (*supra*), 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.”

13. Bearing in mind the tests, which have been enunciated above decision, we are of the view that even assuming that all allegations in the First Information Report are correct for the purpose of considering the application for quashing under Section 482 of the Code of Criminal Procedure, no offence has been established. There is no allegation to the effect that promise to marry given to the non-applicant No.2 was false at the inception.

On the contrary, it appears from the contents of the First Information Report that there was a subsequent refusal on the part of applicant No.1 to marry non-applicant No.2 which gave rise to the registration of the First Information report.

14. In so far as the allegations against the rest of the applicants are concerned, those allegations are not sufficient to fulfill essential ingredients of the offences alleged against them.

15. For the above reasons, we are satisfied that the continuation of proceeding would amount to abuse of process of the Court.

16. We therefore pass following order :

17. The First Information Report bearing No.118/2019 dated 13.03.2019 registered with non-applicant No.1 – Police Station against the applicants for the offences punishable under Sections 376, 376(2)(n), 323, 500, 504, 506 read with Section 34 of the Indian Penal Code is quashed and set aside.

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