

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

CRIMINAL APPLICATION (APL) NO. 815 OF 2021

Ankush s/o Sudhakar Somankar
Aged 32 years, Occupation : Private Job,
R/o Kachipura, behind Chamdiya High
School, Dist. Nagpur

}

.. Applicant

Versus

1. State of Maharashtra, through PSO MIDC,
District Nagpur
2. Mamta Gunvantrao Jhodape
Aged 32 years,
R/o C/o Nimraskar, Jal Vihar Colony,
Priyadarshini Girls Hostel, Near Water Tank,
Hingna T-Point, District Nagpur

}

.. Respondents

Mr. P. V. Navlani, Advocate for applicant.

Mr. S. M. Ghodeswar, APP for respondent No.1 State.

Mr. Amit Balpande, Advocate for respondent No.2 (appointed).

CORAM : MANISH PITALE, AND
G.A.SANAP JJ.

DATED : 01/08/2022

ORAL JUDGMENT (Per : Manish Pitale J.)

Heard. **Admit.**

(2) Heard finally with the consent of the learned
counsel appearing for the rival parties.

(3) By this application, the applicant is seeking to invoke inherent powers of this Court under Section 482 of the Cr.P.C. for quashing of First Information Report (FIR) No.491/2021 registered at Police Station, MIDC, District – Nagpur, for offences punishable under Section 376 and 506 of the India Penal Code (IPC). The FIR was registered on an oral report submitted by respondent No.2, before the said police station.

(4) A perusal of the oral, report leading to registration of the FIR, would show that the respondent No.2 has narrated the manner in which she and the applicant were allegedly in a relationship and as to the incidents that occurred specifically on 23/08/2019, when the applicant allegedly demanded physical intimacy and on 02/09/2019, when the applicant allegedly forcibly established physical relations with the respondent No.2. It is then alleged that the applicant threatened the respondent No.2, not to raise any grievance in respect of the said incident and that on 28/09/2019, the applicant met her at his residence where after she was called to a garden and the applicant told her to forget about the relationship. Such narration of incidentS has led to registration of the FIR.

(5) On 23/08/2021, this Court issued notice in the present application, directing that the investigation may go on, but the charge-sheet shall not be filed without leave of this Court.

(6) Mr. Ghodeswar, learned APP appeared on behalf of respondent No.1 State. The respondent No.2 was personally present in Court to instruct Mr.Amit Balpande, learned counsel appointed to appear on her behalf.

(7) Mr. Navlani, learned counsel appearing for the applicant at the outset, invited attention of this Court to a report dated 31/10/2019, submitted by the respondent No.2 orally before the aforesaid Police Station leading to registration of an N.C. against the applicant on the same date for offence under Section 417 of the I.P.C. By referring to the said contents of the said report, the learned counsel submitted that the respondent No.2 herself specifically stated that although the applicant was her boyfriend and he did demand physical relationship, there was no actual physical relationship between applicant and respondent No.2. It was only alleged that the applicant was avoiding to marry respondent No.2. In pursuance of the said report and registration of N.C., the police had summoned the

applicant, who did appear before the police and on 31/10/2019 and his statement was also recorded.

(8) The learned counsel for the applicant submitted that the applicant had stated that the parties knew each other for some period of time and that the respondent No.2 was insisting on marriage before physical relations could be established and that the applicant had clearly stated that he could not marry her.

(9) In this backdrop, it is submitted on behalf of the applicant that after the applicant got married on 10/01/2021, the respondent No.2, appears to have approached the police in July/August 2021 to raise grievance, on the basis of events pertaining to the period prior to 31/10/2019, after a delay of almost two years of the alleged incident. Yet, the police had registered the FIR. According to the learned counsel for the applicant, the grievance of respondent No.2 as regards alleged forcible physical relationship established by the applicant ought to have been reflected in the complaint dated 30/10/2019 and therefore, it was clear that the subsequent oral report leading to registration of FIR was only an afterthought and a step taken by respondent No.2 after the applicant got married in January,

2021. On this basis, it was submitted that the application deserved to be allowed in the interest of justice.

(10) Mr. Ghodeswar, learned APP appeared on behalf of respondent No.1 State and made available the case diary for our perusal. He submitted that the contents of the oral report would indicate that there were clear allegations of forcible physical relationship established by the applicant and that therefore, registration of FIR for the aforesaid offences could not be said to be anomalous or unwarranted. It was further submitted that since this Court had granted interim order on 23/08/2021, the charge-sheet could not be filed in the present case.

(11) Mr. Amit Balpande, learned counsel appointed to appear on behalf of respondent No.2 submitted that even if the statement given by the applicant on 31/10/2019, before the police was to be perused, which was given in the context of the N.C. registered against him on the same date, it would be clear that he himself was demanding physical relationship with respondent No.2, thereby supporting the case sought to be made out by the respondent No.2 in the oral report, which led to registration of the FIR. It is submitted

that in fact, the police had not registered a proper FIR in terms of the grievance raised by the respondent No.2 and in that regard copy of the alleged original complaint submitted by the respondent No.2 in August, 2021 was sought to be relied upon. It was submitted that the FIR did not deserve to be quashed in the facts and circumstances of the present case.

(12) Heard learned counsel for the rival parties and perused the material on record. If the oral report leading to registration of the FIR is to be perused, there can be no doubt about the fact that there are clear statements on behalf of respondent No.2 about the alleged forcible physical relationship established by the applicant on 02/09/2019. The backdrop of the said incident is also stated in the oral report. But, we cannot be oblivious about the entire material brought to our notice, particularly the aforementioned earlier oral report dated 30/10/2019, submitted by the respondent No.2 before the very same police station. The same led to registration of N.C. against the applicant.

(13) The contents of the said report are significant because the respondent No.2 herself has narrated as to the manner in

which the applicant and the respondent No.2 were in relationship and crucially that no physical relationship was ever established in between two. It is significant that in this oral report also, the respondent No.2 had referred to incidents that had occurred in September and October 2019 and yet the only grievance raised on behalf of respondent No.2 was that the applicant was avoiding to marry the respondent No.2. In fact, the respondent No.2 specifically gave in writing that if the applicant was ready to marry her, she would not want any further action in the matter. The statement given by the applicant on 31/10/2019, upon being summoned by the police is also significant. It shows that according to the applicant the respondent No.2 and the applicant did know each other for quite some time. That they were indeed in a relationship with each other and when he demanded physical relationship, the respondent No.2 insisted for marriage and further that the applicant was not ready for marriage with respondent No.2. This is where the matter rested till in July/August 2021, when the respondent No.2 approached the police, leading to registration of the aforesaid FIR.

(14) As noted above, oral report leading to registration of

the FIR dated 02/08/2021, narrates incidents of August and September, 2019. There is no reference to any incident after 31/10/2019 i.e. the date on which the earlier report had been submitted by the respondent No.2, before very same Police Station. It is not as if the applicant had contacted the respondent No.2 after registration of the N.C. on 31/10/2019 or that he had in any manner pursued the matter or threatened her with any consequences. The entire grievance raised in the oral report, leading to registration of the aforesaid FIR pertains to incidents of August and September, 2019. It is a matter of record that the FIR is registered almost after two years. There is no remark in the column pertaining to reasons for delay in reporting the incident. It is not even stated in the FIR as to for what reason there was considerable delay in registration of FIR.

(15) In this backdrop, we find that at the first available opportunity when the respondent No.2 had raised grievance against the applicant i.e. on 30/10/2019, she could very well have stated incidents that allegedly occurred on 23/08/2019 and 02/09/2019. But, a positive statement was made in the oral report dated 30/10/2019, that there was never any physical relationship

established between the respondent No.2 and the applicant. This gives credence to the contention raised on behalf of the applicant that after the relationship was over and the applicant got married on 10/01/2021, perhaps the respondent No.2 felt aggrieved and approached the police after about two years with grievance pertaining to alleged incidents of August and September, 2019. It is crucial, as noted above, that none of these incidents find mention in the oral report submitted by the respondent No.2 on 30/10/2019.

(16) This Court is of the opinion that in matters such as these, where there is a relationship between two adults and promise of marriage is the backdrop in which allegations are made pertaining to the offence of rape, the Hon'ble Supreme Court and this Court have repeatedly opined that the intention of the accused at the start of the relationship is to be gauged from the material that has come on record, when a prayer is made for quashing of FIR/charge-sheet.

(17) In the case of *Pramod Suryabhan Pawar vs. State of Maharashtra and another (2019) 9 SCC 608*, the Hon'ble Supreme Court has deliberated upon the said issue and commented upon the concept of consent under misconception. In such cases also, the

Supreme Court has laid down that the Court would have to appreciate as to whether the promise to marry could be said to be falsely given with the intention of luring the victim into physical relationship.

(18) We are of the opinion that in the present case, we do not have to go to even the said position of settled law, because on facts, we find that the allegation is not about the applicant having given a false promise of marriage and lured the respondent No.2 into physical relationship. On the contrary, the allegation appears to be that the applicant despite resistance from the respondent No.2 indulged in such activity on a particular date. But, since the alleged incident was prior to the respondent No.2 herself approaching the police on 30/10/2019 and not having raised any grievance regarding the same, it does not appeal to reason that such an incident could be said to have occurred between the applicant and respondent No.2. The positive statement made in the oral report dated 30/10/2019 that there was no physical relationship established between the applicant and respondent No.2 completely gives away the case of the respondent No.2, sought to be made out in July/August 2021, i.e. almost two years after the alleged incident about the applicant having forcible

sexual intercourse with respondent No.2.

(19) The material on record gives an impression that the relationship between the applicant and respondent No.2 having gone sour, after about two years the respondent No.2 gave the oral report to the police, leading to registration of FIR. It is also noteworthy that the respondent No.2 refused to undergo medical examination after registration of FIR. In the facts and circumstances of the present case, we are convinced that even if the material available on record, including the case diary that was brought to our notice is to be accepted as it is, no case is made out for the matter to travel further to the stage of filing of charge-sheet and the applicant facing the rigour of trial.

(20) In view of the above, the application is allowed. Consequently, FIR No.491/2021 dated 02/08/2021, registered at Police Station MIDC, Nagpur City, is quashed.

[G. A. SANAP J.]

[MANISH PITALE J.]