

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

CRIMINAL APPLICATION [APL] NO.981 OF 2022

Applicant : Aakash Suresh Waghmare,
Aged about 32 years, Occ. Police Constable,
R/o Renuka Nagar, Ward No.12, Shegaon,
District Buldana.

– Versus –

Non-Applicants : 1. State of Maharashtra,
Through Police Station Officer,
Police Station Shegaon, Buldana.

2. XYZ (Victim) in Crime No.243/2022,
Through Police Station Shegaon,
Buldana.

Shri S.V. Sirpurkar, Advocate for the Applicant.
Shri S.M. Ghodeswar, A.P.P. for Non-Applicant No.1.
Ms. Sapna Jadhav, Advocate for Non-Applicant No.2.

CORAM: **SUNIL B. SHUKRE AND M.W. CHANDWANI, JJ.**

DATE : **16th DECEMBER, 2022.**

ORAL JUDGMENT : *(Per Sunil B. Shukre, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the parties.

02] Learned Counsel for non-applicant No.2, who is the victim and the complainant, states that the complainant is personally present and as stated in her reply filed before the Court directly, which is taken on record and marked

as Document-A for identification, the complainant does not wish to press the allegations against the applicant for the reason that the complainant is a married woman having a daughter to take care of and this criminal case is adversely affecting her married life as well as the future of her daughter. She, therefore, submits that non-applicant No.2 intends to withdraw all her allegations against the applicant.

03] On going through the F.I.R. made by non-applicant No.2 against the applicant, we are of the view that serious doubts arises as to whether or not, any such offences as are punishable under Sections 376, 377 and 506 of the Indian Penal Code are *prima facie* constituted for the reason that at the time when the alleged sexual intercourse took place between non-applicant No.2 and the applicant for the first time, non-applicant No.2 was already working as a Police Head Constable and if there was really some force having been applied by the applicant in engaging himself illegally with non-applicant No.2, non-applicant No.2 would have certainly lodged a police report against the applicant. But, non-applicant No.2 did not do so, rather non-applicant No.2 later on responded to the calls of the applicant and continued to meet him and even allow him to get physical with her. Of course, non-applicant No.2 states that her subsequent sexual dalliance with the applicant was under pressure as

the applicant had threatened to blackmail her. The details of the alleged threats of blackmailing, however, have not been given by non-applicant No.2. And, this is in addition to the fact that all these sexual encounters occurred in between the applicant and non-applicant No.2, as per the version of non-applicant No.2, when non-applicant No.2 was already married and having a small daughter to take care of. This would make us conclude that this is a case, which falls within the parameters laid down in the case of *State of Haryana and others vs. Bhajan Lal and others – 1992 Supp (1) SCC 335*, warranting interference by this Court.

04] From the reply filed on record by non-applicant No.2, which is marked as Document-A for the purpose of identification, it appears that now non-applicant No.2 has realized her mistake and thinking of the need for protecting her marital life and also future of her daughter, now she has decided to withdraw the allegations made against the applicant. In other words, the reason given by non-applicant No.2 for taking such a decision, in our opinion, is one of likelihood of bringing in harmony not only in the family of non-applicant No.2, but also between the non-applicant on the one hand and the applicant on the other, of course in healthy terms. If this is so, this case would also be covered by the judgment of the Supreme Court rendered in

the recent case of *Kapil Gupta vs. State of NCT of Delhi & anr. In Criminal Appeal No.1217 of 2022, dated 10/08/2022*, wherein the Apex Court in paragraph 13 has observed that the Court is required to take into consideration as to whether or not any settlement between the parties is going to result into harmony between them, which may improve their mutual relationship. Of course, in this case, there is no mutual settlement between the parties, but the gesture made by non-applicant No.2 is suggestive of the fact that now she is ready to bury her differences with the applicant and lead a peaceful life ahead.

05] In the result, the application deserves to be allowed and it is allowed in terms of prayer clause (1), which reads as under:

“(1) Quash and set aside F.I.R. No. 243/2022 registered at Police Station Shegaon, Buldana under Section 376, 377, 506 of Indian Penal Code as against the applicant.

06] Rule is absolute in the above terms.

07] At this stage, the learned Counsel for non-applicant No.2 makes a request to issue a direction to the applicant not to circulate in any manner this

judgment and order anywhere, not in the department, nor amongst his friends, nor in any Whatsapp group, nor anywhere in any social platform.

08] The learned Counsel for the applicant, on instructions, submits that the applicant has undertaken to not circulate the copy of this judgment and order anywhere, as desired by learned Counsel for non-applicant No.2. The assurance given to this Court by non-applicant No.2 through his learned Counsel is accepted and we hope that the applicant shall keep his words.

(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

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