

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

CRIMINAL APPLICATION (APL) NO.1328 OF 2022

Sadashiv s/o Vaijyanath Kadam
Aged about 27 years,
Occupation – Private,
R/o. 1-67, Poonaa,
Adilabad, Telangana

...APPLICANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sitabuldi,
Nagpur
2. XYZ (Victim)
Crime No.0328/2022
Police Station Sitabuldi
District Nagpur

...NON-APPLICANTS

Shri R.D. Dharmadhikar, Advocate with Shri I. Kalsi,
Advocate for the applicant.
Shri M.J. Khan, Additional Public Prosecutor for
non-applicant No.1/State.
Shri Javed Sheikh, Advocate for respondent No.2

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 14, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. The applicant has preferred this application under Section 482 of the Code of Criminal Procedure for quashing of First Information Report vide Crime No.328/2022 registered against the applicant at Sitabuldi police station, Nagpur for the offences punishable under Sections 376, 376(2)(n), 328, 343 and 506 of the Indian Penal Code (hereinafter referred to as 'the Code' for short).

3. The non-applicant No.2 (due to mandate of Section 228-A of the Indian Penal Code name of non-applicant No.2 is not mentioned) lodged report on an allegation that on 18/07/2022 she received a friend request on her Instagram account by the name of "Arjun Fouji-1" and the same was accepted by her. Thereafter they exchanged their mobile numbers and started phone calls and chatting on WhatsApp. Since then they developed love affair. It is further alleged that on 22/07/2022 the applicant called non-applicant No.2 at one Hotel in Nagpur. After they met at the Hotel, the applicant mixed some intoxicant substances in the liquor of the non-applicant No.2 and sexually assaulted her and prepared obscene video and blackmailed her.

4. On the basis of the report the offences registered against the applicant under Sections 376, 376(2)(n), 328, 343 and 506 of the Code. After lodging of the report, the applicant and non-applicant No.2

performed the marriage on 08/08/2022 at Shree Brahmadata Pujari Seva Mandal, Sitabuldi, Nagpur under the Special Marriage Act, 1954. Now non-applicant No.2 is residing with the applicant. Hence the applicant approached to this Court for quashing of the First Information Report by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

5. Heard both the sides.

6. The applicant and non-applicant No.2 are present before the Court. We personally interacted with non-applicant No.2. She had also filed affidavit and stated on oath that there was love affair between her and the applicant. Now they had performed marriage on 08/08/2022 and she is leading happy marital life. These facts are ascertained as non-applicant No.2 is present before the Court. The applicant and non-applicant No.2 are present before the Court and identified by their respective Counsel.

7. We are conscious about the guidelines laid down by the Hon'ble Apex Court in the case of ***Gian Singh Vs. State of Punjab and another (2012) 10 SCC 303*** for exercising jurisdiction under Section 482 of the Code of Criminal Procedure wherein it is laid down that in the cases of heinous and serious offences like murder, rape, dacoity, etc. the

jurisdiction under Section 482 of the Code of Criminal Procedure cannot be used to quash the proceedings even though the victim or the victim's family settles the dispute and the guidelines laid down by the Hon'ble Apex Court in the case of ***Mandar Deepak Pawar Vs. The State of Maharashtra and anr. 2022 LiveLaw (SC) 649*** wherein it is held that the parties choose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Permitting further proceedings under the F.I.R. would amount to harassment to the appellant through the criminal process.

8. We are fortified to adopt this course of action by the judicial view in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608*** wherein the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Hon'ble Apex Court quashed the F.I.R. However, considering non-applicant No.2 and the applicant out of love affair got married on 08/08/2022 and leading happy marital life, therefore, we are inclined to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure. The applicant and non-applicant No.2 are major and in the age of understanding.

9. Considering the peculiar facts, we are of the view that no purpose will be served by compelling the applicant to face the prosecution. Therefore, the application deserves to be allowed. In the result, we proceed to pass the following order :

(a) The criminal application is allowed.

(b) The First Information Report vide Crime No.328/2022 registered against the applicant at Sitabuldi police station, Nagpur for the offences punishable under Sections 376, 376(2)(n), 328, 343 and 506 of the Indian Penal Code is quashed and set aside.

(c) Consequential all the proceedings arising therefrom also stand disposed of.

10. Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*