

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.327 OF 2023

Ravikiran Bhaskar Bhojane.

... Applicant

Versus

- 1) The State of Maharashtra.
- 2) Komal Tatyarao Dhavale.

... Respondents

...

Mr. Sandeep C. Swami, Advocate for Applicant.

Mr. P. N. Kutti, APP for Respondent No.1 / State.

Mr. Amar Vinayakrao Lavte, Advocate for Respondent No.2. (Appointed).

...

CORAM : **R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.**

DATE : 08th September, 2023.

ORDER: (Per Sanjay A. Deshmukh, J.)

1 Heard the learned advocates for the respective parties.

2 This is an application, under Section 482 of the Code of Criminal Procedure, 1973, for quashment of FIR and consequential charge-sheet in R.C.C. No.895 of 2022 pending in the Court of Chief Judicial Magistrate, Ahmednagar, for the offences punishable under Sections 377, 498-A, 323, 504 and 506 of the Indian Penal Code, 1860.

3 The informant-respondent No.2 averred in the FIR that her earlier marriage was performed with one Sachin Baburao Hirde, resident of Karmala, District Solapur. The applicant started to contact her and insisted her to breakdown that marriage. The applicant threatened her that he will communicate the fact of their love affair to her husband and father-in-law. Therefore, she took divorce from her earlier husband. Thereafter, as per the directions of the applicant, she went to Pune for further education. The applicant used to meet her at Pune. There he committed rape on her. On 18th July, 2018, they performed marriage at Alandi, Taluka Khed, District Pune. They started to reside at Jamkhed, District Ahmednagar. After some days, the applicant started to beat her. He was saying to her that their marriage is not legal but it is false. He threatened to kill the informant. He abandoned the informant. Therefore, she lodged the report against him in Jamkhed Police Station on 27th October, 2018. That report was quashed by this Court on 19th January, 2021 on account of the compromise. Again the applicant started to harass the informant when they were residing under one roof. Therefore, she left him and started to reside at Gangotri Apartment, Tapowan Road, Ahmednagar alongwith her friend Surekha Pawar. She was serving as a nurse with "Daily Health Hospital". The applicant again went to her. She refused to continue the marital relationship with him. But the applicant started

to beat her. He also threatened her to commit her murder and committed rape on her continuously for three days i.e. from 20th June, 2021 to 23rd June, 2021. After every fifteen days, the applicant used to come there and used to commit rape on her. Then the informant went to reside at Suryanagar, Tapowan Road, Ahmednagar in the house of one Ashok Maharanwar with her friend Anisha Divte. There also, on 18th January, 2022 when Anisha was not there, the applicant came there and committed rape on her. He also committed unnatural sexual intercourse against her will. Therefore, she lodged the report after two days on 20th January, 2022.

4 The learned counsel for the applicant submitted that the applicant and informant are husband and wife. There is no medical evidence of commission of unnatural sexual intercourse as alleged by the informant. There is unexplained delay of two days for lodging the report. There is no demand and there is no evidence of alleged cruelty and threatening etc. He, therefore, prayed to quash the report and the charge sheet.

5 The learned APP for the State and the learned counsel for the informant strongly opposed the application. They submitted that the FIR shows that the applicant committed unnatural sexual intercourse against the will of the informant. They, therefore, prayed to reject the application.

6 Perused the charge-sheet. The FIR shows that the applicant committed alleged unnatural sexual intercourse against the will of the informant. However, the medical evidence shows that there is no any anal injury and no sign of anal penetration. Thus, there is no *prima-facie* medical evidence of alleged commission of unnatural sexual intercourse. The FIR also does not show that the applicant committed cruelty as contemplated under Section 498-A of I.P.C. Though there are allegations of threatening and beating etc. punishable under Sections 323, 504 and 506 of I.P.C., which are no cognizable offences. Those cannot be invoked by lodging the FIR, which requires filing of the complaint by victim. Therefore, in the absence of material evidence against the applicant, it would not be legal and justifiable to compel the applicant to face the trial. For the aforesaid discussion, the application deserves to be allowed. The application is, therefore, allowed in terms of prayer clause (B).

7 The fees of the appointed counsel for respondent No.2 is quantified at Rs.10,000/-, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]