

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.551 OF 2023

Kiran s/o Baban Kalpe & others ... **APPLICANTS**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....
Mr. N.B. Narwade, Advocate for applicants
Mr. S.N. Morampalle, A.P.P. for respondent No.1.
Ms Anagha Pedgaonkar, Advocate with
Ms Archana Sorate, Advocate for respondent No.2.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 20th OCTOBER, 2023

ORDER :

Heard. This application has been moved for quashing of F.I.R. bearing Crime No.0183/2022, registered with M.I.D.C. Police Station, Ahmednagar for the offences punishable under Sections 376(2)(n), 420, 494, 366 read with Section 34 of the Indian Penal Code and the consequential criminal proceedings bearing Sessions Case No.435/2022, pending before the learned Sessions Court, Ahmednagar. We need not narrate the averments in the F.I.R. so as to avoid repetition since the averments in the F.I.R. themselves could be our reasons in support of the order.

2. Learned counsel for respondent No.2 and learned A.P.P. would submit that, the applicant No.1 is in police service. Applicant No.2 had assisted applicant No.1 in inducing respondent No.2 to enter into sexual relationship with him. The first incidence dates back to the year 2006. No specific date and time has been given therein. The informant was a married lady of 35 years of age when she lodged the F.I.R. She was blessed with the child of first marriage. Once she was travelling along with applicant No.2 in a vehicle for attending someone else's marriage, she got acquainted with the applicant No.2. Since she was travelling along with them, on the way they halted at Ahmednagar. The applicant No.2 is alleged to have served her some drink. She thereby became unconscious to ultimately find to have been at the house of sister-in-law of Ashabai at Santakruz, Mumbai. When she questioned as to why she had been brought there, the applicant No.2 told her that it was done with a view to take revenge as she used to defame her in the village. Meanwhile, the husband of respondent No.2 lodged a missing person's complaint. The applicant No.1 assured her to maintain her as his wife. He thereby sexually exploited her many a time. The respondent No.2 once approached the concerned Police Station at Shirur Police Station. The police officers there obtained her consent in writing under duress. Then she came to M.I.D.C. Police Station, Ahmednagar. The police there, were of

acquaintance of applicant No.1 Kiran. She could successfully flee therefrom and came back to Mumbai. She took shelter at the house of one Asma. She therefrom made phone call to her father on cell phone, he came. He brought her back to his house at Ahmednagar. Both of them then went to Kotwali Police Station. Her statement was recorded thereat. In 2006 itself her husband took a premises on rent, both of them started residing together. The applicant No.1 came there and informed her husband to have relationship with her. He even shown her photographs with the respondent No.2.

3. It has further been averred, in 2007, the applicant No.1 adorned her with Mangalsutra and gold ornaments. In 2007 the applicant No.1 came to be recruited as a Police Constable. Thereafter the respondent No.2 started residing at Ulhasnagar. She was serving at one Massage Parlour. The applicant No.1 used to visit Ulhasnagar to meet her. They used to stay in a lodge at Kalyan. During all those such visits, he sexually exploited her. In 2010, he completed his police training. He was appointed at Ahmednagar. He was assigned a job at the residence of Superintendent of Police, Ahmednagar. Then he took the premises on rent and started residing with her. He snapped photographs of their compromising position. It is her case that, on 24/5/2014, both of them got married in presence of their friends. Both of them

started cohabiting together. Then a Flat was taken in 2017 at Ahmednagar. Since frequent quarrel ensued between the two, she again went back to Ulhasnagar. She, however, used to visit Ahmednagar to meet applicant Kiran. In 2020, he was transferred to Jamkhed. Again dispute arose between the two over taking a premise for their stay. After a while, the applicant No.1 started avoiding her. It was ultimately realised that, he contracted second marriage. He threatened the informant of dire consequences and asked her to do whatever she could. After having realised to have been duped by both the applicants No.1 and 2, the F.I.R. came to be lodged.

4. The aforesaid factual matrix indicate that, the relationship between the applicant No.1 and the informant commenced way back in 2006 i.e. 17 years before the F.I.R. was lodged. The informant was already a married woman and blessed with a child. It appears that, their acquaintance was on account of intervention of the applicant No.2. For over years, both of them stayed together. Even in 2013-2014, they got married with each other. Since the applicant no.1 contracted second marriage, he started avoiding her and therefore, ultimately the F.I.R. was lodged.

5. It is just difficult for us to comprehend the case of the respondent No.1 as has been averred in the F.I.R. about having been duped and compelled to submit to applicant No.1's sexual

lust. It is a case of relationship of about 17 years. When something went wrong between them, the F.I.R. came to be lodged. According to us, the facts and circumstances averred in the F.I.R. constitute good ground to observe that, directing the applicants to stand trial based thereon would be an abuse of process of Court, although both the learned A.P.P. and learned counsel for respondent No.2 would submit that granting the application would send wrong message in the Society and the applicant No.1 being in Police service and a person in uniform, has committed a crime. We are unable to agree to their submissions. It is reiterated that, it was a long standing consensual relationship and the F.I.R. has been lodged after something goes wrong between the two. Even the informant was previously married. Her marriage was subsisting.

6. In view of the above, the application deserves to be allowed and the same is allowed in terms of prayer clause (B).

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-