

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

CRIMINAL APPLICATION NO.442 OF 2021

**SHESHNARAYAN RAJANNA KATKURI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S. S. Rathi, Advocate for the applicant
Mr. M. M. Nerlikar, APP for the respondent/State
Mr. B. V. Thombre, Advocate for respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 31ST JANUARY, 2023

PER COURT :-

1. At the outset learned counsel for the applicant seeks leave to amend the prayer clause 'C-1'. Leave granted. Amendment to be carried out forthwith.
2. With consent, heard finally at the stage of admission.
3. This is an application under Section 482 of Cr.P.C. to quash the first information report No. 405/2020 registered with Kotwali Police Station, Parbhani, Dist. Parbhani and Sessions Case No. 181/2021 pending before the learned Addl. Sessions Judge, Parbhani for the offence punishable under Section 376(2)(n), 323, 504 of the Indian Penal Code.
4. Heard learned counsel for the applicant, learned APP for the

State and learned counsel for the respondent No.2. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

5. The question for consideration is whether the first information report and the other material, which forms part of the charge-sheet disclose offences as alleged.

6. It may be mentioned that the crime against the applicant was registered pursuant to the first information report lodged by the respondent No.2. Perusal of the first information report reveals that the respondent No.2 is a married lady with two children. She claims that she could not get along with her husband and hence she left the matrimonial home and she started residing with her parents since the year 2017. She claims that in the year 2020 one of her acquaintance had asked her whether she was willing to remarry and introduced her to the applicant herein. The respondent No.2 claims that the applicant had promised to marry her and to take care of her children. The first information report indicates that respondent No.2 was living with the applicant and that they had consensual physical relationship with each other. The respondent No.2 claims that subsequently the applicant refused to marry her, he abused and drove her out of the house.

7. 'Rape' as defined in clause first and second to Section 375

IPC is sexual intercourse against the will of a woman or without her consent. In the instant case the first information report and the other material on record clearly indicate that the applicant and respondent No.2, both adults, had indulged in consensual sexual relationship. Respondent No.2 has stated that the applicant had promised to marry her. However, the first information report itself indicates that the respondent No.2 is a married woman with children. The first information report does not indicate that her first marriage was dissolved and as such she could not have married the applicant during subsistence of the first marriage. Hence her relationship with the applicant was not under misconception of fact. The first information report and the other material on record do not disclose the offence within the meaning of Section 375 of the IPC and other offences are under Section 323, 504 are noncognizable offences. Under the circumstances the present case which is squarely covered by illustrations (1), (3) and (4) in the case of State of **Haryana and others Vs. Ch. Bhajan Lal and others** reported in **(1992) 3 SCR 735**.

8. In the facts and circumstances, compelling the applicant to face trial would be an abuse of the process of law. Hence in our considered view this is a fit case to exercise inherent power under Section 482 of Cr.P.C to prevent the abuse of the process of Court. In the result, the application is allowed. The FIR No.405/2020 registered with

Kotwali Police Station, Parbhani, Dist. Parbhani and Sessions Case No. 181/2021 pending before the learned Addl. Sessions Judge, Parbhani for the offence punishable under Section 376(2)(n), 323, 504 of the Indian Penal Code stands quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp