

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1174 OF 2021

Shivaji s/o Dilip Mali,
Age 23 years, Occupation Service,
R/o Warapgaon, Tq. Ambajogai,
District Beed, At present serving in
Indian Army at 118 brigade,
14 Marathi Light Infantry, C/o 56 APO,
PIN Code – 911 614

... APPLICANT

VERSUS

1. The State of Maharashtra
through Police Station Officer,
Police Station, Ambajogai (Rural),
District Beed.

(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)

2. X Y Z

... RESPONDENTS

.....
Mr. A.D. Gade, Advocate for applicant
Mr. P.G. Borade, A.P.P. for respondent No.1.
Mr. A.B. Chalak, Advocate for respondent No.2.

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

DATE : 6th JANUARY, 2023

ORAL JUDGMENT (PER R.M. JOSHI, J.) :

With consent, heard finally at the stage of admission.

2. By this application under Section 482 of the Code of

Criminal Procedure, the applicant is seeking to quash First Informant Report bearing No.0007/2021, registered with Ambajogai (Rural) Police Station, District Beed for the offences punishable under Sections 376, 506 of the Indian Penal Code lodged at the instance of respondent No.2 and the further charge sheet and consequential criminal proceedings bearing Sessions Case No.147/2021 pending before the learned Additional Sessions Judge, Ambajogai.

3. As per the report lodged with the police, the respondent No.2 got acquainted with the applicant as respondent No.2's brother was deployed together with the applicant in Indian Army at Leh. It is stated that, prior to four months of the lodging of the report, the applicant had phoned the respondent No.2 and expressed his love towards her. She further stated that, love relations developed between them and the applicant promised to marry her. Initially, she refused to establish physical relations with him. Thereafter, applicant took her to his house at Varapgaon and introduced her to his parents. She further claimed in the report that, applicant established forcible physical relations with her, against her consent. Later it was revealed to her that the applicant is not intending to marry her and hence the report came to be lodged.

4. The learned counsel for the applicant argued that, taking into consideration the report given by the respondent No.2 and other material on record, there appears consensual physical relationship between the applicant and respondent No.2, and only for the reason that the marriage was not materialised, present complaint is lodged. According to him, case of rape is not made out. Promise of marriage was not false since inception of the relationship between the parties. According to him, the respondent No.2 is major and consciously agreed for sexual relations. It is also argued that, merely because at later point of time the marriage could not be performed or even refused by the applicant per se does not amount to a case of false promise or misconception of fact that vitiates consent of respondent No.2. In support of his submission, he placed reliance on the following decisions :

- (1) Uday Vs. State of Karnataka [(2003) 4 SCC 46]
- (2) Pramod Suryabhan Pawar Vs. State of Maharashtra
(2019) 9 SCC 608
- (3) Maheshwar Tigga Vs. State of Jharkhand
(2020) 10 SCC 108

5. Learned A.P.P. opposed the application by placing reliance on the evidence collected during investigation, which according to him makes out case against the applicant for

offences under Sections 376 and 506 of the Indian Penal Code.

6. Learned counsel for the respondent No.2 vehemently opposed the application by contending that, as per the information given to the police, she had conceded to the request for physical relationship only on false promise of marriage and hence, the case squarely falls under Section 376 of the Indian Penal Code. In support of his submission, he placed reliance on a decision in case of **Anurag Sony Vs. State of Chhatisgarh [AIR 2019 SC 1857]**. Thus, according to him, it is not a fit case to quash the F.I.R. and subsequent proceedings.

7. Before advertng to the material, as disclosed in the charge sheet and contentions of rival parties, we find it necessary to make a fruitful reference to the judgment of the Hon'ble Apex Court in case of **State of Haryana & ors. Vs. Ch. Bhajan Lal [AIR 1992 SC 604]**, wherein guidelines are laid down by the Hon'ble Apex Court as to the circumstances in which High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure and quash criminal proceedings. The illustrations given therein can be reappreciated as under :

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out

a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view

to spite him due to private and personal grudge.”

8. Keeping in mind the guiding principles laid down in the above mentioned judgment, prima facie facts appearing from First Informant Report and material evidence collected during the course of investigation are appreciated. Though in report a bold statement is made by respondent No.2 about applicant committing forcible sexual intercourse against her wish, but from the entire material on record, it is crystal clear that the case of prosecutrix against applicant is for establishing sexual relationship on false promise of marriage and not committing forcible intercourse. After lodging of report, while respondent No.2 was referred by police for medical examination, she narrated history to Medical Officer of consensual sexual intercourse 5 to 6 times on his promise to marry her. Even from statements of parents and other witnesses it does not reveal that there was compulsive sexual relation forced upon by applicant on respondent No.2.

9. Section 375 of the Indian Penal Code defines “rape” and a man is said to have committed rape if sexual intercourse is committed, under the circumstances falling under any of seven descriptions provided therein. For the present case, description

first – against her will and secondly – without her consent, would be relevant. Section 90 of the Indian Penal Code refers to “consent” to state that a consent is not such a consent as is intended by any Section of this Code if the consent is given by person under fear of injury or under misconception of fact and if the person doing act knows, or has reason to believe that consent was given in consequence of such fear or misconception. Having regard to the relevant provision of the Penal Code applicable to the present case, this Court, in the light of the facts appearing on record, has to ascertain whether there is misconception of fact i.e. false promise of marriage given by applicant do vitiate her consent for sexual relationship. The Hon’ble Apex Court, while dealing with similar question in case of Sonu @ Subhash Kumar Vs. State of Uttar Pradesh [2021 SCC Online – SC 181], has observed that :-

9. In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

“Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of

the promise should have had no intention of upholding his word at the time of giving it...”

10. Further, the Court has observed:

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

10. In the instant case, there is no dispute about the fact that the respondent No.2 is major and she developed love relations with the applicant. It is her case that, she conceded to physical relationship with the applicant on his promise to marry her and same same did not materialise, the complaint came to be lodged. In order to appreciate these allegations against the applicant, if the charge sheet and material collected during the investigation is perused, then it reveals that the applicant not only had promised to marry the respondent No.2, but in that direction, he had taken steps to solemnize the marriage. It is clear from the statement of parents of respondent No.2 that their son, who was colleague of applicant, took initiative to have

discussion with the family of the applicant about the marriage and it was decided to fix the date of marriage even before the applicant went back to his work place after leave period was over. The statement of mother of respondent No.2 in fact indicates that, even the *Muhurta* (auspicious date and time) for the marriage was to be decided, however, for certain reasons, thereafter the applicant refused to marry the respondent No.2. This material on record indicates that, it was not a hollow promise of marriage given by the applicant only with a view to establish physical relationship with respondent No.2. No prudent person, if has no intention to marry a girl, would introduce her to family and hold talks about fixing date of marriage that too through his colleague who is brother of respondent No.2.

11. In the light of aforesaid facts, if the judgments of the Hon'ble Apex Court (cited supra) are considered, then it is crystal clear that present case is not the one where a false promise of marriage is given only with a view to extract consent for sexual intercourse from respondent No.2, to constitute the same as misconception of facts in order to vitiate the consent of respondent No.2 for physical relations. In case of Anurag Soni (cited supra) on behalf of respondent No.2, the Hon'ble Apex Court has taken into consideration the facts involved therein, wherein the accused was married and in fact, his marriage was

fixed long back and despite the same, he continued to give promise/ false promise and alluded to the prosecutrix to give her consent for physical relationship. It is in those peculiar set of facts, it was held by the Hon'ble Apex Court that it was a case of misconception of facts, which has vitiated the consent of the prosecutrix. In considered view of this Court, the said facts involved in case of Anurag Soni (cited supra) and the facts involved in the instant case are entirely different and hence, the said judgment has no application to the present case.

12. Having considered the entire material on record, we are of the view that, it is a fit case where since inception of the relationship between the parties there was no false promise of marriage, and merely because for some reasons the marriage could not be materialised, it cannot be said that the applicant has committed offence punishable under Sections 376, 506 of the Indian Penal Code. The facts as they appear from material on record and allegations made against applicant, even if are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against accused. With these set of facts and as the prosecution cannot travel beyond the material collected during investigation, there is no purpose in calling upon the applicant, who is in Indian Army to undergo process of law, which would not be culminating to his

conviction. To allow prosecution to hold trial on the basis of such material on record, would be sheer abuse of process of the Court. We, therefore, find the present case to be a fit case wherein inherent powers can be exercised to quash the First Information Report and consequential proceedings. In the result, following order :

O R D E R

- (i) The Criminal Application is allowed in terms of prayer clauses (C), (C-1) and (C-2).
- (ii) Consequently, the First Informant Report bearing No.0007/2021, registered with Ambajogai (Rural) Police Station, District Beed for the offences punishable under Sections 376, 506 of the Indian Penal Code and the further charge sheet and consequential criminal proceedings bearing Sessions Case No.147/2021 pending before the learned Additional Sessions Judge, Ambajogai stand quashed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-