

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

CRIMINAL APPLICATION NO. 1337 OF 2021

Datta Manikrao Chalak

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....
Mr. S.P. Rathod, Advocate for applicant

Mr. S.N. Morampalle, A.P.P. for respondent no.1 – State

Mr. M.P. Tripathi, Advocate for respondent no.2

....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 29th AUGUST, 2023**

PER COURT :

1. Heard.

2. This application, under Section 482 of Code of Criminal Procedure, has been filed for quashment of the First Information Report ('F.I.R.'), being Crime No. 60 of 2021 registered with Mukundwadi Police Station, Dist. Aurangabad for the offences punishable under Sections 376, 376(2)(f) and 376(2)(n) of the Indian Penal Code and consequential charge-sheet, being R.C.C. No. 1473 of 2021 pending on the file of C.J.M., Aurangabad.

3. The F.I.R. has been lodged by the victim herself on 10th March, 2021. It is alleged therein that the applicant is a cousin of her husband. He was staying in the neighbourhood of the victim. Once he came her home in March 2020 and expressed her love for her. He even put up a proposal of marriage. She refused. The applicant, however, compelled her to submit to his sexual lust. He then gave her threat of eliminating her husband if she reported the said incident to anyone.

4. It has further been averred that since there were matrimonial disputes between the victim and her husband, she had returned to her parental home on 05th October, 2020. Her husband filed a petition for dissolution of marriage. On 04th March, 2021 the applicant again came to her. He offered to act as a go between to settle the matrimonial dispute. He, therefore, took her with him to Aurangabad. As it was late in the night, he took her to his friend's room. It was 11:30 p.m. He again committed sexual intercourse with her without her consent and against her wish. He again allegedly threatened her of eliminating her parents, if she goes public with the incident. Based on the aforesaid facts, crime came to be registered and investigated as well.

5. According to learned counsel for the applicant, it was a consensual relationship. He, therefore, urged for grant of the application.

6. Learned A.P.P. and learned counsel representing Respondent No.2 would, on the other hand, submit that averments in the F.I.R. suggest the applicant to have sexually exploited her. The acts were without her consent and against her wish. It is now for the trial Court to proceed against the applicant. A statement of the applicant's friend, in whose room the offence was committed on 04th March, 2021, was adverted to. His statement indicates that on the given night the applicant alongwith a lady had stayed in his room. The applicant that time had informed him that his wife was with him and none else.

7. Considered the submissions advanced. Perused the F.I..R and related papers. Admittedly, all is not well between the informant and her husband. In the F.I.R. itself the informant admits her husband to have filed a petition for dissolution of marriage. A certified copy thereof has been placed on record by the applicant. Husband of the informant has asked for dissolution of marriage on the ground of her adultery. Said petition was filed on 13th October, 2020. It has been alleged therein that the informant had tried to be physical with one boy of sixteen years old. It has further been alleged therein that the informant to have been in relation with the present applicant. On these grounds dissolution of marriage was asked for.

8. We fail to understand as to when the applicant had allegedly committed rape of the informant way back in March 2020, why she did not report the said incident immediately. Last such incident did take place on the night of 04th March, 2021. The F.I.R. has been lodged on 10th March, 2021 i.e. six days thereafter, and therefore, medical examination report of the informant will be of little assistance for the prosecution. As such, it is a case of averments in the F.I.R. alone. When the applicant allegedly had sexual intercourse with the informant a year before lodging of the F.I.R. and she keeps mum for over twelve months, lead us to observe it to be a case of consensual relationship. As such, it is not an offence of rape. Directing the applicant to stand trial would be an abuse of process of Court. We are, therefore, inclined to allow the application.

9. In view of above, criminal application is allowed in terms of prayer clause (B).

SSD (SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)