

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1117 OF 2020

Vinod Prakash Sonawane

Petitioner

Versus

The State of Maharashtra & another

Respondents

Mr. H. P. Randhir, Advocate for the petitioner.

Mrs. V. N. Patil-Jadhav, APP for the State.

Ms. Jayshree Ghorpade, Advocate (appointed) for respondent No. 2.

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

DATE : 23rd FEBRUARY, 2023.

PER COURT :

1. It is seen that the petitioner has disclosed the identity of the victim who is a lady. Learned counsel for the petitioner tenders apology and seeks leave to mask the name of respondent No. 2. The same shall be done forthwith. The petitioner shall pay cost of Rs. 5,000/- to library, Advocates' Association of Bombay High Court, Bench at Aurangabad.

2. The petitioner has filed this petition under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure to quash the First Information Report No. 200/2020 registered with Bhusawal Taluka Police Station, Bhusawal, Dist.

Jalgaon and SCC No. 166/2021 pending on the file of learned Sessions Judge, Bhusawal, for the offences punishable under Sections 376 and 420 of the Indian Penal Code.

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

4. The only question for consideration is whether the First Information Report and the other material collected during the course of investigation, which forms part of the charge-sheet, disclose offence as alleged against the petitioner.

5. The crime against the petitioner was registered pursuant to the First Information Report lodged by respondent No. 2. The First Information Report reveals that respondent No.2 is a married woman. She had developed extra marital relations with the petitioner herein who is also a married man. They had indulged in consensual sexual relationship with each other. It is seen that respondent No. 2

had lodged the First Information Report only after her husband came to know about her extra marital relationship.

6. The First Information Report reveals that the relationship between the petitioner and respondent No. 2, who are adults, was consensual. Respondent No. 2 has stated that she had sexual relationship with the petitioner because he had assured to marry her after she left her husband. As noted above, marriages of the petitioner as well as respondent No.2 was subsisting on the relevant day. Thus, it is evident that respondent No. 2 had not entered into any relationship under misconception of fact.

7. The First Information Report as well as other material on record do not disclose essential ingredients of rape within the meaning of Section 375 of the Indian Penal Code. Under such circumstances, subjecting the petitioner to face criminal trial will be an abuse of the process of Court. Hence, this is a fit case to exercise discretion under Section 482 of Cr.P.C. to prevent an abuse of the process of the Court.

8. In the result, the petition is allowed in terms of prayer clause 'B'. Consequently, First Information Report No. 200/2020 registered with Bhusawal Taluka Police Station, Bhusawal, Dist. Jalgaon and SCC No. 166/2021 pending on the file of learned Sessions Judge, Bhusawal are hereby quashed. Secretary, High Court Legal Services, Sub Committee, Aurangabad to pay the fees of the appointed counsel which is quantified at Rs. 6,000/-.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

dyb