

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

CRIMINAL APPLICATION NO. 1992 OF 2019

Manoj S/o Chandrakant Hadke
Age-28 years, Occu-Business
R/o- Main road, Rahata,
Tq.- Rahata, Dist.- Ahmednagar

... **APPLICANT**

VERSUS

1. The State of Maharashtra
for the Police Station Shirdi, Tq.- Rahata,
Dist.- Dist.- Ahmednagar
2. Rachna D/o Deoram Kale
Age-30 years, Occu- Household,
R/o-Harikunj Apartment, In front of
Jai gas agency Samta Nagar,
Takli road, (Gandhinagar), Lane No. 1,
Nasik-6, Tq. & Dist.- Nasik

... **RESPONDENTS**

...

Mr. Amol S. Gandhi, Advocate for the applicant
Mr. G.O. Wattamwar, APP Respondent No. 1/State
Mr. R.V. Gore, Advocate for respondent No.2

...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 28.03.2023

ORDER (MANGESH S. PATIL, J.) :

By invoking the powers of this Court under Section 482 of the Code of Criminal Procedure the applicant who is the sole accused in Crime No.0718/2018 registered with Shirdi Police Station, Shirdi, Tq. Rahata, Dist. Ahmednagar for the offences punishable under Section 376-B, 504 and 506 of the Indian Penal Code and the consequent charge sheet No.45/2019 and the criminal case R.C.C. No.120/2019, is seeking its quashment.

2. We have heard both the sides.

3. Learned advocate for the applicant submits that accepting the allegations in the FIR and all the statements recorded by the Investigating Officer at their face value the circumstances are indicative of the fact that the allegations are concocted. It was a consensual act. The applicant and the respondent No.2 is a married couple. A petition for divorce is pending and the allegations in the FIR are improbable. Applicant is being falsely implicated. It would be sheer abuse of the process of law to make the applicant face the trial.

4. Per contra, the learned APP and the learned advocate for the respondent No.2 strongly oppose the application. They submit that it is a serious crime. Even if the applicant and the respondent No.2 are husband and the wife, commission of sexual intercourse during separation has been made punishable under Section 376-B of the Indian Penal Code. At this stage when she has alleged that the applicant committed sexual intercourse without her consent, she should not be disbelieved. She must get an opportunity to substantiate these allegations during the trial. It would be travesty of justice if the crime is quashed after the charge-sheet is filed in such serious matter.

5. They would further submit that there is ample evidence *inter alia* in the form of statement of the lodge owner which corroborates the circumstances mentioned in the FIR about the applicant having booked room in his lodge and both had stayed there in the night of 27.12.2018.

6. We have carefully considered the rival submissions and perused

the papers. As has been rightly submitted by the learned advocate Mr. Gore for the respondent No.2, the offence punishable under Section 376-B of the Indian Penal Code is peculiar and makes the husband liable for punishment if he indulges in sexual intercourse with his wife when they are separate by way of a decree of separation or even otherwise. But then, even Section 376-B requires that such sexual intercourse between a man and his wife happens without her consent. Absence of consent is a *sine qua non* for commission of the crime punishable under this provision.

7. True it is that in the FIR the respondent No.2 has been alleging about the applicant having performed sexual intercourse forcefully and even when she was opposing it. However, according to us, the allegations seem to be improbable if one carefully considers the papers of the investigation which reveal the conduct of the respondent No.2 before and after the alleged incident, which according to her took place in the evening of 27.12.2018 and even in the morning of 28.12.2018 in the lodge.

8. It does appear from the statement of the lodge owner that indeed the couple had stayed in his lodge during that period. However, conspicuously, the respondent No.2 does not state either in the FIR or even in her supplementary statement about having expressly opposed the overtures of the applicant during the period he was forcing himself on her which would be contrary to the behavior in a normal circumstances. Besides, even in her supplementary statement recorded under Section 161 she has mentioned that a similar incident had occurred even in the month of

November 2018 but does not mention any reason for not disclosing such grievance even at that time.

9. It would be appropriate to bear in mind the version as can be made out from the FIR. The applicant and the respondent got to know each other even when she was married and even her husband became aware about such relations. He divorced her on 10.11.2017 and thereafter this couple performed the registered marriage on 30.05.2018 and started cohabiting with him in his house at Rahata. It further alleges that after 7 to 8 days of marriage under the pretext that his father was not keeping well the applicant dropped her to her parental home at Nashik and assured to bring her back after the health of his father improved. It further mentions that his father died on 15.06.2018 and since thereafter in spite of her persistence he failed to take her back. The FIR thereafter alleges that on 27.12.2018 at about 4.00 pm she started from Nashik and reached at a place Zagde Phata. At about 6:30 pm she received a phone call from the applicant who asked her as to where she was going. When she told that she was going to Shirdi for darshan he asked her to wait there and he would take her. After some time he arrived there on a motorcycle. The couple went to Shirdi on his motorcycle, had darshan and then he took her on his motorcycle to the lodge. He then said to her that he wanted to talk to her and in spite of her refusal he insisted, booked a room and took her to the room. It alleges that he then insisted for having sex. When she declined he performed sex without her consent in the same night and even in the next

morning for five to six times. The further allegations are that in the morning at around 10.00 am the couple left the lodge, dropped her on his motorcycle all the way at Nashik at 1.00 pm. It alleges that he threatened her not to disclose anything to anybody and went back. The FIR was lodged on 29.12.2018 at 00.23 hours. As is mentioned earlier the respondent No.2 in her supplementary statement has specifically mentioned about a similar incident to have taken place in the month of November as well wherein on a similar insistence of the applicant under the pretext of having a talk he had taken her to the same lodge and had performed sex without her consent. In this supplementary statement she has further stated that on 29.12.2018 during medical checkup the doctors informed her that she was pregnant and that is how she realized that the incident of November 2018 must have caused the pregnancy.

10. The learned advocate for the respondent No.2 submits that subsequently she has delivered a boy. We are narrating these details as according to us such conduct of the respondent No.2 clearly belies her version of the sexual intercourse having taken place without her consent. It is highly improbable, even if it is assumed for the sake of arguments that the couple was residing separately, the alleged incidents could have taken place without her active connivance.

11. The Medico-Legal Examination Report which is a part of the charge sheet reads as under :

“ Column 15 A. History of Sexual Violence
i.

.....

(vii) : Description of Incident in the words of the narration narrator of the incident : survivor/informant (specify name and relation to survivor)

Married since 6 months. lived together. 10 days after marriage. She was left to her home Nashik to her parents. On and off they used to meet at Pandharpur, Shirdi, stayed together during 28 Oct to 6 Nov. meet at 09.11.2018 Last meet at 10.11.2018, 27.12.2018, 28.12.2018 had conflicts about first marriage.”

12. This history narrated by the respondent No.2 clearly indicates that even she admits that the couple was together from 28.10.2018 to 06.11.2018 and the couple had met on 09.11.2018, 10.11.2018, 27.12.2018 and 28.12.2018. This circumstance in our considered view substantiates the inference that the respondent No.2 in all probability must have been a consenting party.

13. Applying the principles laid down in the matter of **State of Haryana and Ors. V/s Ch. Bhajan Lal and Ors.**; (1992) SCC (Cri) 426, allowing the applicant to face the prosecution in such peculiar facts and circumstances would be sheer abuse of the process of law.

14. The Application is allowed. The Crime No.0718/2018 registered with Shirdi Police Station, Shirdi, Tq. Rahata, Dist. Ahmednagar and the consequent charge sheet No.45/2019 and the criminal case R.C.C. No.120/2019 is quashed and set aside.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)