

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

CRIMINAL APPLICATION NO.2487 OF 2022

Ankush s/o. Raghunath Jamunde	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.Ujwal Patil, Advocate for applicant
Mr.A.R.Kale, APP for respondent no.1
Mr.R.C.Brahmankar, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : NOVEMBER 06, 2023**

ORDER (PER SANJAY A. DESHMUKH, J.) :-

This is an application under Section 482 of the Code of Criminal Procedure, 1973, for quashment of the Special Case No.182 of 2022, pending before the Sessions Court, Aurangabad, in respect of Charge Sheet No.94 of 2022, submitted by Pundlik Nagar Police Station, Aurangabad, for the offences punishable under Section 376(2) (n), 313, 323 and 506 of Indian Penal Code (for short "IPC") and Sections 3(1)(w)(i)(ii), 3(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Respondent no.2 – informant, aged 30 years, averred in the report that she was working as a Nurse. Love-affair was developed between her and the applicant. The applicant assured that he will marry her. They were living in live-in relationship. She became pregnant and her Medical Termination of Pregnancy was done at the insistence of the applicant. Their relationship was continued. Thereafter, the applicant started beating her and lastly, he refused to marry with. She, therefore, lodged FIR on 24.07.2022.

3. Learned counsel for the applicant submits that this is a case of consensual sexual relationship between respondent no.2 – informant and the applicant, which is exception as per Section of 90 of Indian Penal Code. He relies on a judgment of this Court in the case of **Rajat Punamdas Ate Vs. State of Maharashtra, 2023 DGLS (Bom.) 919** and more particularly, paragraphs 6 and 7 thereof, which read thus:-

6. Apart from the settlement in between the parties, we have examined the case on its own merits. The informant is well educated, grown up lady who was serving in the Company. Obviously, she had capacity of understanding the consequences of her act. The entire Police Report discloses that for long period of three to four years, they had maintained relationship. Pertaining to note that they resided together in live-in-relationship which prima facie discloses

that she never surrendered herself only on account of promise for marriage. Moreover, the informant in her statement before the learned Magistrate did not utter a single word that the applicant has promised her for marriage and therefore, she consented for sexual relation.

7. In reported cases of Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608 and Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others, AIR 2019 SC 327, the Supreme Court made distinction in between breach of promise and false promise. In order to vitiate the consent in terms of Section 90 of the Indian Penal Code, the applicant must possess deceitful intent from the inception. To construe a consent to be obtained by fraud, it is to be demonstrated that consent was given only because there was promise for marriage. Examination of the entire material, particularly age, education living together and maintaining relationship is sufficient to demonstrate that they had relation out of love and passion. Therefore, the essential ingredients to constitute the offence punishable under Section 376 of the Indian Penal Code are missing. In addition to that, the victim has filed affidavit stating that out of anger, she has filed the report.

He lastly prays for quashment of the FIR.

4. Learned APP for respondent no.1 - State and learned counsel for respondent no.2 - informant strongly opposed the application, contending that the FIR itself shows that the applicant had assured to marry with the informant and therefore, she submitted herself to him. It was not a consensual sexual relationship. They, ultimately, urged for rejection of the application.

5. Perused the FIR and the charge sheet. The report itself shows that the informant was serving as a Nurse in a hospital at Aurangabad. Their love-affair started in the year 2021. It lastly resulted into quarrel and thereafter, the applicant refused to marry with her. She, therefore, lodged the report. She alleged that the applicant told her that she belongs to Scheduled Caste category and therefore, the marriage cannot be performed till marriage of his sister. The ingredients of Sections 3(1)(w)(i)(ii) and 3(v) are not establishing from the report and statements of the witnesses.

6. On perusal of the FIR, it, Prima facie, appears to be a case of consensual relationship between the applicant and the informant. Essential ingredients of Section 376 of IPC are, therefore, not establishing. In such a circumstance, there is no *prima facie* evidence to proceed against the applicant under Section 376(2)(n) of IPC. It would, therefore, be certainly an abuse of the process of Court, if the applicant is compelled to face the trial. The application, therefore, deserves to be allowed.

7. The application is allowed in terms of prayer clause (A).

8. Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.10,000/- (Rupees Ten Thousand), which shall be paid by the applicant to learned counsel for respondent, within one week.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP