

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

CRIMINAL APPLICATION NO.2815 OF 2022

Deepak s/o. Chandoba Kamble ..Applicant

Vs.

The State of Maharashtra and anr. ..Respondents

Mr.D.M.Shinde, Advocate for applicant
Mr.S.D.Ghayal, APP for respondent no.1
Mr.V.A.Badgiya, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : FEBRUARY 13, 2023**

PER COURT :-

Heard finally with the consent of learned counsel for the parties.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing FIR No.260 of 2022, registered with Shivaji Nagar Police Station, Dist.Nanded, for the offences punishable under Sections 376(2)(n), 506 and 494 of Indian Penal Code as well as the criminal proceedings, i.e. R.C.C. No.866 of 2022, pending on the file of learned Addl. Chief Judicial Magistrate, Nanded.

3. Heard learned counsel for the applicants, learned APP for the respondent no.1 and learned counsel for the respondent no.2.

4. The aforesaid crime was registered pursuant to the FIR lodged by respondent no.2. She has alleged that in the month of February, 2021, the applicant had sent her a message: "I Like You". He deleted the message when she expressed her displeasure over the same. She claimed that on 21.05.2021, the applicant called her to the flat of his friend, Vinod, and hugged her. On 16.09.2021, the applicant took her to a room in Hotel Midland, Nanded and had forcible sexual intercourse with her and threatened her not to disclose the incident to anyone. She claims that the applicant gave her an idol of Gautam Buddha and threatened to implicate her in atrocity case, if she did not accept the idol.

5. The respondent no.2 further alleged that the applicant started a company 'Scope Management Solutions', in her name. On 24.11.2021, he took her to Hotel Renaissance, Powai, Mumbai, on the pretext of attending a meeting and had forcible sexual intercourse with her. She also claims that on 09.12.2021 and 12.01.2022, the applicant again took her to Hotel Midland, Nanded,

and had forcible sexual intercourse with her. The applicant compelled her to marry him and performed a religious ceremony by exchanging garlands on 29.12.2021 at Lumbini Buddha Vihar, Vasmat. The respondent no.2 states that the applicant had requested her parents to allow him to marry her and threatened to kill them in the event they did not accept his proposal. She claims that from 16.09.2021 to 12.01.2022, the applicant had sexual relationship with her under threats of causing death of her family members and implicating them in a case under the provisions of S.C. and S.T. Act. Pursuant to the allegations leveled against the applicant, the aforesaid crime came to be registered.

6. The respondent no.2 was sent for medical examination, wherein, she had given the history that she was in love with the applicant and he had sexual intercourse with her on several occasions. The statement of the respondent no.2 was also recorded under Section 164 of the Code of Criminal Procedure, which clearly indicates that she was aware that the applicant was a married man. The statement under Section 164 of Cr.P.C. also indicates that the applicant had sexual intercourse with the respondent no.2 on several occasions at several places.

7. The record reveals that the applicant and the respondent no.2, both adults, had indulged in consensual sexual relationship. Suffice it to say, consensual relationship between the two adults, would not constitute rape as defined under Section 375 of Indian Penal Code. In the case of **Shambhu Kharwar Vs. State of Uttar Pradesh and anr., 2022 SCC OnLine SC 1032**, the Hon'ble Supreme Court has referred the decision in the case of **Dhruvaram Murlidhar Sonar Vs. State of Maharashtra, (2019)18 SCC 191**, wherein it is held that *"it is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."* In the case of **Shambhu Kharwar** (supra), the Hon'ble Supreme Court also referred to the decision in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019)9 SCC 608**, wherein it was held that *"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."

8. In the instant case, as stated earlier, the record reveals that the applicant and the respondent no.2, both adults, were in love with each other. They accompanied each other and had sexual intercourse several occasions, even though the respondent no.2 was aware that the applicant was a married man. The allegations contained in the FIR as well as the other material collected in the course of investigation do not disclose essential ingredients of the offence under Section 375 of I.P.C., in the absence of which the applicant cannot be compelled to face criminal trial. Hence, in our considered view, this is a fit case to exercise powers under Section 482 of the Code of Criminal Procedure to prevent an abuse of the process of Court.

9. In the result, the application is allowed in terms of prayer clauses (B) and (E). Consequently, FIR No.260 of 2022

registered with Shivajinagar Police Station, Dist.Nanded, for the offences punishable under Sections 376(2)(n), 506 and 494 of Indian Penal Code as well as the criminal proceedings, i.e. R.C.C. No.866 of 2022, pending on the file of learned Addl. Chief Judicial Magistrate, Nanded, shall stand quashed.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP