

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

CRIMINAL APPLICATION NO.3404 OF 2022

Keshav Manikrao Panchal

..Applicant

Vs.

The State of Maharashtra and anr.

..Respondents

Mr.M.K.Bhosale, Advocate for applicant
Mr.P.G.Borade, APP for respondent no.1
Mr.C.E.Gaikwad, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : JANUARY 25, 2023**

ORDER :-

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.0119 of 2022 registered with Tadkalas Police Station, Dist.Parbhani, for the offences punishable under Sections 376, 376(2)(n), 323 and 504 of Indian Penal Code.

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

4. The aforesaid crime was registered pursuant to the FIR lodged by respondent no.2, alleging that the applicant herein had sexual relationship with her under a false promise of marriage. Perusal of the FIR reveals that the applicant and the respondent no.2 were known to each other and were in love with each other. The FIR reveals that the respondent no.2 had married some other person of her parents' choice and that she has a child of five years of age from the said wedlock. The respondent no.2 claimed that on 25.10.2016, she once again met the applicant at her sister's house. The applicant professed love to her and told her that she should seek divorce from her husband and that he (applicant) would marry her. She has stated that the applicant had sexual relationship with her under the promise of marriage.

5. The FIR reveals that the applicant and the respondent no.2, both adults, had indulged in sexual activity on several occasions since 25.10.2016. She has lodged the FIR only after her husband came to know about her relationship with the applicant. It is to be noted that the respondent no.2 was already married and hence, there was no question of the applicant marrying her during

subsistence of the first marriage. Hence, the consent of the respondent no.2 cannot be said to be under misconception of facts. In such circumstances, consensual relationship between the applicant and the respondent no.2, both adults, would not constitute an offence of rape within the meaning of Section 375 of Indian Penal Code. Consequently, continuation of the criminal proceedings would be sheer abuse of the process of the Court. In the result, this is a fit case to exercise powers under Section 482 of the Code of Criminal Procedure to prevent abuse of the process of the Court.

6. In view of the above, the application is allowed in terms of prayer clause (A). Consequently, FIR No.0119 of 2022 registered with Tadkalas Police Station, Dist.Parbhani, for the offences punishable under Sections 376, 376(2)(n), 323 and 504 of Indian Penal Code, stands quashed.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]