

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2669 OF 2021

Rajeshkumar s/o Dineshchandra Sharma ...Applicant

versus

1. The State of Maharashtra

2. X.Y.Z. ...Respondents

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Mr. N.R. Shaikh, advocate for the applicant (appointed)

Mr. P.N. Kutti, A.P.P. for respondent No.1

Ms. Sayali S. Tekale-Dadpe, advocate for respondent No. 2
(appointed).

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 26th SEPTEMBER, 2023.

O R D E R (PER SANJAY A. DESHMUKH, J.) :-

1. Heard the learned advocates for the respective parties.

2. This is an application filed under Section 482 of Cr.P.C. for quashment of charge sheet bearing R.C.C. No. 155 of 2021 submitted in the Court of learned Judicial Magistrate, First Class, Kandhar, district Nanded in connection with crime No. 278 of 2021 registered with Kandhar police station, Tq. Kandhar, District Nanded, for the offences punishable under Sections 376(2) (n) and 506 of I.P.C and under Section 67-A of the Information Technologies Act.

3. Respondent No.2-informant has averred in the report that she became familiar with the applicant due to their job. In the year 2018, the applicant put a proposal for marriage with informant and developed physical relations with her on the pretext of performance of marriage. They used to meet each other frequently.

4. On 6.12.2018, the applicant got service in Food and Safety Department in West Bengal. He performed his marriage with another girl. However, he continued contacting with the informant by telling her that he is ready to perform marriage with her, after giving divorce to his wife. He called the informant for performance of marriage at Raiganj. On 1.2.2019, she went there. They both stayed there from 1.2.2019 to 7.2.2019. At that time, sexual intercourse between them was continued. Again he made phone call to informant on 8.4.2019 and told her that he is giving divorce to his wife. They again met at Hyderabad, Lucknow, Darjiling and Sikkim. When the wife of the applicant came to stay with him, the informant told him that he shall continue with his marital relations with his wife and she refused to meet him. The applicant sent a mail to the informant and threatened her that he will prove that she is infidel lady. He also made bad allegations against her parents and teachers in order to defame her. She also spent an amount of more than Rs.1,00,000/- to Rs.1,50,000/- when they were residing together. He had repaid that amount to her, however, he has sent false sms and informed

that he is sending that the amount as a hand loan to her. Lastly, on 11.7.2021, the applicant threatened her of dire consequences. Therefore, she lodged the report on 11.08.2021.

5. Since the appearance of learned advocate engaged by the applicant has been discharged, we have heard the learned advocate appointed to represent him. He submitted that there were consensual sexual relations between the applicant and the informant for years together. She had made false allegations of rape against the applicant on the pretext of performance of marriage with her. He submitted that there is delay for lodging the report. He prayed for quashing the report and the charge sheet.

6. The learned advocate appointed to represent respondent No.2-informant and the learned A.P.P. submitted that the applicant is involved in serious crime of rape. There are messages on WhatsApp between the informant and the applicant which show their close relationship. They prayed for dismissal of application.

7. On perusal of the charge sheet, it appears that there is no any evidence of forensic laboratory showing alleged objectionable photographs and messages uploaded by the applicant. Further, there is no evidence of alleged overt-act of committing rape, without consent of the informant. It was consensual sexual relationship between them. Thus, there is no prima facie material against the

applicant establishing ingredients of Sections 376(2) (n) and 506 of I.P.C. and Section 67-A of the Information Technologies Act. Therefore, directing the applicant to face trial in such circumstances would be an abuse of process of Court. Considering, all these aspects the application deserves to be allowed in the interest of justice. Hence, the following order:-

8. The application is allowed in terms of prayer clause "B". No costs.

9. We quantify an amount of Rs.15,000/- to be paid to the learned advocate appointed to represent the applicant and an amount of Rs.10,000/- to be paid to the learned advocate appointed to represent respondent No.2-informant, by the High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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