

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

998 CRIMINAL APPLICATION NO.4292 OF 2022

Sunil s/o Narayan Kalbande ...Applicant

versus

1. The State of Maharashtra
2. XYZ ...Respondents

...
Advocate for Applicants : Mr. G.K. Muneshwar
APP for Respondent No.1: Mr. M.M. Nerlikar
Advocate for Respondent No.2 : Ms. Priyanka P. Shinde (appointed)
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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 11th JULY, 2023.**

PER COURT :-

1. Heard.
2. This application has been filed for quashment of the F.I.R. No. 170 of 2022 registered with Hadgaon police station, district Nanded for the offence punishable under Section 376(2) (N) of I.P.C. and the consequential proceedings of Sessions Case No. 241 of 2022 pending before the learned District Judge-2, Nanded.
3. The learned advocate for the applicant submits that it was a consensual relationship between the applicant and the respondent/informant. They stayed together as husband and wife for not less than 8 months. Thereafter, she left the company of the

present applicant. The applicant made efforts to get her back but in vain. According to him, the false F.I.R. is filed only with a view to teach him a lesson.

4. The learned A.P.P. and the learned advocate appointed to represent the cause of the informant would, on the other hand, submit that although there were consensual sexual relations between the applicant and respondent/informant, that was only after the applicant extended her the promise of marriage. The applicant thereafter, did not keep his promise and as such, the consent given by respondent/informant was not free consent within the meaning of Section 90 of the Indian Penal Code. According to them, the allegations in the F.I.R. and the relevant police papers, make out a *prima facie* case to proceed against the applicant. They therefore, urge for rejection of the application.

5. Considered the submissions advanced. Perused the F.I.R. and the relevant police papers. Admittedly, the respondent/informant was previously married. Although, in the F.I.R. she states to have been divorcee, *prima facie*, there is nothing to indicate that her marriage with the applicant was void one. Be that as it may, admittedly, both applicant and respondent were emotionally involved. Both of them stayed as husband and wife in Pune. There are statements of the landlord of the premises wherein both of them have stayed. It is in his statement that both the applicant and informant introduced him as

husband and wife. Then there is statement of one Vikas Muneshwar, a friend of the applicant. His statement also indicates that both the applicant and respondent/informant married with each other in his presence. Needless to mention that to form a relationship as husband and wife, no rituals are required to be undergone. Living in such relationship or presenting themselves as husband and wife is sufficient to constitute a marriage. As such, what has been averred in the F.I.R. that the applicant sexually exploited the respondent/informant with a promise of marriage, is false. As such, it was consensual relations between the two, who had stayed together as husband and wife. After something went wrong, the F.I.R. appears to have been lodged. In this factual backdrop, directing the applicant to stand trial would be an abuse of process of Court.

6. The application is therefore, allowed in terms of prayer clause "C" subject to the applicant depositing costs of Rs.15,000/- in the Registry of this Court, within a week from today.

7. The amount of Rs.15,000/-, deposited with this Court by the applicant, be paid to the learned advocate who was appointed to represent the respondent No.2 in this matter, immediately.

8. List the matter on 20.07.2023 for compliance of the order.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)