

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

CRIMINAL APPLICATION NO.3811 OF 2019

1. Navnath s/o. Bapurao Shinde,	
2. Surekha w/o. Navnath Shinde,	
3. Swati w/o. Amol Bansode	..Applicants
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.A.R.Gaikwad, Advocate for applicants
Mr.A.R.Kale, APP for respondent no.1
Mr.U.S.Patil, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : JANUARY 06, 2023**

PER COURT :-

At the outset, learned counsel for the applicants seeks leave to amend the cause title by deleting the name of the respondent no.2 and to amend the prayer clause (B1). Leave granted. Amendment be carried out forthwith.

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

2. This is an application under Section 482 of the code of Criminal Procedure for quashing FIR No.157 of 2019 registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 376(2)(n), 313 and 417 read with Section 34 of Indian Penal

Code so also the criminal proceedings, i.e. R.C.C. No.87 of 2020, pending before learned Chief Judicial Magistrate, Dhule.

3. Heard learned counsel for the applicants, learned APP for respondent no.1 and learned counsel for respondent no.2. Considered the submissions advanced by learned counsel for the respective parties.

4. The aforesaid crime was registered pursuant to the FIR lodged by respondent no.2. Perusal of the FIR and the material on record reveals that the respondent no.2 had friendly relation with the son of the applicant nos.1 and 2, since November, 2017. They had physical relation with each other. The respondent no.2 alleged that she was pregnant and when she had told the son of the applicant nos.1 and 2 about her pregnancy, he told her not to worry and that he would marry her. She went to the house of the applicants on 12.01.2018. She claims that when she told the applicants that she was pregnant, they told her to terminate the pregnancy. They compelled her to take some tablets. She claimed that thereafter, the son of the applicant nos.1 and 2 took her to one

lodge and they again had physical relation. She claims that the fetus was aborted on 13.01.2018 due to the pills given by the applicants herein.

5. The FIR reveals that even after the said incident, the respondent no.2 continued her relationship with the son of the applicant nos.1 and 2. It was some time later, the son of the applicant nos.1 and 2 started avoiding her and in the month of February, 2019, he told her that he was already married and instructed her not to contact him. It is in these circumstances, about three months later, i.e. in the month of May, 2019, the respondent no.2 lodged complaint against the applicants and the son of the applicant nos.1 and 2, alleging rape and cheating. The crime was also registered under 313 of the Indian Penal Code in view of the accusations of termination of pregnancy.

6. The FIR *prima facie* reveals that the respondent no.2 was in relationship with the son of the applicant nos.1 and 2 since November, 2017. The relationship between her and the son of the applicant nos.1 and 2 *prima facie* was consensual. She has lodged the complaint in the month of May, 2019, alleging rape and cheating,

only after the son of the applicant nos.1 and 2 refused to marry her, told her that he was already married and instructed her not to contact him.

7. The questions, whether such consensual relationship between the two adults, amounts to rape and refusal to marry, amounts to cheating, are debatable. Even otherwise, present applicants are, in no way, involved in committing the offence under Sections 376(2)(n) and 417 of I.P.C. The only allegation against them is that they gave some tablets to respondent no.2 in order to terminate the pregnancy.

8. The alleged incident was of January, 2018. The respondent no.2 has not specified the name of the tablets. There is no medical record to indicate that she was, in fact, pregnant and that her pregnancy was terminated. Furthermore, while she was referred to the Medical Officer for medical examination after registration of the FIR, she had disclosed that it was the son of the applicant nos.1 and 2, who had given her the tablets. The record further indicates that even after the alleged termination of pregnancy, the respondent no.2 had continued to have physical relationship with the the son of the applicant nos.1 and 2.

9. Considering the above facts and circumstances and taking the FIR and the other record as true in its entirety, in our view, no offence is made out against these applicants. Subjecting these applicants to undergo criminal trial, would be sheer abuse of process of law.

10. In view of the above, the application is allowed qua the applicants in terms of prayer clauses (B) and (B-1). Consequently, FIR No.157 of 2019 registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 376(2)(n), 313 and 417 read with Section 34 of Indian Penal Code so also the criminal proceedings, i.e. R.C.C. No.87 of 2020, pending before learned Chief Judicial Magistrate, Dhule, qua the applicants stand quashed.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP