

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 727 OF 2020

Ashish Sureshbhai Doshi

...Petitioner

Versus

The State of Maharashtra

...Respondent

....

Mr. Lokesh D. Zade, Advocate for the Petitioner.

Ms. Priyanka Chavan, Advocate for Respondent No.2.

Mr. Y. Y. Dabake, APP for the Respondent No.1 – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 28th JULY 2023

PC:

1. The Petitioner has invoked the powers of this Court under Article 227 of the Constitution of India challenging order dated 3rd August 2019 passed by the Sessions Court for Greater Bombay in Sessions Case No.981 of 2015 rejecting Discharge Application Exh.11.

2. The prosecution case is based on the First Information Report (for short “FIR”) registered at the instance of Respondent No.2 on 16th January 2015 with Matunga Police Station, Mumbai for offences under Sections 376(2)(n), 504 & 506 of Indian Penal Code (for short “IPC”).

3. The case of the prosecution is that the first informant is women aged around 36 years. Her marriage was performed on 22 May 2010. After the marriage she went to USA. Due to differences with her husband, their marriage was dissolved by divorce by mutual consent. She returned to India in February 2012. Shri. Dharmesh Shah is a friend of first informant's father. He suggested marriage proposal of accused to the first informant. The accused met first informant on 30th June 2014. They agreed to perform marriage. Somewhere in the first week of July-2014, the accused called the first informant to his house to introduce her to his mother. The mother of the accused had consented for their marriage. Thereafter, the accused and the first informant used to go out for shopping. They were closely acquainted with each other. Somewhere in July-2014, at the request of accused the first informant went to his house. The accused demanded sexual favour. She was not inclined. Under the promise of marriage, the accused maintained physical relationship with the first informant. Thereafter the accused threatened that if she does not maintain physical relationship with him, he would defame her in Society. Subsequently, there was physical relationship between them on three to four occasions. Thereafter the accused avoided her. The first informant and others went to the house of the accused. The

mother of the accused refused to consent for marriage. The victim then realized that she was pregnant. She consulted Doctor. She was informed that she had aborted. She lodged FIR. On completing investigation, charge-sheet was filed.

4. The Petitioner preferred application for discharge before the trial Court. The said application was rejected vide order dated 3rd August 2019.

5. Learned Advocate for the Petitioner submitted as under:

- i) The FIR is false.
- ii) Offence under Section 376 of Indian Penal Code is not made out.
- iii) There is no evidence to substantiate the allegations that the victim was pregnant and that she has aborted. The medical case papers does not indicate corroborate version of complaint.
- iv) The relationship between the accused and the victim was of consensual nature. The requisite ingredients to constitute the offence under Section 376 of IPC are lacking.

v) The learned Judge has committed an error while rejecting the application for discharge.

vi) The victim had not disclosed that she was divorcee which was the reason for break up of marriage. It cannot be said that the consent of the victim was obtained by misrepresentation.

6. Learned Advocate for the Petitioner has relied upon the following decisions.

i) **Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Anr¹.**

ii) **Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr².**

7. Learned APP submitted that at the stage of framing charge, the Court is required to see whether prima facie case is made out against the accused. There is no infirmity in the impugned order. The victim was induced to maintain physical relationship under the false promise of marriage. Offence under Section 376 of Indian Penal Code is made out. The accused cannot be discharged.

8. Learned Advocate for the Respondent No.2 submitted

¹ AIR 2021 SC 1405

² (2019) 9 SCC 608

that there is sufficient evidence to frame charge against the accused for the alleged offence. The first informant has categorically stated that the accused had promised her that he would perform marriage and under the pretext of false promise, induced her to maintain physical relationship. The accused threatened the first informant that he would defame her in the society in the event she does not maintain physical relationship with him. The offence under Section 376 of IPC is clearly made out. The relationship was not consensual.

9. The factual matrix of the case indicate that the first informant/victim was aged around 36 years. Her first marriage was dissolved by mutual consent. The accused was aged around 36 years. The middleman Shri.Dharmesh Shah suggested the proposal of the accused for marriage with the first informant. It was decided to perform marriage between the accused and the first informant. Somewhere in July 2014, the accused had called the first informant at his residence and maintained physical relationship with her. Thereafter, the accused allegedly threatened the victim and accused maintained physical relationship on 3 to 4 occasions.

10. The FIR indicate that there was physical relationship between the accused and victim on 4 to 5 occasions. During the

course of investigation, statements of witnesses were recorded. Apart from the statement of the first informant, statement of Vasant Cheda (father of victim), Shri.Dharmesh Shah (Middleman) and other witnesses were recorded. Conversation between the father of first informant/victim and mother of accused, father of first informant and accused reveal that the accused has refused to perform marriage. The mother of the accused refused consent for marriage. Assuming the allegations in the FIR and statements of witnesses to be true, no offence under Sections 376 of IPC is established. There is no allegations that the promise to marry given to the complainant was false at the inception. It appears that there was subsequent refusal on the part of the accused to perform marriage.

11. In the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr.** (supra) the Apex Court had observed that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the women to convince her to engage in sexual relations, there is a 'misconception of fact' that vitiates the women's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the

promise should have had no intention of upholding his word at the time of giving it. The 'consent' of a women 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 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 women's decision to engage in the sexual act.

12. In the case of **Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Anr.** (supra) the apex Court referred to the decisions of **Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr.** (supra) and observed that there is no allegations to the fact that the promise to marry given to the complainant was false at the inception.

13. The factual matrix of the present case indicates that the marriage between the first informant and the accused was to be performed. The first informant and the accused developed close acquaintance. Somewhere in July-2014 the first informant visited the house of the accused. She was induced to maintain physical

relationship. Even thereafter there was sexual relationship between the accused and the victim on 3 to 4 occasions. The conversation between the father of the victim and the mother of the accused which is part of the charge-sheet indicate that even mother has refused to give consent of marriage between the parties. Applying the test laid down in decisions referred to herein above to the facts of the present case, it cannot be said that the offence under Section 376 of IPC is made out against the accused. No case is made out to framing charges against the accused for any offence and hence the accused required to be discharged from the proceedings.

14. Hence, I pass the following order:

ORDER

- i) Criminal Writ Petition No. 727 of 2020 is allowed;
- ii) Order dated 3rd August, 2019 passed by the Additional Sessions Judge, Sessions Court for Greater Bombay in discharge application Exh.-11 is set aside. The Petitioner is discharged from Session Case No.981 of 2015 pending in the Court of Sessions at Greater Bombay.
- iii) Petition stands disposed off.

(PRAKASH D. NAIK, J.)