



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

CRIMINAL WRIT PETITION NO.2153 OF 2022

Vivek Chandrahas ..Petitioner
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Shirish Gupte, Sr. Adv. a/w. Adv. Balkrishnan K., Adv. B. D. Shinde i/b. Mr. Ganesh Bhujbal for the Petitioner.
Mr. S. V. Gavand, APP for the Respondent/State.
Mr. Hemant Ingale a/w Adv. Vedang Deshpande, Adv. Pratik Ingle, i/by Samrat Ingale for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ**

DATED : 12th OCTOBER, 2023

P.C. (Per Nitin W. Sambre, J.):

1. The prayer is for quashing and setting aside the FIR in Crime No. 1040 of 2021 punishable u/s. 420 and 376 of IPC registered with the Respondent No. 1-Police Station at the behest of the Respondent No. 2/Complainant.
2. The genesis of the offence alleged in the FIR and the charge-sheet are as under:
3. The Respondent No. 2/Complainant an air hostess with Air India was intending to improve her qualification to become a commercial pilot. Through common acquaintance, the Petitioner, a pilot with Indian Navy was introduced to the Respondent No.

2/Complainant who started extending help to the Respondent / Complainant including that of financial aid. Taking undue advantage of the aforesaid relationship the Petitioner introduced himself to be a divorcee and further assured the Respondent No. 2/Complainant to perform marriage and physically exploited her resulting into not only registration of the offence but also charge-sheeting.

4. Mr. Gupte, learned Senior Counsel while trying to make out the case for quashing of the offence and charge-sheet would urge that the relationship between the Petitioner and the Respondent No. 2/Complainant is consensual. According to him, perusal of the FIR would depict that the Petitioner as and when demanded advanced amount and has also borne the training charges of the Respondent No. 2/Complainant for acquiring qualification for the post of pilot. The aforesaid admitted fact according to him subsequently has boomeranged as the Petitioner demanded/asked for return of the amount, which has resulted into his false implication in the aforesaid offence.

5. Apart from above, the contentions of Mr. Gupte, learned Senior Counsel is, perusal of the FIR would reflect that the relationship between the Petitioner and the Respondent No. 2 was

consensual.

6. By inviting the attention of this Court to a communication issued by Ms. Laxmi, a person of common acquaintance with the Petitioner and Respondent No. 2, it is sought to be impressed upon this Court that marital status of Petitioner was within the knowledge of the Respondent No. 2/Complainant. Apart from above, Mr. Gupte, learned Senior Counsel invited our attention to the order of learned Single Judge passed in ABA/2972/2021 wherein observations of *prima facie* consensual relationship are made in favour of the Applicant. Based on the aforesaid material, including that of the narrations in the FIR, Mr. Gupte, learned Senior Counsel would urge that the ingredient of offence punishable u/s. 376 of IPC cannot be said to be satisfied as there was no promise of marriage by the Petitioner to the Respondent/Complainant.

7. While countering the aforesaid submissions, learned APP and learned Counsel for the Respondent No. 2 would urge that the evidence collected during the investigation and the WhatsApp chats between the Petitioner and Respondent No. 2 sufficiently establishes that the Petitioner made the Respondent No. 2/Complainant to believe that though he was married, he got

divorce from his wife. Based on the above with a promise of marriage, Respondent/Complainant was sexually exploited. Our attention is invited to the contents of the FIR, the WhatsApp chat *inter se* between the Petitioner and the Respondent No. 2 so as to substantiate the aforesaid contentions.

8. In addition to above, learned Counsel for the Respondent No. 2 has drawn support from the judgment of the Apex Court in the matter of ***Yedla Srinivasa Rao vs. State of A.P.*** reported in ***2006 DGLS (SC) 829*** particularly paragraph 8 and 16 so as to submit that in case of false promise of marriage, the consent of the victim is immaterial. In addition to above, reliance is also placed on the judgment of the Apex Court in the matter of ***Anurag Soni vs. State of Chhattisgarh*** reported in ***2019 DGLS (SC) 568***, paragraph nos. 10 onwards so as to substantiate the above submissions.

9. We have appreciated the aforesaid submissions.

10. With the assistance of the respective learned Counsels we have gone through the records. The prosecution case is based on the complaint dated 06/07/2021 wherein a specific averment is made that one Laxmi, a person of common acquaintance as referred to hereinabove has introduced the Respondent No.

2/Complainant to the Petitioner so as to get assistance in securing nationality and character certificate from the gazetted officer like that of the Petitioner, as he is working as a gazetted officer with Indian Navy.

11. The Respondent No. 2/Complainant had a dream of becoming a commercial pilot and for the said purpose she was having basic qualification by virtue of which she is informed to be working as air hostess with Air India.

When the Respondent No. 2/Complainant disclosed her intention to improve her qualification, the Petitioner allegedly made her feel sure that he is the perfect person to extend all possible help including that of technical, financial assistance. The Petitioner allegedly taken advantage of the aforesaid situation of the Respondent No. 2/Complainant.

The Petitioner thereafter made the Respondent No. 2/Complainant to believe that he is a divorcee and custodian of 12 years old son. In the backdrop of the aforesaid matrimonial status, he allegedly assured the Respondent No. 2/Complainant of marrying her. The Petitioner by virtue of his conduct as reflected in the investigation papers and available material treated the Respondent No. 2/Complainant as his de-facto wife though they

were never married and made her to believe that he is going to marry her.

12. In the aforesaid background, it is the claim of the Respondent No. 2/Complainant that since inception under the false promise of marriage, the Petitioner physically exploited the Respondent No. 2/Complainant by calling and making her stay arrangement in hotels at various places in India.

13. It is also stated that major part of the amount which was paid by the Petitioner towards financial assistance was already returned by the Respondent No. 2.

When confronted, learned APP on instructions from the Investigating Officer has informed that it can be borne out of the records that major part of the amount is already received by the Petitioner, which fact is suppressed by him from this Court.

14. Apart from above, what is required to be noted is communication addressed by the person of common acquaintance i.e. Laxmi is based on instructions of the Petitioner as the said person had no occasion to issue such communication in favour of the Petitioner after the offence was registered against him. Apart from above, the said communication issued by Ms. Laxmi allegedly in favour of the Petitioner has to be subjected to scrutiny

during the trial. The said issue needs appreciation by the Trial Court after the evidence is recorded. As such, this Court cannot go into the said communication.

15. Apart from above, the observations made by learned Single Judge while dealing with the pre-arrest bail Application of the Applicant will not bind this Court at this stage of the proceedings particularly when the observations therein are confined only to the extent of the prayer for grant of bail which was considered by the learned Single Judge viz. grant of pre-arrest bail.

16. With the assistance of learned Counsel appearing for the Respondent No. 2, we have perused the WhatsApp chat *inter se* between the Petitioner and the Respondent No. 2. The WhatsApp chat which is produced at page 207, 212 and 214 and mail dated 27/04/2020 in categorical terms admits that the Petitioner has always promised the Respondent No. 2/Complainant to marry and accordingly physically exploited her. In the said WhatsApp messages exchanged between the Petitioner and Respondent/Complainant, the Petitioner has repeatedly referred to her as his wife. When confronted Petitioner has no convincing explanation to offer for the same. The fact that the Petitioner, a married person cannot marry the Respondent No. 2 was a fact well

within his knowledge. In such an eventuality, it is not open for the Petitioner to marry the Respondent No. 2 during subsistence of his first marriage. The intention of the Petitioner to cheat the Respondent No. 2/Complainant since beginning can be inferred which fact *prima facie* satisfy the very ingredients of offence punishable u/s 420 of the IPC viz. cheating.

17. The contentions of learned Senior Counsel that there was consensual relationship, if appreciated in the backdrop of the aforesaid findings, the fact remains that consent, if any, by the Respondent No. 2/Complainant of having physical relationship, was under the promise of marriage by the Petitioner and not otherwise.

18. In that view of the matter, the consent, if any, cannot be said to be out of free will. Rather such consent can be said to be coerced.

19. In the aforesaid background, the issue canvassed by the Respondent No. 2 is squarely covered by the judgment of the Apex Court in the matter of **Anurag Soni** and **Yedla Srinivasa Rao** cited supra.

20. In a well reasoned judgment of Apex Court delivered on 31st August, 2023 in the matter of **Abhishek Vs. State of Madhya**

Pradesh in Criminal Appeal No.1457 of 2015 with Criminal Appeal No.1456 of 2015, the Apex Court had an occasion to consider the parameters within which this Court can exercise the powers under Section 482 of the CrPC. While dealing with the issue, the Apex Court has observed that powers of quashing are required to be exercised sparingly as could be noted from the observations made in paragraph 12 of the said judgment which reads thus :-

“12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In *V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others* [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.

In *M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others* [Criminal Appeal No.330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty.

It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly,

the parameters laid down by this Court in R.P. Kapur vs. State of Punjab (AIR 1960 SC 866) and State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.”

21. In the case in hand it cannot be said that the Petitioner is falsely implicated in the offence in question as has been contended by learned Senior Counsel based on the alleged theory of extending financial help to the Respondent and upon asking for refund false offence allegedly came to be registered.

22. In this background, no case for causing interference is made out.

23. The Petition accordingly stands dismissed.

(N. R. BORKAR, J)

(NITIN W. SAMBRE, J.)