



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

CRIMINAL APPLICATION NO. 805 OF 2021

Dayanand Bhanudas Kamble

.... Applicant

v/s.

The State of Maharashtra and anr.

.... Respondents

Mr. Suvidh S. Kulkarni for the Applicant.

Mr. Ajay Patil, APP for the State.

Mr. Sagar Tambe, appointed for Respondent No.2.

**CORAM: SMT. ANUJA PRABHUDESSAI AND
N.R. BORKAR, JJ.**

DATED : 13th SEPTEMBER, 2023.

P. C. :-

. With consent, heard finally at the stage of admission.

2. This is an application under section 482 of Cr.PC. to quash the Sessions Case No.239/2022 pending on the file of learned Additional Sessions Judge, Mumbai arising from C.R.No.454/2021 registered at Ghatkopar Police Station, Mumbai for offences punishable under sections 376, 376(2), 377, 420 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the FIR dated 28/05/2021 lodged by the Respondent No.2. The facts narrated in the FIR reveal that the Respondent No.2, who is a Police Constable

attached to Security Branch was posted on duty at CP office. The Applicant was a Police Constable in the same department. The Applicant and the Respondent No.2, both married with child/children, got acquainted with each other and initial acquaintance soon turned into a romantic relationship. The Respondent No.2 claims that the Applicant had assured to be with her till the end. He had asked her to seek divorce and had promised to marry her after divorcing his wife. The Applicant and Respondent No.2 engaged in physical relationship multiple times during subsistence of their marriage. The Respondent No.2 claims that the Applicant had borrowed from her an amount of Rs.1,50,000/- from time to time.

4. The wife of the Applicant learnt about his extra-marital relationship with the Respondent No.2 and she threatened her with dire consequences. The Applicant also informed the Respondent No.2 that his wife had learnt about their relationship and refused to meet her for some while, but subsequently they continued meeting at different places and having physical relationship, which the Respondent No.2 claims to be forceful.

5. The FIR further reveals that on 20/05/2021, the Respondent

No.2 had learnt that the Applicant was on duty at Ghatkopar Junction and hence she went to meet him. The wife of the Applicant saw them talking to each other and quarreled with them and took the Applicant to Ghatkopar Police Station. The Applicant repaid Rs.1,00,000/- and requested Respondent No.2 not to disclose about their relationship to anyone. Even after this incident, they met at Jagruti Nagar and indulged in unnatural sexual relationship.

6. On 26/05/2021, the wife of the Applicant informed the husband of the Respondent No.2 about the extra-marital relationship between the Applicant and the Respondent No.2. The Respondent No.2 has stated that her husband quarreled with her, he left the house and did not return. This led to lodging of the FIR.

7. Mr. Suvidh Kulkarni, learned counsel for the Applicant submits that the facts narrated in the FIR as well as the other material on record, even if accepted at face value, do not disclose offence under section 376 IPC. In such circumstances, compelling the Applicant to face the trial would be abuse of process of law. He therefore contends that this is a fit case to exercise discretion under section 482 of Cr.P.C. to quash the FIR and the consequent proceedings.

8. Per contra, Mr. Ajay Patil, learned APP and Mr. Sagar Tambe, learned counsel for Respondent No.2 submit that the powers under section 482 of Cr.P.C. are to be exercised sparingly, particularly considering the gravity of the offence. Relying upon the decision of the Apex Court in ***Manik B. v/s. Kadapala Sreyas Reddy and anr. 2023 LiveLaw (SC) 642***, it is urged that it is not permissible for the Court to conduct a mini trial at this stage. Learned APP states that charge sheet having been filed, it would be appropriate to refer the parties to the Sessions Court to seek discharge.

9. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

10. A bare reading of section 482 Cr.P.C. would indicate that inherent powers under section 482 can be exercised (i) to give effect to any order under the Code (ii) to prevent abuse of the process of any Court, or (iii) to secure the ends of justice. The scope and ambit of this provision has been considered and analyzed by the Hon'ble Supreme Court in catena of judgments. In ***State of Haryana and others v/s. Ch. Bhajan Lal and others AIR 1992 SC 604***, the Apex Court has laid down

certain guidelines that must be adhered to while exercising its inherent powers under section 482 of the Code of Criminal Procedure to quash the First Information Report. The guidelines relevant to the present case read thus :-

“ 108. xxx

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

3. Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

xxx

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously

instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. In ***Geo Verghase v/s. State of Rajasthan and Anr., AIR 2021 SC 4764***, the Apex Court has observed thus :-

“ 34. The scope and ambit of inherent powers of the Court under Section 482 Cr.P.C. or of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see based on sound principles. The inherent powers vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed. ”

12. In ***Manik B.*** (supra) the Hon’ble Supreme Court has reiterated that the scope of interference, while quashing the proceedings under section 482 of Cr.P.C. is very limited. It is held that the Court would exercise its power to quash the proceedings only if it finds that taking

the case at its face value, no case is made out at all. At the stage of deciding an application under Section 482 of the Cr.P.C. it is not permissible for the High Court to go into the correctness or otherwise of the material placed by the prosecution in the charge sheet.

13. In the instant case, we are not required to conduct a roving inquiry, or go into the correctness of the allegations made in the FIR, as the facts narrated in the FIR, as they stand, reveal that the Applicant and Respondent No.2, both married with children, were engaged in extra-marital relationship. They indulged in sexual relationship multiple times from January-2020 till May-2021. The sexual relationship between these two adults was consensual. The Respondent No.2 was well aware that the Applicant was already married and could not have married her during the subsistence of the marriage. Respondent No.2 and the Applicant have indulged in sexual relationship knowing fully well that they were married. In such circumstances, there was no misconception of fact. The allegations in the FIR, even if are accepted to be true and correct, the same do not disclose offence of rape within the meaning of Section 375 of the IPC or the offence of cheating punishable under section 420 IPC.

14. The uncontroverted statement in the FIR as well as the material gathered in the course of investigation does not disclose commission of cognizable offence. On the contrary, a perusal of the FIR reveals that the extra-marital relationship between the Applicant and the Respondent No.2 continued smoothly till the time the wife of the Applicant learnt about the same and revealed it to the husband of the Respondent No.2. The fall out of which was the husband of the Respondent No.2 leaving the marital home. It is only then that the Respondent No.2 lodged the FIR alleging rape, in a relationship which was otherwise consensual. In such circumstances, we have no hesitation to hold that the Criminal proceedings initiated against the Applicant is nothing but an abuse of process of law.

15. Under the circumstances and in view of discussion supra, the Application is allowed. Sessions Case No.239/2022 pending on the file of learned Additional Sessions Judge, Mumbai arising out of C.R.No.454/2021 registered at Ghatkopar Police Station, Mumbai for the offences punishable under sections 376, 376(2), 377, 420 of the Indian Penal Code, are hereby quashed.

16. Application stands disposed of.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)