

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
APPLICATION NO. 850 OF 2022**

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| 1. | Nitin B. Nikhare         |                |
| 2. | Chandrakant M. Dhakate   | ...Applicants  |
|    | Versus                   |                |
| 1. | The State of Maharashtra |                |
| 2. | Manisha G. Rokade        | ...Respondents |
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Mr. Priyal G. Sarda for the Applicants.

Mr. S.V. Gavand, APP for the Respondent/State.

Ms Sakshee P. Chavan, Appointed Advocate for Respondent No.2.

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| <b>CORAM</b> | <b>:</b> | <b>NITIN W. SAMBRE &amp;<br/>N. R. BORKAR, JJ.</b> |
| <b>DATE</b>  | <b>:</b> | <b>19 OCTOBER, 2023.</b>                           |

**PC:-**

1. The applicants are seeking quashing of FIR and consequential charge-sheet in Crime No.646 of 2021 registered at Lonikand Police Station, Pune for the offences punishable under sections 376(2)(n) and 417 of the Indian Penal Code and sections 3(1)(r)(w)(i)(ii), 3(2)(v) & 6 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act.

2. The case of the prosecution against the applicants is respondent No.2/complainant and applicant No.1 were on friendly terms as both of them are Engineers by profession. Alleging physical exploitation under the promise to marry, the

complaint came to be lodged on 21 December 2021, which has resulted into registration of the aforesaid offence.

3. Prior to the aforesaid complaint, it is alleged that on 6 December 2021, the respondent No.2/complainant approached the police authorities alleging that applicant No.1 assured to marry her and accordingly, committed the same in writing. It is further claimed that under the promise to marry, she was sexually exploited for almost a period of one year. In this backdrop, the meeting took place between the family members of the applicant No.1 and respondent No.2/complainant. During which, both the applicants have uttered caste based insulting words and as such, the offence under the provisions of Atrocities Act is also registered.

4. Counsel for the applicants Mr. Sarda has invited our attention to the various statements of respondent No.2 recorded from time to time. According to him, respondent No.2 remained in relations with applicant No.1 for a period of more than one year. According to him, the fact that applicant No.1 informed respondent No.2 that he is unable to marry her is

duly admitted in the complaint. It is further claimed that in the aforesaid backdrop, it cannot be said that since inception the applicant No.1 has physically exploited the respondent No.2/complainant under the false promise of marriage.

5. In addition to above, Mr. Sarda would urge that the relations between the applicant No.1 and respondent No.2/complainant was consensual as it could be inferred from the plain reading of statements of the victim girl recorded under Section 161 of Code of Criminal Procedure. To substantiate the said contention, Mr. Sarda would draw support from the judgment of the Apex Court in the matter of ***Sonu @ Subhash Kumar vs. State of Uttar Pradesh & Anr.***<sup>1</sup> .

6. Mr. Sarda would urge that in view of contents of the FIR, i.e., the applicants having specifically informed respondent No.2/complainant of not getting married with her and the respondent No.2/complainant continued to maintain physical relations with the applicant No.1 sufficiently establish consensual relation, as such he would draw support from the matter of *Sonu @ Subhash Kumar (cited surpa)*.

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<sup>1</sup> (2021) 1 East CrC(SC) 199

7. Apart from above, Mr. Sarda would urge that the complaint dated 21 December 2021 or 6 December 2021 is not referring to the attributions which can constitute offence under the Prevention of Atrocities Act. According to him, byway of afterthought allegations of utterances of caste based insulting words are made against the applicants in supplementary statement dated 26 February 2022. Mr. Sarda as such would urge that apart from above ground even if what has been stated in the supplementary statement dated 26 February 2022, for the sake of argument is accepted, since the utterances were in closed room, it cannot be said that the ingredients of offence of Atrocities Act can said to be satisfied as the said offence is said to be not committed in public view.

8. While countering the aforesaid submissions, learned APP would urge that the statement of victim girl is already recorded under section 164 of the Code of Criminal Procedure, which has more evidentiary value. In addition, learned APP would urge that there is a consistency in the statement of various witnesses including that of respondent No.2/complainant which speaks of the false promise of marriage by applicant No.1. In

addition, Mr. Gavand, learned APP would urge that whether the incident, which led to the registration of offence under the Prevention of Atrocities Act, has occurred in closed premises is an issue which can be gone into at the time of trial by appreciating the evidence. That being so, he would urge that the application is liable to be rejected.

9. The counsel for respondent No.2/complainant would urge that the contents in FIR, in categorical terms satisfies the ingredients of the offence punishable under Section 376 (2)(n) of the IPC. According to counsel for respondent No.2, time and again applicant No.1 has assured to marry the complainant and physically exploited her. Drawing support from the judgment of the Apex Court in the matter of **Anurag Soni vs. State of Chhattisgarh**<sup>2</sup>, she would urge that the satisfaction of necessary ingredients can be inferred. As such, she seeks dismissal of the Application.

10. We have appreciated the submissions.

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<sup>2</sup> (2019) 13 SCC 1

11. The offence in question came to be registered on 21 December 2021, wherein the allegations are of commission of offence from 8 January 2021 till the date of registration of offence.

12. In categorical terms, respondent No.2/complainant in her statement dated 21 December 2021 has specifically stated that applicant No.1 has assured her to marry and physically exploited her inspite of she having shown resistance for such act. It has been specifically mentioned in the said statement that applicant No.1 thereafter assured her to perform registered marriage on 4 December 2021 and thereafter he backed out from the same.

13. Another complaint dated 6 December 2021, which is acknowledged by the police authorities on 7 December 2021, specifically mentioned that applicant No.1 having executed in writing that applicant No.1 shall be getting married with respondent No.2/complainant and such promise was not honoured. In this backdrop, the investigation was set into motion.

14. The medical evidence supports the case of the prosecution as could be inferred from the perusal of same. Apart from above, the statements of witnesses viz. mother, cousin sister and brother of respondent No.2 specifically supports the case of prosecution.

15. The supplementary statement of victim girl was recorded on 26 February 2022. In the said statement, it is mentioned that on 22 June 2021 there was a meeting at the residence of victim which was attended by both the applicants. It is specifically mentioned that while discussing about the marriage, both the applicants have abused respondent No.2 and her family members by uttering caste based insulting words. The fact remains that such utterances are inside the house of respondent No.2/complainant. Drawing support from the judgment of the Apex Court in the matter of **Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh**<sup>3</sup> so as to claim that since utterances are in the closed door meeting, the same would not amount to an offence.

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3 (2023) 0 Supreme (SC) 550

16. Though Mr. Sarda was justified in claiming that offence punishable under Section 3(1)(s) of the SC & ST (Prevention of Atrocities) Act will not be attracted in case if utterances based on caste are not in public view. However, such fact can be looked into by trial Court upon appreciation of evidence. At this stage, if we look into FIR, *prima facie*, contends therein demonstrate offence punishable under Section 3(1)(s) of the SC & ST (Prevention of Atrocities) Act, could be inferred. In that view of the matter reliance placed by Mr. Sarda on the judgment of the Apex Court in the matter of *Ramesh Chandra Vaishya (cited supra)* will be hardly of any assistance, particularly, when it cannot be inferred from record that offence was not committed within the public view.

17. In the aforesaid backdrop, having regard to the contents of the FIR and the supplementary statement of victim girl, what can be noticed is the applicant No.1 has time and again promised respondent No.2/complainant to perform marriage and physically exploited her.

18. Apart from above, the medical evidence and the

statement of witnesses sufficiently support the case of the prosecution. That being so, it has to be inferred that applicant No.1 since beginning had no intention to marry the respondent No.2/complainant, but under the false promise of marriage physically exploited respondent No.2/complainant.

19. As regards the offence under the Prevention of Atrocities Act is concerned, the same can be looked into only after the appreciation of evidence by the trial Court. In this backdrop, having observed that the consent of respondent No.2/complainant was obtained under the false promise of marriage, it has to be inferred at this stage that the relationship between applicant No.1 and respondent No.2/complainant was not a consensual one, but was only under the promise of marriage made by the applicant No.1. That being so, support drawn by the counsel for the applicants by relying on the judgment of Apex Court in the matter of *Sonu @ Subhash Kumar (cited supra)* will be of hardly any assistance. This Court is required to be sensitive to the fact that complainant and witnesses have specifically stated about applicant No.1 having promised to marry respondent

No.2/complainant, though it is for the prosecution to establish that since inception there was false promise on the part of the applicant No.1/accused to marry respondent No.2/complainant and the absence of motive or intention on the part of applicants cannot be looked into at this stage of the proceedings as it is always open for the prosecution to lead appropriate evidence in support of its case. In this view of the matter, the judgment referred to by the Counsel for the applicants in the matter of *Sonu @ Subhash Kumar (cited supra)* cannot be relied upon.

20. We have already observed that the offence under the Prevention of Atrocities Act can be looked into only upon appreciation of evidence. That being so, no case causing for interference is made out. As such, the Application fails and the same stands dismissed.

**(N.R. BORKAR, J.)**

**(NITIN W. SAMBRE, J.)**