



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

CRIMINAL REVISION APPLICATION NO.428 OF 2018

Kapil Jayprakash Ingole

..Applicant

VS.

The State of Maharashtra

..Respondent

Adv. Aditya Mithe a/w. Adv. Sachin Agawane, Adv. Krishna P.
for the Applicant.

Ms. P. N. Dabholkar, APP for the State.

Adv. Rahul Arote for the respondent no.2.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 18, 2023

ORAL JUDGMENT :

1. Heard learned counsel for the applicant, learned APP for the respondent no.1 and learned counsel for the respondent no.2.

2. The challenge in this revision application filed under Section 397 of the Code of Criminal Procedure (hereafter 'Cr.P.C.' for short) is to an order dated March 26, 2018 passed below Misc. Application - Exhibit "3" in Sessions Case No. 224 of 2014 by the Sessions Court, Borivali Division, Dindoshi, Mumbai.

3. Exhibit '3' was an application made by the applicant-original accused praying for discharge under Section 227 of

the Cr.P.C. The respondent no.2 registered First Information Report (FIR) bearing No.21 of 2014 against the applicant under Section 376, 377 and 420 of the Indian Penal Code (hereafter 'IPC' for short) on May 14, 2014. In the said FIR, the respondent no.2- complainant alleged that the applicant had sexual relations with the informant by giving false promises and assurance of marriage.

4. At the time of hearing of this application, an affidavit-in-reply was filed on behalf of the respondent no.2-complainant stating thus :-

"I, SUPRIYA SWAPNIL SHINDE nee SUPRIYA BHAGWAN MORE, Aged 35 years, Residing at 137/11, Sita Bhavan Chawl, Anthony Church, Tembhipada, Bhandup (W), Mumbai-400078, Respondent No.2 herein, do hereby state on solemn affirmation as under;

1. I state that, I had lodged a complaint against the Applicant vide C.R. No.21 of 2014 registered with Gorai Police Station, for commission of offences punishable under Section 376, 377 and 420 of Indian Penal Code. I say that after registration of offence investigation was carried on by the police and charge sheet was came to be filed before Ld Metropolitan Magistrate, Borivali. I say that thereafter matter was committed to court of session, Dindoshi, Mumbai and same is numbered as Sessions Case No.225 of 2014 and same is pending for

trial.

2. I say that applicant had filed discharge application before Learned Sessions Judge, Dindoshi and same was rejected on 26.03.2018, and being aggrieved by the said order Applicant approached this Hon'ble Court and filed present Revision Application. I say that during the pendency of the present Revision application the friends and family members of both the sides had intervened, and settled the disputes between myself and the Applicant. I say that we have amicably settled the dispute and I do not wish to proceed in the present matter as both of us are married separately and have started our life a fresh.

3. I say that as per the understanding arrived at, I have agreed and undertaken to withdraw unconditionally all the allegations made by me against the Applicant and no more willing to pursue the aforesaid case. The Applicant has not coerced me or influenced me into executing this affidavit in any manner whatsoever, and the same is executed out of my own free will.

Hence this affidavit is filed. Whatever stated herein above is true and correct."

The affidavit-in-reply on behalf of the respondent no.2-complainant is taken on record and marked as **Exhibit 'X'** for identification. Learned counsel for the respondent no.2 submitted that in view of understanding arrived at the respondent no.2 does not want to pursue the aforesaid

case.

5. However, considering the nature of the accusations, it is necessary for me to analyse the materials on record in order to arrive at a conclusion whether the impugned order passed by the trial Court rejecting the application for discharge calls for interference or not.

6. With the assistance of learned counsel I have gone through the materials on record. The allegations as can be spelt out from the statement of the respondent no.2-complainant recorded under Section 164 of the Cr.P.C. reveals that the applicant and the respondent no.2 belonged to same profession of journalism. They started interacting with each other. Sometime in May 2013, the applicant proposed marriage to the respondent no.2. After due consideration, the respondent no.2 agreed to the proposal made by the applicant. Thereafter, sometime on May 12, 2013, the applicant had physical relations with respondent no.2 by persuading her that in any case, they are getting married. Because of this, such a relationship went on almost for one year. During this period, the applicant introduced the respondent no.2 to his mother and his brother as well. The

applicant changed his job. The respondent no.2 realised that the applicant was not paying enough attention to her and therefore, asked him the reason. The respondent no.2 also informed the applicant's mother this sudden change in behaviour of the applicant. It is alleged that the applicant's mother told the respondent no.2 that she is against the marriage. Hence the FIR.

7. Learned counsel for the applicant relied upon the decision of the Supreme Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and another**¹ in support of his submission that the allegations in the present FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. It will be material to reproduce paragraphs 17 and 18 which reads thus: -

“**17.** In Uday v. State of Karnataka the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with

¹ (2019) 9 SCC 608

the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors: (SCC p. 58, para 25)

“25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. *Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the*

appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married."

(emphasis supplied)

18. To summarise the legal position that emerges from the above cases, the "consent" of a woman 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 been a 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 woman's decision to engage in the sexual act."

8. In the present case, it is seen that the applicant and the respondent no.2 were from the same profession when they first met. In my opinion, the allegations in the FIR do not on their face indicate that the promise by the applicant was false, or that the respondent no.2-complainant engaged in sexual relations on the basis of this promise. There is no allegation that when the applicant promised to marry the respondent no.2, it was done in bad faith or with the intention to deceive her. The applicant's failure to marry her

in 2014 cannot be construed to mean the promise itself was false. The accusations as can be seen in the Section 164 statement would indicate that though there was a proposal by the applicant to marry respondent no.2, the materials even if they are taken at their face value are not sufficient to indicate that the promise by the applicant was false. The applicant and the respondent no.2 have been in the relationship for a long time. Even the applicant had introduced the respondent no.2 to his mother and brother with an intent to get married which is a circumstance to indicate that the failure to marry cannot be considered to mean the promise itself was false. The allegations in the statement under Section 164 of the Cr.P.C. and the materials on record, are not at all sufficient to indicate that the respondent no.2 was deceived by the applicant's promise of marriage. Therefore, even if facts set out in the respondent no.2's statement are accepted in totality, no offence could be said to have been made out.

9. For the above reasons, the revision application is allowed.

10. The impugned order is set aside.

11. The application Exhibit '3' before the trial Court is allowed.

12. The revision application is disposed of accordingly.

(M. S. KARNIK, J.)