

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 151/2023

Prashant Sukhlal Sarkar,
Age 42 yrs., Occ. Private,
R/o. Fukat Nagar, Ramnagar,
Chandrapur, Dist. Chandrapur.

APPLICANT

VERSUS

1. The State of Maharashtra,
through its Police Station Officer,
Police Station, Ramnagar,
Dist. Chandrapur.
2. XYZ,
Crime No. 1236/2022,
Police Station, Ramnagar,
Dist. Chandrapur.

NON-APPLICANTS

Mr. A. A. Dhawas, Advocate for applicant.
Mr. A. Kadukar, APP for non-applicant No.1/State.
Mr. A.D. Ramteke, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.
DATE : 24.04.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This is an application seeking to quash First Information Report ('FIR') vide Crime No. 1236/2022 registered with the Police

Station Ramnagar, Chandrapur for the offence punishable under Sections 376(2)(n), 417, 313 and 506 read with Section 34 of the Indian Penal Code along with Charge-sheet No. 35/2023 numbered as RCC No. 77/2023 on merits as well as on account of settlement.

4. The informant a grown up lady aged 30 years has lodged report regarding occurrence. It is her contention that in the year 2011, she got acquainted with applicant (accused) while doing nursing work. At the relevant time, applicant was working as Medical Assistant in the Hospital. Love relationship was developed out of acquaintance. The applicant was saying that he would marry with the informant and then had physical relations on several occasions. At the instance of applicant, the informant has left her job and she was periodically maintained by applicant. The relationship was continued for next 10 years. In the month of August 2022, the informant remained pregnant, however the applicant by deceiving, got aborted a child. The relationship was continued thereafter also, however applicant refused for marriage therefore, the report.

5. The learned counsel appearing for the applicant would submit that the contents of FIR and material collected in the charge-sheet nowhere discloses the commission of cognizable offence. It is submitted that the material on record does not specify the ingredients to constitute the offence punishable under Section 376 of the Indian Penal Code nor there is supporting material for alleged miscarriage. It is applicant's

contentions that it is purely case of consensual relationship in between two adults. Moreover, the applicant has attracted our attention to the reply as well as affidavit filed by informant stating that out of misconception, she has lodged report against the applicant.

6. Non-applicant No. 2 is present before us, who has been identified by her Advocate Mr. A.D. Ramteke. We have asked to the informant, on which she has accepted about the compromise by filing of affidavit-reply and her no objection for quashing of the FIR.

7. We have examined the Police papers. As per informant's own case, she got acquainted with the applicant in the year 2011 and for next 10 years they were in relationship. The very fact that for one decade, they were in relationship itself strongly suggests that it is a case of consensual relationship. It emerges that for long period of 10 years, they were in relationship, but she never put any grievance against the applicant at any point of time.

8. In the case of **Pramod Suryabhan Pawar Vrs. State of Maharashtra and another, reported in (2019) 9 SCC 608**, the Hon'ble Supreme Court by referring its earlier decision in case of **Uday Vrs. State of Karnataka** has summarized the position in para No.18 which reads as below :-

"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."

9. The informant is well grown up educated lady. She was serving as a Nurse meaning thereby, she had good understanding and was capable to know the consequences of her act. The material nowhere suggest that only because of applicant has promised for marriage, she has surrendered herself for the sexual relationship. The facts of this case particularly 10 years long relationship indicates that it is a case of consensual relationship in between two adults which cannot be termed as an offence of rape. As regards to the allegation of causing miscarriage, there is no supporting material. The Investigating Officer has recorded statement of medical officer, staff nurse, but no one has supported the informant's contention to that extent. It reveals that for the sake of supporting the report, allegations have been levelled. Moreover, by the time, the matter is settled in between the parties. The informant has filed affidavit stating about long standing relationship and filing of Police report under misunderstanding. Thus, besides the settlement, on merits also we find that the available material does not

constitute alleged offence. Continuation of such prosecution is exercise of futility. As the matter is settled, the chance of conviction are remote and bleak.

10. We have brought to the notice that on the basis of Police Report, the investigation was carried out, charge-sheet was filed and the matter is pending in the Court. At this juncture, the learned counsel for the applicant submits that applicant would pay costs Rs. 15,000/- for rotating State machinery.

11. In the above circumstances, we find that it is a fit case to invoke our inherent powers to prevent abuse of the process of the Court. In view of that, application is allowed. We hereby quash and set aside FIR vide Crime No. 1236/2022 registered with the Police Station Ramnagar, Chandrapur for the offence punishable under Sections 376(2)(n), 417, 313 and 506 read with Section 34 of the Indian Penal Code along with Charge-sheet No. 35/2023 numbered as RCC No. 77/2023.

12. The applicant shall deposit sum of Rs. 15,000/- with the High Court Bar Association, Nagpur on or before 28.04.2023. The matter be placed for compliance on 02.05.2023.

13. Application stands disposed of in above terms.