

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 137/2023.

1.Pavan s/o Jagdeo Survade,
Aged about 27 years,
Occupation – Education, resident
of Mahalungi Jahagir, Taluka
Motala, District Buldhana
[Mob.No.9970380136]
[Aadhar Card No.5900-8411-8293]

2.Sagar s/o Ashok Bawaskar,
Aged about 27 years, Occupation
Education, resident of Betavad,
Taluka Jamner, District Jalgaon.
[Mob.No.844612867]
[Aadhar Card No.2735-7631-6774]

... **APPLICANTS.**

VERSUS

1.State of Maharashtra,
through Police Station Officer
Police Station Dhamangaon Baddhe,
Taluka and District Buldhana.

2.XYZ,
[Victim in Crime No.0150/2021
Police Station Dhamangaon Baddhe,
District Buldhana]

... **NON-APPLICANTS.**

Mr. V. Awchat, Advocate for Applicants.
Mr. V.A. Thakare, A.P.P. for Non-applicant No.1/State.
Mr. K.V. Bhoskar, Advocate for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATE : APRIL 17, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally by consent of the learned Counsel present
for the parties.

Admit.

2. This is an application seeking to quash the first
information report bearing Crime No.150/2021 registered with the
Dhamangaon Baddhe Police Station, Buldhana for the offence
punishable under Sections 376, 376[2][n], 506 read with Section 34
of the Indian Penal Code and Section 67[a] of the Information
Technology Act. Applicants seek to quash the first information

Rgd.

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report on merits as well as on account of settlement between the parties, the application is also for quashing the related charge-sheet.

3. It is the contention of applicants that the contents of the first information report and investigating paper clearly disclose that it is a case of consensual relationship in between two adults which cannot be termed as an offence of rape. It is submitted that both were in love relationship and the sexual relationship was out of love and own wish, but, due to misunderstanding the report has been lodge. Applicants further submit that even after the lodgement of the report both decided to marry and engagement ceremony was held, but, marriage could not materialize.

4. The informant / lady aged 21 years stated that applicant no.1 was her distant relative and was well acquainted with her. Both of them were in love relationship, in which the applicant no.1 proposed for marriage. They had physical relationship at umpteen times. Some where in the month of March, 2021 the informant got engaged with some other to which applicant no.1 gave threat.

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Moreover, applicant no.1 has video-graphed the informant in obscene position and it was sent to brother of the informant through applicant no.2. Since applicant no.1 refused to marry, the report has been lodged.

6. Our attention has been invited to statement of informant recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure. In said statement, she has stated that out of love relationship there were sexual relations and then both have decided to marry. She has stated about their frequent relations and finally stated that on 11.06.2021 they underwent engagement ceremony, and therefore, she has no grievance.

7. Conjoint reading of the first information and statements recorded under Section 164 of the Code discloses that both had relationship out of love affair. The material does not indicate that only because the applicant gave promise to marry, therefore, the informant agreed to maintain sexual relations. Besides that parties have settled the matter as marriage of informant has been fixed

some where else. She has filed an affidavit and also appeared before this Court and identified by her Advocate. She contends that the matter is settled and she do not wish to prosecute the matter further.

8. Insofar as the offence under Section 376 of the Indian Penal Code is concerned, though it is a serious offence, but, at this stage it would be profitable to refer to the judgment of the Hon'ble Apex Court in the case of **Narinder Singh & others Vs. State of Punjab & another - AIR 2014 SCW 2065**. The decision of the Hon'ble Apex Court makes it clear that the Court cannot declare to quash the first information report merely because the first information report incorporates a particular provision which is a serious offence or an offence against the society. The Court has to make an endeavour to find out whether the first information report indeed discloses the ingredients of such offence and the Court can accept the statement and quash the first information report/charge-sheet after the Court is of the opinion that such an offence is unnecessarily incorporated in the first information report/charge-sheet. In the facts of the present case, though Section 376 of the Indian Penal Code is incorporated in

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the first information report, the essential ingredients of Section 376 of the Indian Penal Code are missing.

9. From perusal of the first information report and the material produced, we are satisfied that the ingredients of the offences alleged against the Applicant No.1 are not fulfilled. Since the Applicants have mutually resolved their dispute, chances of conviction are bleak.

10. In view of the judgment of the Hon'ble Supreme Court in the case of **Narinder Singh (supra)** and in view of the settlement of dispute between the parties, there is no impediment in quashing the first information report and charge-sheet against Applicants, hence, the following order is passed:-

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No. 150/2021 registered with the Dhamangaon Baddhe Police Station,

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Buldhana for the offence punishable under Sections 376, 376[2][n], 506 read with Section 34 of the Indian Penal Code and Section 67[a] of the Information Technology Act is hereby quashed and set aside against the applicants, alongwith related charge-sheet dated 16.01.2023 bearing No.04/2023.

JUDGE

JUDGE