



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

CRIMINAL APPLICATION [APL] NO. 232/2021.

Praful s/o Dhanraj Tembekar,
Aged about 25 years, Occupation – Service,
resident of Masala, Kondhali, Tahsil
Katol, District Nagpur.

... **APPLICANT.**

-VERSUS-

1.The State of Maharashtra
through Police Station,
Kondhali, District Nagpur.

2.Mayuri d/o Gunwanta Neware,
Aged about 23, Occupation -
Labour, resident of Masada,
Taluka Katol, District Nagpur.

... **NON-APPLICANTS.**

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None for the Applicant.

Shri S.M. Ghodeswar, A.P.P. for Non-applicant No.1.

Shri A.A. Dhawas, Advocate for Non-applicant No.2.

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CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : OCTOBER 09, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

None appears for the applicant. However, considering the

controversy involved in the matter and by consent of the learned A.P.P. and learned Counsel for Non-applicants, the matter is taken up for final disposal.

Admit.

2. This is an application seeking to quash the first information report in Crime No. 420/2020 registered with Kondhali Police Station, Nagpur District for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and related charge-sheet bearing Sessions Case No.98/2021 pending on the file of the District Judge-4 and Additional Sessions Judge, Nagpur, on account of settlement arrived in between the parties.

3. It is the contention of the applicant that the first information report along with investigation 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 long standing relationship, enjoyed sexual relation as per their wish, but, due to misunderstanding, report has been lodged.

4. The facts in brief are – that the informant aged 23 years, was a college going girl. While she was studying in 11th standard, she fall in love with the applicant, who was residing in the same village. After initial education, the informant shifted to village Selu to attend college.

Whenever she was visiting her parents house, she used to meet the applicant on an often. The applicant has expressed his desire to marry and thus, relations continued. The informant has stated that prior to 4 years, the applicant promised her for marriage and had sexual relations. It was followed for next 4 years as time to time they had maintained sexual relations. Finally in the month of October, 2020 the applicant refused to marry, which resulted into lodging of the first information report.

5. It reveals from record that the entire episode disclose that it was a love relationship in between two adults. The victim never gave her consent for sexual relation on account of promise, but, on her own volition of mind she kept the relation. It is submitted that there are no allegations that by force or compulsion, the applicant has established relationship. According to the applicant, the victim was well educated grown up matured lady and therefore, the allegation about sexual relation on account of false compromise are inherently improbable.

6. In this regard it is useful to make reference of the decision of Supreme Court in case of **Shubham Ravindra Kalbende & ors. Vs. State of Maharashtra, 2022 ALL MR(Cri) 3552**, wherein this Court has quashed the prosecution for the offence of rape on account of settlement as well as on merits. It is expressed that though the offence was

registered under Section 376 of the Indian Penal Code, the Court has to examine the facts to find out whether the ingredients to constitute offence are made out. Relevant observation made in para 7 reads as below:

“7. 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 reported in 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 endeavor 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/chargesheet. In the facts of the present case, though Section 376 of the Indian Penal Code is incorporated in the first information report, the essential ingredients of Section 376 of the Indian Penal Code are missing.”

7. In order to impress the averments that one has to see the facts

of the case without getting influenced by the sections invoked, the Supreme Court in case of *Narinder Singh & ors. Vs. State of Punjab and anr.*, (supra) while dealing with the offence punishable under Section 307 of the Indian Penal Code, expressed that despite invoking the particular section, the High Court has to examine whether prima facie offence is made out under said section.

8. This Court in case of **Amit Kumar Arun Kumar Singh Vs. State of Maharashtra & anr. 2016 ALL MR (Crim) 1553**, held that though the offence is about rape, however, it was in between two adults having the age of understanding. In the situation, this Court has quashed the first information report on account settlement.

9. It reveals from the record that apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation. In this regard, reference to the decision of the Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608** can be made. In said decision, the Supreme Court took review of earlier decisions and summarized the legal position in para 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.”

10. On the similar lines, reference can be made to the decision of the Supreme Court in case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & ors, 2019 AIR (SC) 327**. In the said case, the Supreme Court has once again highlighted the distinction in between mere breach of promise and false promise. The relevant observation made in para 20 are as follows:-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the

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prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.”

11. The informant girl is well educated, prosecuting her degree course. She was having love affair with the applicant for a period of 4-5 years preceding to the lodgment of the first information report. It is her own statement that they were enjoying sexual relations for a period of 4 years before the report. It is difficult to accept the contention of informant that each time under the pretext of marriage, they had indulged into sexual relations. It reveals that some time at her own she was visiting the house of the applicant, where they had maintained relations. Taking over all view of the matter, prima facie there is no material to hold that only because the applicant gave promise to marry, believing on such assurance, she has submitted herself. Besides that the

parties have mutually resolved the dispute, therefore, the charge of conviction are remote and bleak. The victim has filed reply-affidavit and stated that due to grudge she has lodged report.

12. In view of above peculiar facts, continuation of prosecution will be an exercise in futility. Therefore, to secure the ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceeding. We hereby allow the application and pass the following order :-

ORDER

- (a) Criminal Application is allowed and disposed of.
- (b) The first information report bearing Crime No. 420/2020 registered with Kondhali Police Station, Nagpur District for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and related charge-sheet bearing Sessions Case No.98/2021 pending on the file of the District Judge-4 and Additional Sessions Judge, Nagpur, is hereby quashed and set aside.

(VALMIKI SA MENEZES, J)

(VINAY JOSHI, J)