

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

CRIMINAL APPLICATION (APL) NO. 201/2022

Rajat Punamdas Ate,
aged 30 yrs., Occ. Private Job,
R/o. Lumbini Nagar, Nachangaon,
Pulgaon, Tah. Deoli, Dist. Wardah.

APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Pulgaon,
Tah. Deoli, Dist. Wardha.
2. XYZ Complainant/Victim
in Crime No. 1027/2021 registered
at Police Station Pulgaon, Dist. Wardha.

NON-

APPLICANTS.

Mr. S. U. Bhuyar, Advocate for applicant.
Mr. A. M. Kadukar, APP for Non-applicant No.1.
Mrs. J. P. Junghare, Advocate for non-applicant No.2.

CORAM

: VINAY JOSHI AND
BHARAT P.

DESHPANDE JJ.

DATE OF JUDGMENT

: 21.03.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. This is an application seeking to quash First Information
Report in Crime No. 1027/2021 for the offence punishable under

Sections 376(2)(n), 417 of the Indian Penal Code registered at Police Station Pulgaon, Tq. Deoli, Dist. Wardha along with the charge-sheet in Sessions Case No. 58/2022 pending on the file of the Additional Sessions, Wardha. The applicant seeks quashing on merits as well as on account of settlement between the parties. It is submitted that the allegation levelled in the Police Papers does not constitute the offence of rape. At the most, it is a case of consensual relationship between two adults.

3. On 15.11.2021, the victim aged 25 years has lodged report. It is her case that in the year 2017, she got acquainted with the applicant. Their acquaintance turned into love relationship. She stated that on 15.11.2017, the applicant called her at his residence and asked sexual favour. Initially, she denied, but the applicant expressed his love and readiness to marry. Therefore, she has surrendered herself. She stated that thereafter, on various occasions, they had physical relations in public school playground. Both of them, got job in Pune, therefore they shifted to Pune and lived together for the period of six months in live-in-relationship. During said period also, they had physical relationship. The applicant assured victim for marriage, after marriage of his younger sister. In the year 2021 at Pulgaon, both had physical relationship in public playground. Finally, the applicant denied for marriage therefore, the report.

4. It is submitted that the informant was well educated,

matured lady serving in Company. It is pointed that both lived in live-in-relationship for considerable period and therefore, it cannot be construed that she has surrendered herself only on account of promise to marry. The learned counsel for the applicant also attracted our attention to the statement of victim recorded by the learned Magistrate in terms of Section 164 of the Code of Criminal Procedure ('Code'). The said statement nowhere says that the applicant gave a promise for marriage. Rather it conveys that there was pure love relationship and desired by both, they maintained sexual relation. The said statement contradicts the initial report that the applicant gave promise for marriage.

5. The informant is present in Court, filed an affidavit stating that they have love relationship. She was desirous for marriage, as the applicant refused out of anger, she filed report. The informant is stated that the report was lodged under misconception and therefore, she has no objection to quash FIR.

6. Apart from the settlement in between the parties, we have examined the case on its own merits. The informant is well educated, grown up lady who was serving in the Company. Obviously, she had capacity of understanding the consequences of her act. The entire Police Report discloses that for long period of three to four years, they had maintained relationship. Pertaining to note that they resided together in live-in-relationship which prima facie discloses that she

never surrendered herself only on account of promise for marriage. Moreover, the informant in her statement before the learned Magistrate did not utter a single word that the applicant has promised her for marriage and therefore, she consented for sexual relation.

7. In reported cases of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608*** and ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others, AIR 2019 SC 327***, the Supreme Court made distinction in between breach of promise and false promise. In order to vitiate the consent in terms of Section 90 of the Indian Penal Code, the applicant must possess deceitful intent from the inception. To construe a consent to be obtained by fraud, it is to be demonstrated that consent was given only because there was promise for marriage. Examination of the entire material, particularly age, education living together and maintaining relationship is sufficient to demonstrate that they had relation out of love and passion. Therefore, the essential ingredients to constitute the offence punishable under Section 376 of the Indian Penal Code are missing. In addition to that, the victim has filed affidavit stating that out of anger, she has filed the report.

8. In above peculiar facts, we deem it appropriate to exercise our inherent jurisdiction, as continuation of prosecution amounts to the abuse of the process of Court. In view of that, application is allowed. We hereby quash and set aside the First Information Report in Crime

No. 1027/2021 for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code registered at Police Station Pulgaon, Tq. Deoli, Dist. Wardha as well as charge-sheet in Sessions Case No. 58/2022 pending on the file of the Additional Sessions, Wardha.

9. Application stands disposed of in above terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane