



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

CRIMINAL APPLICATION NO.294 OF 2023

Mr. Rajdeep Singh s/o Satnam Singh
Sohal, Aged 22 years, Occupation :
Student, R/o Plot No.111, Banshi Nagar,
Hingna Naka, Tq. And Dist. Nagpur.

... APPLICANT

VERSUS

1. State of Maharashtra, through Police
Station Officer, Police Station
Gittikhadan, District Nagpur.
2. XYZ, Victim in Crime No.68/2023
registered with Police Station,
Gittikhadan, Nagpur.

... NON-APPLICANTS.

Shri R.R. Vyas, Advocate for the applicant.
Shri Doifode, Addl.PP for the State.
Ms. Mohini Sharma, Advocate (appointed), for non-applicant no.2.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.

RESERVED ON : 28.11.2023.

PRONOUNCED ON : 01.12.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. ADMIT.

2. The matter is taken up for final disposal by consent of

learned Counsel appearing for the parties.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is seeking to quash the First Information Report bearing Crime No.68 of 2023 registered with the Gittikhadan Police Station Nagpur City for the offence punishable under Sections 376(2)(n), 323, 417, 504 and 506 of the Indian Penal Code. This applicant has posed a question whether it is a case of mere breach of promise or false promise to marry.

4. The informant-lady aged 22 years has lodged the report on 24.01.2023, which led registration of crime. The informant was studying in the final year at Priyadarshini Engineering College. The applicant was also studying in the same college, as well as both had prior education in the same School. On 11.02.2022, the applicant asked the informant to accompany him along with friends to Chikhaldara (Hill Station) for a trip. On his request, she went to Chikhaldara, but did not find other friends. The applicant had booked a room at Hotel Natraj, Chikhaldara, where both stayed. On the first day, the applicant conveyed his desire to marry and maintained sexual relations. Thereafter, they stayed in said Hotel for three days. On their return, the applicant took the informant to meet his parents. On 24.04.2022, the

applicant took the informant at Hotel Trigon at Hingna, Nagpur and had forcible sexual relations. In the month of June, 2022 while they were talking on phone, she perceived that the applicant's family members are arranging applicant's marriage elsewhere. On said count, there was a quarrel in between them. On 05.07.2022, the applicant again took the informant to Chandrapur at lodging house, where by giving promise of marriage, had established sexual relations. The informant remained pregnant from the relations. The applicant took her to his house, where in presence of family members, he denied for marriage. After 6 to 7 days, again the applicant assured her for marriage, took her to lodging house at Mihan, Nagpur, where they had sexual relations.

5. It is the applicant's case that three times she became pregnant from the applicant and each time pregnancy was aborted. The informant stated that the applicant threatened her to expose her photographs, and thus, by putting her under pressure took her to different places and sexually exploited her. Finally, as the applicant refused to marry, she has lodged the report alleging the case of rape.

6. Learned Counsel appearing for the applicant would submit that contents of the FIR even if taken at its face value, it does not make

out a case of false promise constituting the offence of rape. It is argued that the facts are clear enough to convey that the consent was not given by the informant only on account of promise to marry, but relations were established due to love affair.

8. Learned Counsel appearing for the applicant strenuously argued that the facts does not disclose that it is a case of false promise vitiating the consent. He would submit that both were young and had relationship purely out of love affair. It is submitted that despite initial denial, the informant has maintained sexual relations which itself discloses that the consent was not given on account of promise to marry. Learned Counsel for the applicant has relied on the decision of the Supreme Court in cases of *Pramod Suryabhan Pawar vs. State of Maharashtra and anr.* 2019 SCC OnLine SC 1073 and *Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra and ors.* 2018 SCC OnLine SC 3100. Likewise, he has also relied on the decision of this Court in cases of *Pawan s/o Bhimrao Jadhav vs. Sate of Maharashtra and anr.* (Criminal Application (APL) No.1065 of 2019) and *Mr. Abhay s/o Suresh Jaiswal vs. State of Maharashtra and anr.* (Criminal Application (APL) No. 297 of 2022).

9. *Per contra*, learned Addl. PP. and learned Counsel appearing

for the informant would submit that, the consent was given by the informant under a misconception of fact. Reading of the FIR discloses that the accused had sexual intercourse with the informant by giving false assurance that he would marry. According to him, it is evident that the applicant never intended to marry with her and therefore, the consent vitiates amounting to the offence of rape. To substantiate the said contention learned Addl.PP. relied on the decision of the Supreme Court in case of ***State of Uttar Pradesh vs. Naushad (2013) 16 SCC 651***.

10. The Supreme Court has occasion to deal the same issue in several cases. The observations made in this regard would provide us a guiding factor. In case of ***Deepak Gulati vs. State of Haryana (2013) 7 SCC 675***, specific observations were made in paragraph 21 of the judgment, which reads as follows :

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused 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 latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a

false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. 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 mis-representation made to her by the 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 so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

11. On the same line, we may refer the decision of the Supreme Court in case of *Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra and ors. supra* with emphasis on paragraph 23 of the decision, which reads as below :

“23. 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 latter 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 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.”

12. In said case the Supreme Court has considered its earlier pronouncement in case of ***Uday .vrs. State of Karnataka – [2003] 4 SCC 46***, and reiterated the principle that there is a clear distinction between rape and consensual sex. It was considered that there can 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 misconception created by the accused or the circumstances are beyond his control. It is expressed that the Court shall very carefully examine all the aspects in like cases.

13. It emerges from the above exposition of law that “consent” of a woman must involve an active and reasoned deliberation towards the proposed act to attract the penal consequence. The promise of

marriage must have been a false promise given in bad faith and with no intention to adhere the promise.

14. Section 90 of the Indian Penal Code defines “consent known to be given under fear or misconception”, reads as below :

“Section 90 – Consent known to be given under fear of misconception – A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or”

15. Section 90 of the Code, though does not define the term ‘consent’, but, in negative manner it describes what does not amount to consent. True, consent may be express or implied, must actuated, obtained through deceit or fraud. If the consent is given under misconception of fact, it vitiates. In order to come out from the clutches of Section 375 of the Indian Penal Code, the consent requires voluntary participation and not on some deceitful misrepresentation. In case at hand undoubtedly there was no resistance for physical intercourse but, as per the victims case there was love relationship.

16. In case of Pramod Pawar (*supra*), once again the Supreme Court has summarized the position in paragraph 22, which reads as below :

“22. 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.”

17. In view of above settled position, it is necessary to examine the facts and relevant circumstances of the case to find out whether in given case, the consent was actuated by fraud amounting to absence of consent. With the assistance of both sides, we have examined the material adduced by the prosecution.

18. Undeniably, the informant is well educated grown-up lady aged 22 years. Particularly, she was studying in final year of Engineering College. It reveals from the FIR itself that both were acquainted with each other from the school days. The informant stated

the first occurrence dated 11.02.2022, when both visited to Chikhaldara. Pertinent to note that, though the applicant's friends had not accompanied to Chikhaldara still she stayed for long i.e. for three days with the applicant boy in lodging house.

19. As per the informant, in the month of June, 2022 she came to know that the applicant's marriage was to be arranged elsewhere, still in the month of July, 2022 she went with the applicant at lodging house at Chandrapur, where they had relations. It is her case that after July, 2022 she became pregnant and then in the month of October, 2022 the applicant denied for marriage. She herself stated that even thereafter, she maintained sexual relations with him. She also went to one lodging house with him at Mihan, Nagpur. Her statement discloses that she became pregnant on three occasions from the applicant. It is her case that the applicant has threatened that he would expose her photographs and therefore, she has succumbed to his wishes. Finally, when the applicant denied for marriage, she has lodged the report.

20. It is a matter of appreciation that the informant went to Chikhaldara on Valentine Day with a boy (the applicant) and stayed for three days in lodging house. There is considerable force in the

applicant's contention that, since the informant was willing party, she continued to stay in the lodging house with a stranger. It requires to be noted that in the month of June, 2022 itself she came to know that the applicant was about to marry elsewhere, however thereafter on several occasions, she went with the applicant at different places and had sexual relations in lodging houses. The entire episode makes out a strong possibility that out of love and passion, she accompanied the applicant despite knowing refusal for marriage.

21. We have examined the statement of the informant dated 10.02.2023 recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure ('CrPC'). In said statement, though the informant referred the instances of relationship, however she has stated that the applicant was willing to marry which assumes significance. There is a clear distinction between rape and consensual sex. Admittedly, the victim is well educated major girl. The applicant is also a young boy of barely 22 years of age. The applicant also arranged the meeting of the informant with his parents. The informant's act of visiting several places with the applicant shows her keen desire to indulge into such activities. In natural course, on first denial of marriage, she would have cutoff the relationship. The said material

prima facie indicates that the informant has maintained the relationship at her own. It reveals that she has consented for the relations not on account of promise, but it was her desire.

22. Learned Addl.PP has stated that during investigation the Police have conducted medical examination of the informant and collected the documents from the lodging house. There can be no dispute about the said material. So far as the medical examination report is concerned, having regard to the nature of accusation, it would not assist in any manner. On examination of register of lodging house, it reveals that the informant had disclosed her name as well as she shown her proof of identity. All these circumstances, indicates her own desire to go with the applicant. In case of *State of U.P. vs. Naushad (supra)*, the facts are quite distinct as the then accused was the uncle of the victim girl, who was minor aged 15 years. On the basis of given facts, it has been held that the consent vitiates. The facts in hand are quite distinct as the relationship was in between two adults.

23. Bearing in mind the test, which has been enunciated in above decisions, it is evident that even assuming that all the allegations in the police papers are correct, no offence has been made out. It is

impossible to find the essential ingredients to constitute the offence of rape. The crucial ingredients of the offence of rape are missing. The relationship was purely of consensual nature. The fact nowhere indicates that only because the applicant assured for marriage, the lady gave consent, nor it indicates that since inception the applicant with deceitful intent gave a promise to marry. Though it is stated that the applicant is threatened to make her photographs viral, however despite seizure of mobile nothing was found. Moreover, statement of the informant does not specifically state about the nature of photographs.

24. Pertinent to note that, the applicant has not kept the relationship in secrecy, as on some occasions he took the victim to his parents. Rather in the statement under Section 164 of CrPC, the informant stated that the applicant was willing to marry with her. The essential ingredients to constitute the offence of rape are clearly missing. Continuation of such prosecution amounts to abuse of the process of court. The case squarely falls in the criteria (1) and (3) laid down by the Supreme Court in case of *State of Haryana vs. Bhajan Lal* **AIR 1992 SC 604**. In order to secure the ends of justice the proceeding needs to be quashed by invoking inherent powers.

25. In view of that, the application is allowed. We hereby quashed and set aside the First Information Report bearing Crime No.68 of 2023 registered with the Gittikhadan Police Station Nagpur City for the offence punishable under Sections 376(2)(n), 323, 417, 504 and 506 of the Indian Penal Code.

26. The application stands disposed of accordingly. No costs.

27. Fees of the appointed Counsel be paid as per the Rules.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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