

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

CRIMINAL APPLICATION (APL) NO.560/2023

Harish S/o Madhukar Tayade,
Aged about 45 years, Occ. Service,
R/o Kamodhe, Panvel,
Navi Mumbai, Maharashtra ..Applicant

- Versus -

1. State of Maharashtra,
Through its In-Charge/Police Station Officer,
Police Station Rajapeth,
Taluka and District Amravati.
2. X.Y.Z.
FIR/Crime No.196/2023
registered at Police Station,
Rajapeth, Amravati. .. Non-applicants

Mr. R.J. Mirza, Advocate for applicant.
Mr. V.A.Thakre, APP for non-applicant no.1.
Mr.Z.A.Haq, Advocate for respondent no.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATE : 13.04..2023.

ORAL JUDGMENT (Per VINAY JOSHI, J)

1. Heard. Admit. Heard finally by consent of learned counsel for the parties.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash FIR in Crime No.196/2023 registered with Police Station, Rajapeth, Amravati, for offences punishable under Sections 376(2) (n), 500, 506-B of the Indian Penal Code. The quashing is sought on merits as well as on account of settlement between the parties.

3. At the instance of report by non-applicant no.2 (informant) dated 23.2.2023 Crime has been registered. The informant is cousin sister of the wife of the applicant. It is informant's case that she had been to the house of applicant somewhere in the month of February 2022 for treatment of her father. She stayed in Mumbai as the applicant was her relative. It is her contention that during her period of residence in Mumbai at the house of the applicant i.e. in between 10.2.22 to 22.2.2023 the applicant sexually abused her. He had physical relations with her and also threatened not to disclose the things. Once the

applicant also took the informant to a lodging house where they had relations. It is alleged that the applicant took her photographs and threatened to make it viral and, therefore, the report.

4. The learned counsel for the applicant would submit that it is purely case of consensual relationship in two adults. It is submitted that the informant lady was well aware that the applicant was well grown up married fellow still she maintained relations with him. Moreover, the applicant has produced printouts of WhatsApp chats to indicate that both were in relationship. Lastly, it is submitted that out of misunderstanding report has been lodged but now the matter is settled for which the informant has filed reply.

5. The informant lady is present before us with her father namely Kiran Pardhe. The informant is identified by her Advocate Shri Z.Z. Haq. She has accepted about the settlement and filing of reply affidavit to that extent. She also gave no objection for quashing of the FIR. The informant stated that she is studying in Engineering course and desirous to marry somewhere else. She urged to quash FIR to protect her career and future marital prospects.

6. Perusal of FIR indicates that it is a case of consensual relationship. Undisputedly, the informant was major at the time

of occurrence. Pertinent to note that she never states that under promise to marry the applicant has exploited her sexually. Rather, it is evident that since inception the informant was well aware that applicant is a married fellow who cannot marry. Despite, such position, she has maintained relationship. So far as the allegations of rape are concerned that does not hold any water as for long period there was relationship which is evident from WhatsApp chats. Apart from that, the parties have settled the matter for which affidavit has been filed.

7. We have brought to the notice of the parties that due to registration of FIR, the police machinery was rotated as well as concerned Courts were required to deal with the related applications. At this juncture, the applicant expressed his willingness to deposit cost of Rs.20,000/-.

8. Considering the nature of accusation, prima facie case to constitute the offence of rape is not made out. In the circumstances, continuation of such prosecution would be exercised in futility.

9. In view of above, following order:

(i) Application is allowed.

(ii) We hereby quash and set aside FIR in Crime No.196/2023 registered with Police Station, Rajapeth, District Amravati, for offences punishable under Sections 376(2) (n), 500, 506-B of the Indian Penal Code.

(iii) The applicant shall deposit cost of Rs.20,000/- within two weeks from today with the High Court Bar Association.

(iv) The applicant shall file a Pursis along with receipt about compliance.

(v) Office shall place the matter before us, if compliance pursis is not filed within the stipulated period.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

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