



Judgment

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

CRIMINAL APPLICATION (APL) NO. 968/2023

Nitin s/o. Dilip Rao Chandangir,
Aged about 44 yrs., Occ. Architect,
R/o. Old Gyaneshwar Nagar, Manewada
Road, behind Kudrat Pan Mandir, Nagpur.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra,
through P.S.O. Hudkeshwar Nagpur.
2. X.Y.Z. Crime No.407/16,
P.S.O. Hudkeshwar, Nagpur.

...**NON-APPLICANTS**

Mr. Sk. Sabahat Ullah, Advocate for applicant.
Mr. A.B. Bader, APP for non-applicant No.1.
Mr. A.J. Mirza, Advocate for non-applicant No.2.

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

DATE : 06.11.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

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3. This is an application seeking to quash Special Case No. 38/2016 arising out of Crime No. 407/2016 registered with the Police Station Hudkeshwar, Nagpur for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and Sections 3(1), 12, 3(2), 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on merits as well as on settlement.

4. At the instance of report, lodged by young girl aged 21 years, crime has been registered. It is the prosecution case that in the year 2013, the victim girl got acquainted with the accused and started to work on salary as his assistant. The victim was aware that the applicant was married fellow. In the month of February 2013, the applicant proposed her for marriage, however she refused as the applicant was already married. However, they continued to work together. Once the applicant took victim for outing and had sexual intercourse by giving promise to marry. The things were repeated for long period of three years. Finally, the applicant refused to marry. Therefore, the report.

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5. Learned counsel appearing for the applicant would submit that the prosecution even if accepted at its face value, it does not make out an offence of rape. It is submitted that the victim was major and at the most, it is a case of consensual relation. Learned counsel appearing for applicant took us through the statement of victim, where she herself has stated about applicant's marital status and her love relation.

6. We have examined the police papers. It reveals that the victim was major from the date when the relation started. The victim's own statement discloses that she was aware about the marital status of the applicant. The statement of victim also conveys that both were in relationship out of intimacy. They had longstanding sexual relation on several time.

7. Applying the law laid down in the cases of **Pramod Pawar Vs. State of Maharashtra 2019(9) SCC 608** and **Dhruvaram Murlidhar Sonar vs State Of Maharashtra, 2019 AIR (SC) 327**, we have re-examined the facts. Apparently, both were young and in relationship for three to four years. Particularly, the victim was

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aware about the marital status of the applicant. There is no material to infer that only on account of false promise, she has surrendered herself. The prosecution case even if accepted, it does not constitute a prima facie case. The case squarely falls in Criteria Nos. 1 and 3 to Para 108 of the decision of the Supreme Court in case of **State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604.**

8. Besides that, the informant lady has settled the dispute and filed reply stating that out of misconception, she has lodged report. She has appeared through her Advocate Mr.A.J. Mirza and stated about settlement. Apart from the settlement, we have assessed the case on merits, and satisfied that the allegation does not constitute a prima facie offence of rape. In the circumstances, continuation of the prosecution amounts to abuse of the process of the Court. Though charge-sheet has been filed, it is informed that yet charges have not been framed.

9. In view of above, we are inclined to invoke our extraordinary jurisdiction. Application is allowed. We hereby quash and set aside the Special Case No. 38/2016 pending on the file of

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Additional Special Court Atrocity i.e. District Court – 9 and Additional Sessions Judge, Nagpur arising out of Crime No. 407/2016 registered with the Police Station Hudkeshwar, Nagpur for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code and Sections 3(1), 12, 3(2), 5 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on merits as well as on settlement.

10. Application stands dispose of in above terms.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)