



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

CRIMINAL APPLICATION (APL) NO.725/2023.

Shailesh s/o Tarachand Meshram
Aged 25 years, Occu. Pvt. Service,
R/o C/o Tarachand Meshram
at Adegaon (Desh) Tahsil Chimur
District Chandrapur.

Applicant

Versus

1. State of Maharashtra,
through The Police Station Officer,
MIDC (Bori) Nagpur.
2. XYZ in Crime No.106 of 2023
Police Station MIDC, Bori,
Nagpur.

Respondents

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Shri S.G.Karmarkar, Advocate for the applicant.
Mr. S.M. Ghodeswar, APP for non-applicant no.1.
Mr. B. Sachdev, Advocate for non-applicant no.2.

CORAM : NITIN W. SAMBRE AND VALMIKI SA MENEZES JJ.
DATED : 12/09/2023

ORAL JUDGMENT (PER NITIN W. SAMBRE, J)

1. Heard.
2. The prayer is for quashing of FIR and consequential charge-sheet
in Crime No.106/2023 registered with Police Station, MIDC (Bori), Nagpur for
offences punishable under Sections 354-A, 376, 500 and 506 of the Indian

Penal Code read with Sections 67 and 67-A of the Information Technology Act, 2008.

3. This Court, in its order dated 19.06.2023, has already recorded not only the consent of the complainant-victim but also of her parents, as they are supported the case of the applicant for quashing.

4. In this background, we have perused the entire record and the charge-sheet.

5. From the evidence available on record, it can be inferred that the relationship between the victim and the applicant was consensual.

6. In the backdrop of the aforesaid matrix, the Apex Court in ***Sonu Vs. State of Uttar Pradesh and ors*** reported in ***AIR 2021 SC 405***, has held that the prosecution even in consensual offences can be quashed. The Apex observed in para 7, 9 and 11, which read thus:

“7. On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second Respondent had developed a friendship with the Appellant and that he had assured that he would marry her. The FIR then records that the Appellant and the second Respondent developed a physical relationship which spread over a period of one and a half years, during the course of which the second Respondent conversed with the parents and sister of the Appellant. It has been alleged in the FIR that the parents of the Appellant were agreeable to the couple getting married. As a matter of fact, the Appellant returned to his home town at Jhansi on 5 January 2018 when he had made a phone call to her stating that she should come and visit him

so that they can get married. On travelling to Jhansi at the behest of the Appellant, the second Respondent was informed by the father of the Appellant that the Appellant did not wish to marry her. The contents of the statement under Section 164 of Code of Criminal Procedure also indicate that the second Respondent had voluntarily developed relationship of husband-wife with him". The second Respondent has then stated that "now, he and his family members are refusing to marry with me". The second Respondent has further stated that "my sole grievance is that Sonu is refusing to marry with me".

9. *In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:*

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it...

11. *Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of Code of Criminal Procedure, no offence has been established. There is no allegation to the effect that the promise to marry given to the second Respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the Appellant to marry the second Respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of Code of Criminal Procedure on the basis that it was only the evidence at trial which would lead*

to a determination as to whether an offence was established”.

7. In this background, no purpose will be served by keeping the present proceedings pending against the applicant particularly when the victim herself has taken a stand before this Court that she is not intending to support the case of the prosecution. Perhaps such stand is taken by the victim which was supported by her parents in regard to she being unmarried and has long way to go in life.

8. In this background, we deem it appropriate to allow the present proceedings present application in terms of prayer clause (i), in view of the consent recorded by this Court in its order dated 23.06.2023. However, we direct the applicant to pay costs of Rs.25,000/- to be deposited within six weeks with the Central Police Welfare Fund and the acknowledgment be produced on record within the said period.

9. Failure to comply with the aforesaid order, shall result in revival of the order of allowing present proceedings and the application shall be treated as dismissed on merit without further reference to this Court.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)