

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

CRIMINAL APPLICATION (APL) NO. 835 OF 2022

APPLICANT : Rajendra s/o Trambak Shete,
Aged about 57 years, Occ : Police
Inspector, R/o Police Station, Wadner,
Tq. Hinganghat and Dist. Wardha.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through P. S. O. P. S.
Tq. Bramhapuri, Dist. Chandrapur.
2. X Y Z, Crime No.228/2022,
PSO PS. Bramhapuri,
Dist. Chandrapur.

Shri Anil Mardikar, Senior Advocate Assisted by Shri Digvijay Singh,
Advocate for applicant.

Shri S. S. Doifode, Additional Public Prosecutor for respondent No.1.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 17/02/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit.** Heard finally with the consent of learned
counsel appearing 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.228/2022 registered with Bramhapuri Police Station, Dist.
Chandrapur for the offences punishable under Sections 376 (2)
(n), 323, 504 and 506 of the Indian Penal Code.

3. The applicant seeks to quash First Information Report primarily on the ground that reading of entire First Information Report, nowhere discloses constitution of offences as alleged. It is submitted that there was consensual relationship in between two adults with full knowledge that their marriage is impossible, therefore, the story of informant about false promise of marriage is false.

4. The informant – a married lady aged about 42 years having a son of 17 years of age has filed report on 10/05/2022. It is her case that she was residing separately from her husband due to matrimonial dispute. In the year 2006, she got acquainted with the applicant who was serving as Police Officer at Bramhapuri. Their casual acquaintance has turned into relationship. It is her case that from the year 2007, the applicant assured that he would marry with her and under said pretext, has established sexual relations. It is her case that at various places, they went for outing where under promise to marry, applicant has sexually exploited her. The applicant was transferred from Bramhapuri to various places where the informant was called and at those places also, they had sexual relations. The said state of affair continued for next 17 years and finally, the applicant denied for marriage. She stated that applicant assured for marry as well as would build a

house for her, but as he refused, she has filed report.

5. The State resisted the application by filing reply affidavit precisely narrating the contents of FIR. Learned APP in resistance would submit that the applicant took disadvantage of poor vulnerable lady. Under false pretext of marriage, he had satisfied his lust. The informant gave her consent only because the applicant gave assurance of marriage and thus, the consent given under misconception of fact vitiates in terms of Section 90 of the Indian Penal Code.

6. The learned counsel for the applicant would submit that there is marked distinction in between false promise and breach of promise. Moreover, it is submitted that in order to constitute an offence, there must be intention of applicant since inception to deceive the lady. He would submit that the consent must have been given by the lady for the reason that she has been promised for marriage. In support of said contention, he relied on the following decisions :-

i] **2021 SCC ONLINE SC 181**

(Sonu alias Subhash Kumar Vrs. State of Uttar Pradesh and another).

ii] **(2019) 9 SCC 608**

(Pramod Suryabhan Pawar Vrs. State of Maharashtra and another).

iii] (2019) 18 SCC 191

(Dr. Dhruvaram Murlidhar Sonar Vrs. State of Maharashtra and others).

iv] (2017) 13 SCC 369

(Vineet Kumar and others Vrs. State of Uttar Pradesh and another).

v] 2021 SCC ONLINE BOM 3035

(Babasaheb Vrs. State of Maharashtra).

7. In the case of Pramod Suryabhan Pawar Vrs. State of Maharashtra and another, reported in (2019) 9 SCC 608, the Hon'ble Supreme Court has referred earlier decision in case of Uday Vrs. State of Karnataka and summarized the position in para No.18 which reads as below :-

"18. 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."

8. In the case of Dr. Dhruvaram Murlidhar Sonar Vrs. State of Maharashtra and others, reported in (2019) 18 SCC 191,

the facts are somewhat similar as in that case also, the adults were in relations for several years. In that context, it has been observed in Paragraph No.23 as under :-

"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 IPC."

9. Reverting to the facts of this case, the informant was married lady having a grown-up child. Her marriage was subsisting at the time when first time, the applicant allegedly

promised her for marriage. Moreover, the applicant is quite older in age and was already married. The possibility of marriage was apparently impossible. Moreover, the allegation ranges for last 17 years. Therefore, it is difficult to hold that only because there was false promise of marriage, the woman submitted herself for a period of more than a decade.

10. The applicant has produced documents to show that time to time, he was paying money to the informant. Moreover, the report itself indicates that she was demanding a house which speaks about their understanding. The relations were for nearabout 17 years, they travelled together lived at different places and therefore, apparently it is a case of consensual relationship. Prima facie, there is nothing to indicate that only on believing the promise of marriage, the lady surrendered herself.

11. Even if contents of FIR are taken at its face value, no offence is made out against the applicant. Continuation of such prosecution amounts to abuse of the process of Court. In above peculiar facts, we find it appropriate to invoke our inherent powers to secure the ends of justice. In view of that, application is allowed.

12. First Information Report in Crime No.228/2022 registered with Bramhapuri Police Station, Dist. Chandrapur for the offences punishable under Sections 376 (2)(n), 323, 504 and 506 of the Indian Penal Code is hereby quashed and set aside.

13. The application stands disposed of accordingly.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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