

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

CRIMINAL APPLICATION (APL) NO. 801/2023

Moh. Abdul Rafique Khan,
Age 46 yrs., Occ. Business,
R/at: 403 Arshad Meredian,
Block B, Sarkhej Road, Opp Amber
Tower, Ahmedabad City, Ahmedabad,
Gujrat – 380 055.

.....APPLICANT.

VERSUS

1. State of Maharashtra,
(through Police Station Officer,
Police Station Ganeshpeth, Nagpur
City), Dist. Nagpur.
2. X.Y.Z. (Complainant/Victim)
Crime No. 138/2023,
Police Station Ganeshpeth,
Nagpur.

..... NON-APPLICANTS

Mr. R. V. Gahilot, Advocate for applicant.
Mr. V. A. Thakare, APP for non-applicant No.1.
Mr. Manish Shukla, Advocate for non-applicant No. 2

CORAM : **VINAY JOSHI AND**
VALMIKI SA MENEZES JJ.
DATE : **07.07.2023**

JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**
3. This is an application seeking to quash First Information

Report vide Crime No. 138/2023 registered with Police Station Ganeshpeth, Dist. Nagpur for the offence punishable under Sections 376(2)(n) and 377 of the Indian Penal Code, Sections 3(1)(w)(i), 3(1)(ii), 3(2) and 3(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with related criminal case bearing RCC No. 138/2023 on account of merits as well as on settlement.

4. Informant lady aged 27 years has lodged report on 16.04.2023 which led to the registration of Crime. It is prosecution case that the informant was serving as Beautician. On 23.11.2018, she had attended an event, in which she accidentally got acquainted with accused/applicant. Both have exchanged phone numbers and then they were frequenting on phone. Friendship was developed which turned into love relationship. The applicant pretended himself to be unmarried. First time in the month of November 2018 in the Lodging House applicant promised her to marry and had sexual intercourse. In the year 2019 itself, she came to know that the applicant was married, having two grown up issues. She has questioned to the applicant, however he threatened to commit suicide. Again, from the month of September 2021 for the period of one year, both lived together in live-in-relationship. During said period, they maintained sexual relations. The informant remained pregnant in September 2021, while they were

living in Bhopal. The applicant gave some pills which resulted into abortion. Again in the month of January 2022, she remained pregnant and similarly was aborted. Finally, the informant came to understand that the applicant was deceiving her and thus, she has filed report.

5. Applicant seeks to quash criminal prosecution on account of false implication as the case is of consensual relations between two adults. During the course of investigation, statement of other witnesses have been recorded. It is applicant's contention that victim is well grown up lady having love affair for four years. She was in deep love with him therefore, out of intimacy, by consent, they had maintained relation for long period. The victim lady has appeared in Court and filed affidavit stating that out of misunderstanding, she has lodged the report, but she do not want to prosecute the case. She stated that they were in live-in-relationship and therefore, she has no objection to quash First Information Report.

6. Pertinent to note that the quashing of First Information Report is not sought merely on account of settlement, however, elaborate submissions have been made to convince that no offence is made out, as it is a case of consensual relation. It is argued that from the First Information Report itself, it reveals that victim was well educated grown up lady aged 27 years. She had voluntarily entered into sexual relations out of love affair. Report nowhere discloses that only because accused

assured for marriage, she surrendered herself. It is stated that for long period of four years, they have traveled at various places, stayed together, maintained relation and therefore, it cannot be said that under false pretext of marriage, the consent was obtained.

7. The informant/victim is well grown up lady aged 27 years. She was serving in Company, meaning thereby lady of good understanding. She got acquainted with applicant in the year 2018 and both had relation for next four years. Though victim stated that first time in the year 2018, they had sexual relation, however it was continued further. Pertinent to note that it is victim's own case that despite knowing marital status of the applicant, she stayed with him for the period of more than one year. Not only that after due knowledge, she remained pregnant twice which she aborted. It appears that the victim at her own had maintained relationship knowing well that her marriage was not possible.

8. In order to impress the submission that one has to see the facts of the case without getting influenced by the section invoked, reliance is placed on the decision of the Supreme Court in case of **Narinder Singh & ors. Vs. State of Punjab and anr., AIR 2014 SCW 2065**. In the said case, relating to the offence punishable under Section 307 of the Indian Penal Code, it is expressed that despite invoking the particular section, the High Court has to examine whether prima facie offence is made out

under said section. The learned counsel for applicant further relied on the decision of this Court in case of **Amit Kumar Arun Kumar Singh Vs. State of Maharashtra & anr. 2016 ALL MR (Crim) 1553**, wherein this Court on facts, held that though the offence is about rape, however, it was in between two adults having the age of understanding. In the situation, this Court has quashed the First Information Report on account settlement.

9. The learned counsel appearing for the applicant has submitted that apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation. In this regard, reference can be made to the decision of the Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608**. In the said decision, the Supreme Court took review of earlier decisions and summarized the legal position in para 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."

10. On the similar line, reference can be made to the decision of the Supreme Court in case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & ors, 2019 AIR (SC) 327**. In the said case, Court has once again highlighted the distinction in between mere breach of promise and false promise. The relevant observation made in para 20 are as follows:-

"20. 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 later 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.”

11. In said case, both victim and accused were well grown up, fell in love and resided together for considerable period. The relationship was for quite some time and they enjoyed each others company. When victim came to know that accused had married with some other woman, she lodged report. The facts, in hand are similar as herein also the victim was well educated grown up lady. She maintained relations with accused for near about four years. They had enjoyed physical pleasures on various occasion at different places. They stayed together which conveys that the victim's consent was not actuated by some promise, but it was her desire. Pertinent to note that despite knowing about marital status of applicant, she has continued the relationship.

12. From perusal of the Police paper and the material produced in the form of charge-sheet, we are satisfied that the ingredients of offence alleged are not fulfilled. Moreover, the parties have mutually resolved the dispute therefore, the chances of conviction are remote and bleak. The victim has also filed an

affidavit stating that under misconception, she has filed the report. In view of peculiar facts of this case, continuation of prosecution is exercise in futility. Therefore, to secure the ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceeding. In that view, application is allowed. We hereby quash and set aside First Information Report vide Crime No. 138/2023 registered with Police Station Ganeshpeth, Dist. Nagpur for the offence punishable under Sections 376(2)(n) and 377 of the Indian Penal Code, Sections 3(1)(w)(i), 3(1)(ii), 3(2) and 3(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with related criminal case bearing RCC No. 138/2023.

13. Application stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane