

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

CRIMINAL APPLICATION [APL] NO. 896/2022.

Ankush s/o Ashok Shahu,
Aged about 27 years,
Occupation – Business,
resident of Flat No.39, Anand Nagar,
Binaki Mangalwari, Nagpur. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer
of Police Station Yashodhara Nagar,
Nagpur.

2.Victim XYZ,
Crime No.273/2022, Police Station
Yashodhara Nagar,
Nagpur. ... **NON-APPLICANTS.**

Mr. J.B. Gandhi, Advocate for the Applicant.
Mr. N.R. Rode, A.P.P. for Non-applicant No.1/State.
Mr. N.R. Tekade, Advocate for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATE : APRIL 17, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard finally by consent of the learned Counsel present for the parties.

Admit.

2. This is an application seeking to quash the first information report bearing Crime No.273/2022 registered with the Yashodhara Nagar Police Station, Nagpur for the offence punishable under Section 376 [2][n] of the Indian Penal Code on account of merits as well as, settlement in between the parties.

3. The non-applicant no.2/informant lady aged 20 years has lodged a report on 30.04.2022, alleging the offence of rape. It is her case that some wherein the year 2020, she got acquainted with the applicant, who was running a chemist shop. Intimacy developed in between them. In the month of July, 2021, the applicant expressed

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his desire to marry, took the victim to a lodging house at Ramtek, where he had sexual relations. Later on again on some occasion he took her to his house and lodging house and they had sexual relations. It is informant's case that the applicant was expressing his desire to marry and under said pretext has maintained sexual relations.

4. The informant has stated that her marriage was fixed on 06.03.2022 with somebody else. Two days prior to the said marriage, the applicant again assured her for marriage and established sexual relations. Later on even after marriage, he gave promise to marry and maintained the relationship. Finally after demise of husband of informant, the applicant refused to marry and therefore, the report.

5. The learned Counsel for the applicant submits that the story itself postulates a case of consensual sexual relationship in between the two. It is argued that there was no element of force or compulsion. Bare perusal of the report indicates that the informant

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had sexual relations barely two days prior to her marriage with some body else. Moreover, she had relation with the applicant during subsistence of her marriage. Prima facie all these contentions goes to show that the informant was well aware that she could not marry with the applicant as she was already married, but, still she maintained relationship. This supports the contention of the applicant that it is a case of consensual relationship.

7. Besides that now the parties have settled the matter. The informant lady has filed her reply stating that under misconception she has lodged the report. The informant is present in the Court and is identified by her Advocate. We have enquired with the informant on which she states that she do not want to prosecute the applicant, and therefore, gave no objection to quash the first information report.

8. Apparently there appears to be relationship with consent. The entire story no where supports the informant's case that only because of promise to marry, she has consented for sexual

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relationship. Besides that as the matter has been settled, the chances of conviction are remote and bleak. The allegations levelled in the first information report even if accepted at its face value, does not make out a case of deception on the part of the applicant.

9. We have brought to the notice of the applicant that due to registration of the first information report the police machinery has been set into motion. At this juncture, the applicant has shown his willingness to deposit an amount of Rs.10,000/- towards cost. It needs to be mentioned that though the offence of rape has been registered, however, the facts are peculiar that the element of false promise does not emerges from the police report. Moreover, the matter is settled. In the circumstances, we deem it appropriate to invoke our inherent jurisdiction and pass the following order.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.273/2022 registered with the Yashodhara Nagar Police Station,

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Nagpur for the offence punishable under Section 376 [2] [n] of the Indian Penal Code is hereby quashed and set aside, on condition that the applicant deposits an amount of Rs.10,000/- with the High Court Bar Association, Nagpur on or before 27.04.2023.

[iii] List the matter for reporting compliance on 28.04.2023.

JUDGE

JUDGE