

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

CRIMINAL APPLICATION (APL) NO. 48/2021
WITH
CRIMINAL APPLICATION (APL) NO. 740/2020

CRIMINAL APPLICATION (APL) NO. 48/2021

Nikhil S/o. Sudhakar Jichkar,
Aged about 27 years, Occ. Practicing
C.A., R/o. 137, Adhyapak Nagar,
Manewada, Nagpur.

APPLICANT.

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Ajni, Nagpur.
2. XYZ, in Crime No. 487/2020,
Police Station Ajni, Nagpur.

NON-APPLICANTS.

WITH

CRIMINAL APPLICATION (APL) NO. 740/2020

1. Ashwini wd/o. Sudhakar Jichkar,
aged about 60 yrs., Occ. Retired,
2. Ekta w/o. Nikhil Jichkar,
aged about 26 yrs., Occ. Housewife,

Both R/o. 137, Adhyapak Nagar,
near Mahalle Sabhagruha,
Manewada, Nagpur.
3. Ajinkya Nandkumar Bhongade,
aged about 27 yrs., Occ. Business,

R/o. 72, Mahakali Nagar,
Manewada Ring Road, Nagpur.

APPLICANTS.

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Ajni, Nagpur.
2. XYZ, in Crime No. 487/2020,
Police Station Ajni, Nagpur.

NON-APPLICANTS.

Mr. Bhushan Dafle, Advocate for Applicants.
Mr. M. J. Khan, APP for non-applicant No.1/State.
None for non-applicant No.2 - Served.

CORAM

: **VINAY JOSHI AND**
VALMIKI SA MENEZES JJ.

JUDGMENT RESERVED ON : **10.02.2022**

JUDGMENT PRONOUNCED ON : **03.04.2023**

JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**
3. Registration of First Information Report ('FIR') in Crime No.487/2020 with the Police Station Ajni, Nagur for the offence punishable under Sections 376(2)(n), 420, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(w)(ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC and ST Act') gave rise to these two applications similarly

seeking to quash concerned FIR and related charge-sheet.

4. Applicant Nikhil of Criminal Application No. 48/2021 is main accused, whilst applicants of Criminal Application No. 740/2020 are his family members. Applicants seek to quash criminal prosecution on account of false implication. It is contended that the FIR along with investigation paper discloses that it is a case of consensual relationship in between two adults which cannot be termed as an offence of rape. Moreover, it is submitted that the essential ingredients to constitute the offence under the SC and ST Act have not been made out. Besides that, quashing is sought on account of amicable settlement in between the parties.

5. The facts leading to the filing of criminal applications are stated in brief as under:-

6. FIR/Crime has been registered on the basis of report lodged by non-applicant No.2 lady against the applicants. The non-applicant No. 2 stated in report that applicant Nikhil was educating in the same school. She got acquainted with applicant-Nikhil in the year 2007 and were good friends. Nikhil was in visiting terms at her house. There were cordial relations in between two families. In the year 2015, their friendship turned into love relation. The victim belongs to the member of Scheduled Caste. Applicant Nikhil proposed her for marriage despite

knowing that she belongs to the member of the Scheduled Caste. Victim conveyed that due to caste barrier, his parents may not give consent for marriage. Still applicant Nikhil expressed his desire to marry with her.

7. On 14.02.2016 in the afternoon, Nikhil came to the house of victim and demanded physical relations. She denied, to which Nikhil said that he is her husband and in that capacity, he has right. Despite resistance, Nikhil forcibly committed rape on her. Victim has disclosed the happening to her sister, but they kept quite. Victim stated that thereafter, all the time, Nikhil used to visit her house and by saying that he is her husband, and intend to marry, has established sexual relations. They have sexual relations at different places twice or thrice a week. In the month of June, 2018, Nikhil took her to Pench Forest, where they stayed for two days. Then in the month of August 2018, both of them went to Goa, stayed for four days and maintained sexual relations. Victim stated that Nikhil used to have sexual relations twice or thrice in each week, which continued till the month of July 2020. Victim has asked him about marriage, to which later said to wait for some period. Nikhil said that he has informed his mother about the marriage, however they did not approve inter-caste marriage. On 17.08.2020, victim along with her mother and relatives went to the house of Nikhil to meet his family members. At that time, all of them abused in filthy language and refused for marriage, therefore the report.

8. During course of investigation, statement of related witnesses have been recorded. It is applicants contention that the victim is will grown up lady having love relation for years together. She was in deep love with the accused, therefore, out of intimacy, by consent, they had maintained relations four years together. The applicant specifically denied that under promise to marry, he had enjoyed sexual relation. On the other hand, learned APP resisted the applications by contending that though the victim has entered into settlement, however the offence is serious and anti-social therefore, on the basis of settlement, it cannot be quashed. The victim lady has appeared in Court and filed affidavit stating that out of misunderstanding, she has filed report and she does not want to prosecute the case. She stated that by the time, accused Nikhil got married somewhere else as well as she is also married. Therefore, due to settlement, she does not wish to prosecute the case.

9. Pertinent to note that the quashing of FIR 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 FIR 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.

10. The learned APP in resistance, would submit that on account of settlement, FIR relating to serious offence namely rape cannot be quashed. It is his submission that offence of rape is anti-social and heinous one. In support of said contention, learned APP relied on the decision of this Court in case of **Ravindra Laxman Ghogardare Vs. State of Maharashtra and another, 2019 (4) Mh.L.J. (Cri.) 1871**, wherein this Court has declined to quash FIR relating to the offence of rape on account of settlement. The said pronouncement, in-fact, laid down, no proposition of law. Having regard to the peculiar facts that lady became pregnant and the relation was of short duration, the Court declined to quash FIR. On peculiar facts, it was concluded that it is not a fit case to quash FIR on account of settlement. The said decision was based on the facts of said case.

11. Learned APP further relied on the decision of the Supreme Court in case of **State of Madhya Pradesh Vs. Madanlal, AIR 2015 SC 3003**. In the said decision, it is observed that the offence of rape is a

crime against body of woman which is of serious in nature. As a matter of fact, in said decision, the challenge was to the order of reversal of conviction by the High Court. It was a case of rape on minor aged seven years. The parents entered into compromise and without considering the evidence, the High Court has reversed the order of conviction. In such peculiar facts, the Supreme Court has set aside the order of acquittal and remitted the matter back to the High Court for reappraisal of the evidence. The said decision has no bearing to the facts of this case. The decision is confined to the fact of the said case and not to be regarded as binding precedent.

12. The learned APP by relying on the decisions of the Supreme Court in cases of **State of Mahdya Pradesh Vs. Laxmi Narayan and others, (2019) 5 SCC 688, State of U.P Vs. Naushad, AIR 2014 SC 384** and **Deepak Gulati Vs. State of Haryana, AIR 2013 Cri.L.J. 2990** would submit that quashing of FIR in serious offences is not permissible. The offence of rape is heinous and anti-social. The Court shall not permit the settlement in such serious offences which are against the society. We are conscious about said legal proposition that on the sole ground of compromise, a proceeding relating to serious offence cannot be quashed. However, in case at hand, the applicant is not seeking to quash FIR merely on account of settlement, but exhaustive submissions have been made on merits. In that context, the material needs scrutiny.

13. Reverting to the facts, the FIR discloses that the victim was well grown up lady aged 27 years. She studied engineering course and was serving in the Teli Performance Company. She had acquaintance with accused since her childhood i.e. from the year 2007. They were in long standing relationship from the year 2015 onward. Though the victim stated that on 14.02.2016, first time accused committed forcible sexual intercourse, still she has maintained relation for next few years. There is no specific contention that the relations were established by giving a promise of marriage. She stated that accused was saying that he is her husband. It is victim's case that for a long period of two to three years, they had sexual relations twice or thrice in a week. Moreover, both of them traveled together, stayed in resort, went to Goa and had maintained relations. It is evident that after four years, when the marriage was not possible, she has filed the Police Report.

14. The learned counsel appearing for the applicants has submitted that it is not a case of false promise of marriage, but the facts are indicative of consensual sex on account of love relation. The learned counsel for applicants relied on the decision of the Supreme Court in case of **Ananda D.V. Vs. State & anr. 2021 ALL SCR (Crl.) 1175** to contend that in similar circumstances, on account of settlement, crime relating to offence of rape was quashed. In the said decision, both got

married and therefore, quashing was permitted. However, the facts herein being distinct, said decision would not apply. The learned counsel for applicants further relied on the decision of this Court in case of **Shubham Ravindra Kalbende & ors. Vs. State of Maharashtra, 2022 ALL MR(Cri) 3552**, wherein this Court has quashed the prosecution for the offence of rape on account of settlement as well as merits. It is expressed that though the offence was registered under Section 376 of the Indian Penal Code, the Court has to examine the facts to find out whether the ingredients to constitute offence are made out. Relevant observation made in para 7 reads as below:

*“7. Insofar as the offence under Section 376 of the Indian Penal Code is concerned, though it is a serious offence, but at this stage it would be profitable to refer to the judgment of the Hon'ble Apex Court in the case of **Narinder Singh & others Vs. State of Punjab & another reported in AIR 2014 SCW 2065**. The decision of the Hon'ble Apex Court makes it clear that the Court cannot declare to quash the first information report merely because the first information report incorporates a particular provision which is a serious offence or an offence against the society. The Court has to make an endeavor to find out whether the first information report indeed discloses the ingredients of such offence and the Court can accept the statement and quash the first information report/charge-sheet after the Court is of the opinion that such an offence is unnecessarily*

incorporated in the first information report/charge-sheet. In the facts of the present case, though Section 376 of the Indian Penal Code is incorporated in the first information report, the essential ingredients of Section 376 of the Indian Penal Code are missing.”

15. 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 applicants 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 FIR on account settlement.

16. The learned counsel appearing for the applicants has submitted that it apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation. In this regard, reliance is placed on 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 decision 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.”

17. On the similar line, reliance is placed on 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, the Supreme 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.”

18. 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 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 one as herein also the victim was well educated grown up lady. She

maintained relations with accused for near about five years. They had enjoyed physical pleasures on various occasion at different places. They went to different places, stayed together which conveys that the victim's consent was not actuated by some promise, but it was her desire.

19. 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 additional 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. We hereby allow both applications. Hence, following order:-

ORDER

First Information Report bearing Crime No. 487/2020 registered with the Police Station Ajni, Nagpur for the offence punishable under Sections 376(2)(n), 420, 506

read with Section 34 of the Indian Penal Code and Section 3(1)(w)(ii), 3(2)(5) the SC and ST Act and related charge-sheet bearing Special Case No. 513/2021 is hereby quashed and set aside.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane