

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

CRIMINAL APPLICATION [APL] NO. 1050/2022.

1.Ajay s/o Pralhadrao Tantarpale,
Age 33 years, Occupation – Advocate,

2.Pralhadrao s/o Mahadeovrao Tantarpale,
Age 70 years, Occupation – Retired,

3.Devkanya Pralhadrao Tantarpale,
Age 58 years, Occupation – Housewife,

Applicant 1 to 3 residents of Dildarpura,
Achalpur, Tq. Achalpur, District Amravati.

4.Sau. Rupali Devanand Devadekar,
Age 32 years, Occupation – Business.

5.Devanand s/o Kailas Devadekar,
Age 33 years, Occupation – Business,

Applicant No.4 and 5 residents of
Kawatha [BK], Tq. Chandur Bazar,
District Amravati.

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APPLICANTS.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Frezarpura, Amravati
Tahsil and District Amravati.

Rgd.

2.XYZ, [Victim] in Crime No.147/2022,
through Police Station Officer,
Police Station Frezarpura,
Amravati.

... NON-APPLICANTS

Mr. P.V. Navlani, Advocate for Applicants.
Mr. S.A. Ashirgade, Addl.P.P. for Non-applicant No.1/State.
Mr.P.V. Deshmukh, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : MARCH 02, 2023.

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

Considering the controversy involved in the matter, and
with consent of the learned Counsel appearing for the respective
parties, Criminal Application is taken up for final disposal at the
stage of admission.

Admit.

2. This is an application seeking to quash the first
information report bearing Crime No.147/2022 registered with the

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Frezarpura Police Station, Amravati for the offence punishable under Sections 376[2][n], 417 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

3. It is the contention of applicants that the allegations made in the first information report even if taken at their face value and accepted in their entirety, they do not prima facie constitute any offence of rape. It is submitted that it is a case of love relationship, however, out of misunderstanding a false report has been lodged. Moreover, it is contended that by the time the informant lady has realized her mistake about filing report in a heat of anger and therefore, she has settled the matter and filed affidavit to that effect.

4. The State has resisted this application by taking us through the contents of first information report, and submitted that the offence is of serious nature. The informant was 26 years of age and it is her case that in the year 2014 she got acquainted with the accused. Their casual acquaintance turned into love relationship, and they were frequenting with each other. Both liked each other and exchanged proposal for marriage. In the year 2015, the

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applicant for the first time forcibly established sexual relation, despite her refusal. It is informants' case that on 23.05.2021, in pursuance of their understanding, engagement ceremony was solemnized, however, later on the applicant came to her house on 15.02.2022, and by raising dowry demand, refused to marry her, therefore the report.

5. The police have completed investigation and filed final report in the Court of jurisdictional Magistrate.

6. There is no dispute that the victim was major at the time of occurrence. The first information report itself disclose that since the year 2014 i.e. during the long span of 8 years both were in relationship. Though in the first information report the victim has stated that for the first time in the year 2015 the applicant had forcible sexual intercourse, however, she never complained about that. The material in first information report nowhere suggests that under false pretext of marriage, the applicant has sexually abused her. Pertinent to note that on 23.05.2021, the engagement ceremony was over, therefore, it cannot be said that the applicant

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gave false promise of marriage. It reveals that for the reasons best known to the parties, the relationship did not work, which resulted into refusal of marriage.

7. In a reported case of **Pramod Suryabhan Pawar .vrs. State of Maharashtra and another – AIR 2019 SC 4010**, the Supreme Court has observed that consent of victim must have been obtained under misconception of fact. The relevant observations made in paragraph no.18 reads as under :

“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. On examination of facts, it reveals that there is no material to hold that since inception the applicant has established sexual relationship with deceitful intention. Rather the entire story discloses that it was a long standing relationship, but, marriage could not work out. The informant never stated in specific terms that only because she was assured for marriage, therefore, she has submitted herself to the applicant. Besides that the informant lady has filed an affidavit stating that under misunderstanding, she has filed a report and now she has no objection to quash the first information report.

9. We have examined the material on merits and found that even if the allegations are taken at their face value, it does not make out a prima face case of rape. In the circumstances, we are inclined to invoke our inherent jurisdiction. Hence the following order :

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime

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No.147/2022 registered with the Frezarpura Police Station, Amravati for the offence punishable under Sections 376[2][n], 417 read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, and related criminal case bearing R.C.C.No.1376/2022 pending on the file of the Judicial Magistrate First Class, Amravati is hereby quashed and set aside.

JUDGE**JUDGE**