



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

CRIMINAL WRIT PETITION NO.551 OF 2022

1. Vishwanath Anna Karnar, Aged about 24 years, Occupation Service, Residing at Village Dahegaon, Post Vadali Budruk, Taluka Nandgaon, District Nashik.

Presently posted at CISF Unit, ONGC”
Hazira, Surat, Gujrat State.

... PETITIONER.

VERSUS

1. The State of Maharashtra (at the instance of Assistant Commissioner of Police, Rajapeth Police Station, vide C.R. No. II-308 of 2022)
2. XYZ, C.R. No.308 of 2022
Rajapeth Police Station Amravati.

... RESPONDENTS.

Shri J.R. Avhad, Advocate a/w Shri P.B. Kolhare, Advocate for the petitioner.

Shri V.Thakare, A.P.P. for the respondent/State.

Ms. Anushree Pande, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

CLOSED FOR JUDGMENT ON : 02.08.2023.

JUDGMENT PRONOUNCED ON : 23/08/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith.

2. Heard finally by consent of learned Counsel appearing for the parties.

3. This is a petition under Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report in Crime No.308 of 2022 registered with the Rajapeth Police Station, Amravati City for the offence punishable under Sections 376, 417, 504 of the Indian Penal Code and Section 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on account of settlement as well as on merits.

4. The facts in brief are that the informant lady aged 22 years was undergoing Nursing Education. In the month of May 2021, she got befriended with the petitioner through Facebook. Both started to exchange messages and were chatting with each other. On 03.11.2021, the petitioner came to Amravati to meet the informant. On the following day, they met in the temple premises. Thereafter, the informant took the petitioner to the room of her friend. Both chit-chatted with each other and finally the petitioner expressed his

love, intention to marry and had sexual relations. After few months, the informant's father called the petitioner for the purpose of marital talks on which later refused, hence the report.

5. Learned Counsel appearing for the petitioner would submit that the prosecution case even if accepted at its face value, it does not make out the ingredients to constitute an offence of rape. The informant-lady was well educated, undergoing nursing course and the relations if any, would be purely consensual one. Moreover, the informant got married elsewhere and she do not wish to prosecute the criminal case. The informant lady has filed a Pursis stating about her non-inclination to go on with the prosecution. The respondent/State resisted this petition by pointing towards the seriousness of the offence. Learned A.P.P. also took us through the informant's statement recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure.

6. Learned Counsel appearing for the petitioner by placing reliance on the decision of this Court in *Criminal Application (APL) No.48 of 2021 (Nikhil s/o Sudhakar Jichkar vs. State of Maharashtra and anr.)* and with connected one decided on 03.04.2023 would submit that under similar circumstances, this Court has quashed the

proceedings. It is submitted that the informant was well aware about the consequences of the act, still she indulged into the sexual relations. According to the petitioner, the police papers does not reveal that the informant has submitted herself only because she was assured for marriage, but out of love and passion they had sexual relations.

7. In order to appreciate the submission one has to see the facts of the case without getting influenced by the section invoked. In this regard, 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 petitioner 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 of settlement.

8. The learned counsel appearing for the petitioner has

submitted that, if apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation, the proceeding can be quashed. 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*** wherein 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.”

9. 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 acknowledge consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

10. In view of the legal position, we have re-examined the police papers. Pertinent to note that at the relevant time, the petitioner stayed in the lodging house, never called the informant at his place, but the informant herself took him to her friend's room, where the alleged act was done. The informant stated that the accused expressed love but she never stated that because of assurance of marriage, she had indulged into the sexual activities. The informant in her statement recorded under Section 164 of the Code of Criminal Procedure, stated about the love relationship in between the both. There may be variety of reasons for non materialization of marriage. However in order to establish the offence, there has to be deceitful intention since inception.

11. By the time, the informant got married with someone else and she had also given no objection for grant of pre-arrest bail. Perusal of police papers does not indicate *prima facie* material to constitute the offence alleged. Moreover, the parties have mutually resolved the dispute, meaning thereby the chances of conviction are remote and bleak. In view of the peculiar facts of this case, continuation of prosecution is an exercise in futility. Therefore, to secure the ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceedings. Hence the following order :

- (a) The writ petition is allowed.
- (b) We hereby quash and set aside the First Information Report in Crime No.308 of 2022 registered with the Rajapeth Police Station, Amravati City for the offence punishable under Sections 376, 417, 504 of the Indian Penal Code and Section 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

12. The petition stands disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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