

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

CRIMINAL APPLICATION (APL) NO.712 OF 2019

APPLICANT : Rahul S/o Revashankar Peshane,
Aged about 28 yrs, Occ. Service, R/o.
At/Post-Ekodi, Tah. & Dist. Gondia.

..VERSUS..

NON-APPLICANTS : 1 The State of Maharashtra, Through
P.S.O. P.S. Gondia (Rural), Tah. &
Dist. Gondia.

2 XYZ, Crime No.226/19, Police Station
Gondia (Rural), Dist. Gondia.

Mr A. M. Gedam, Advocate for the Applicant.
Ms M. H. Deshmukh, Addl. P. P. for the Non-Applciant No.1/State.
Mr D. V. Mahajan, Advocate for Non-Applciant No.2.

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

DATE : **15th FEBRUARY, 2023.**

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

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

Admit.

2. This is an application in terms of Section 482 of
the Code of Criminal Procedure, 1973, seeking to quash the

First Information Report (FIR) in Crime No.226 of 2019, registered with Gondia (Rural) Police Station, District Gondia, for the offence punishable under Sections 376(E), 373(2)(n), 376(2)(F) and 417 of the Indian Penal Code, 1860.

3. FIR was lodged by informant lady aged 24 years alleging that under false pretext of marriage, the Applicant has committed sexual intercourse amounting to rape. It is the informant's case that Applicant was in her close relations with whom, she had acquaintance since 8 to 10 years. The Applicant gave promise of marriage and under said pretext had sexual relations with her. She stated that on 16.07.2017, both of them have undergone a marriage ceremony at Shri Suryodeo, Mandodevi Devasthan Samiti Bagheda, Tah.Amgaon, District Gondia, as per Hindu Customary Rights, however, it was merely a force created by Applicant. It is her case that the Applicant later on denied the marriage and thus disassociated himself, and therefore, the report.

4. It is the Applicant's specific case that out of love relationship, he got married with the informant on 16.07.2017, therefore, there is no element of commission of offence of rape. The FIR does not say that by use of force of coercion, Applicant had established sexual relations. There is reference that in past also while informant was educating, they had relationship, but there are no specification about that. The entire thrust of informant is that her consent was obtained under false pretext of marriage.

5. Mr Gedam, learned Counsel appearing for Applicant took us through various statements including brothers and father of informant, a person who performed the marriage and some other witnesses. All the statements unequivocally indicate that on 16.07.2017, the couple got married at Mandodevi Devasthan Samiti. Not only that the Applicant has produced marriage certificate issued by the Trust alongwith related documents. It reveals that the informant herself has produced her age proof, consent form and other documents stating her willingness to perform marriage. All these documents clearly conveys that the

marriage of couple took place on 16.07.2017 as per Hindi Customary Rights. Besides that it has been submitted that informant was well aware about her marital status with Applicant as she herself has filed an application under Section 12 of the Domestic Violence Act, 2005, against the Applicant. In this regard, our attention has been invited to para 2 of the pleadings of DV Application (Misc. Judicial Case No.96 of 2019), which reads as below :

“2. That, the non applicant is the husband of applicant. The marriage of applicant had performed with the non applicant on 16.07.2017 at Shri Suryodeo, Mandodevi Devasthan Samiti Bagheda, Tah.Amgaon, District Gondia as per the Hindu customs. That, after the marriage the applicant and non applicant resided at mouza Karanja, Tahsil and district Gondia and cohabited with non applicant peacefully for a short period.”

6. We feel that the informant's own pleading is a complete answer to her stand about denial of marriage. Thus, it is apparent that both have married with each other and thus, the allegation of having sexual relations under pretext of false promise to marry never stand. Though, marriage is

not registered, however, the factum of marriage as per customary rights is amply established. Taking into account all above circumstances and by accepting the case of informant as it stands, it does not make out an offence alleged. In the circumstances, continuation of trial would be an exercise in futility.

7. In view of above, criminal application is **allowed**.

8. FIR in Crime No.226 of 2019, registered with Gondia (Rural) Police Station, District Gondia alongwith criminal case bearing SC No.218 of 2019, pending on the file of Sessions Court, Gondia, is hereby quashed and set aside.

9. Criminal application stands disposed in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE