



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

CRIMINAL REVISION APPLICATION NO. 194/2023

Pramod Sadashiv Pahurkar .Vs. State of Maharashtra and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. R. Gadhia, Advocate for applicant.

Mr. A. R. Chutke, A.P.P. for non applicant no.1-State.

Ms K.Deshpande, Advocate (Appointed) for non applicant no.2

CORAM : ANIL L. PANSARE, J.

DATE : 06.12.2023

Heard.

2. The applicant has questioned the legality, correctness and propriety of the order dated 08.05.2023 passed by Additional Sessions Judge, Amravati below Exh.-8 in Sessions Trial No.236/2021, rejecting the application seeking discharge under Section 227 of the Criminal Procedure Code, 1973 (For short the, "Code")

3. Heard both the sides. I have gone through the material placed before me. It appears that the law was set in motion on 03.06.2021. The prosecutrix lodged report with Police Station, Gadge Nagar, Amravati, stating therein that she got acquainted with the applicant-accused through Facebook, two years back. Initially, they used to chat. Subsequently they developed feelings and on 15.03.2020, the applicant is said to have met the prosecutrix at her house. The applicant sought sexual favour and on the

pretext of marriage, he indulged into sexual relationship, which continued for more than one year. The applicant repeatedly visited her house in this one year. On and after 01.05.2021, the applicant blocked the Facebook account and avoided to contact. Later on, it was revealed that the applicant got married to someone else. Accordingly, the report has been lodged.

4. During the course of arguments, the counsel for the applicant has pointed out that the prosecutrix is married and has two children. He has invited my attention to the statement of her husband. According to him, they have two children. Both the children are residing with the prosecutrix. He has further stated that the prosecutrix had informed him that she is in relation with the applicant and will marry him.

5. Thus, it appears that the prosecutrix is married, having two children. The question, therefore, arises is whether the prosecutrix, a married woman, who has willingly indulged into sexual activities with the applicant, can raise a plea of the applicant exploiting her on the pretext of marriage? Considering the peculiar facts and circumstances, the answer would certainly be in the negative.

6. The case of prosecution, if accepted on its face value, does not make out the offence alleged against the applicant. The prosecutrix is married and the marriage is

subsisting. In that sense she must be aware that only upon her obtaining decree of divorce or judicial separation from the competent Court, she will be entitled to perform the second marriage. Thus, it is within her knowledge that her consent to indulge in sexual activities with the applicant is not dependent on promise of marriage and that is why she has willingly indulged into sexual relationship, that too for substantial period.

7. That apart, the prosecutrix, after filing the report in June, 2021 against the applicant, has filed one more report in October, 2021 against some other person, which indicate that she was residing with her husband at the address mentioned in the present report. The second report shows that there occurred quarrel between her husband and accused therein. She intervened. She was abused by the accused and accordingly, report came to be lodged. The crucial point is; in June, 2021, she lodged the report against the applicant, stating therein that he repeatedly visited her house and indulged into sexual activities. She doesn't disclose here that she was residing with her husband. In October, 2021, the prosecutrix has lodged another report mentioning therein that she was residing at the house with her husband. These two contradictory versions of the prosecutrix will make her representing doubtful.

8. Be that as it may, as stated earlier even if the case of the prosecutrix is to be accepted as it is, it reveals

that the prosecutrix is married, having two children and willingly got involved into sexual activities with the applicant.

9. On this point, a reference could be had to the judgment of the Hon'ble Supreme Court in the case of **Naim Ahamed .Vs. State (NCT of Delhi)**, reported in **2023 SCC Online SC 89**. In similar facts, the Court has made following observations:

“20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause – Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated

earlier, each case would depend upon its proved facts before the court.

21. *In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as 'rape' by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children*

with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr.P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

10. Thus, the Supreme Court has held that the prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. In the said case, it was found that the prosecutrix has betrayed her husband and three children by having relationship with the accused, for whom she had developed liking. Similar is the case here. The prosecutrix willingly continued relationship with applicant for a considerable period. In the circumstances, it will be far fetched to believe that she has given consent for sexual relationship with the applicant under misconception of fact, so as to hold applicant guilty within the provisions of Section 375 of the Indian Penal Code, 1860.

11. Learned A.P.P. as also learned counsel appearing for the applicant made an attempt to leave the matter for

trial on the point of consent obtained by the applicant. However, and as stated earlier, the prosecutrix herself has come up with a case that she and applicant fell in love and willingly continued the sexual activities for a considerable period. The prosecutrix being married, ought to have made out an extra ordinary case to believe that a married woman, during subsistence of her marriage, can indulge into sexual activities on the pretext of false promise to marry when she herself is aware that during subsistence of her marriage, she cannot validly marry the applicant. The promise itself would be illegal, at least from the point of view of the prosecutrix, in the sense during subsistence of marriage, the prosecutrix could not have married any person including the applicant. The theory put forth by the prosecutrix thus will not attract ingredients of Section 375 of the IPC. The applicant is, therefore, entitled to have benefit under Section 227 of the Code. The trial Court committed error in not appreciating the facts and in not applying the law to the admitted facts. Accordingly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) The impugned order dated 08.05.2023 passed by Additional Sessions Judge, Amravati below Exh.8 in Sessions Trial No.236/2021, is set aside.
- (iii) Applicant – Pramod Sadashiv Pahunkar is discharged from the offence punishable under Section

376(2)(n) read with Section 417 of the Indian Penal Code, 1860, registered with Police Station, Gadge Nagar, Amravati, vide Crime No. 1978/2021.

(iv) Professional fees of Ms Kirti Deshpande, Advocate appointed by the High Court Legal Services Sub Committee, Nagpur be quantified and paid accordingly.

The application is disposed of.

(Anil L. Pansare, J.)