



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

CRIMINAL APPLICATION [APL] NO. 1387/2023.

Mohan s/o Keshav Kuchankar,
Aged 27 years, Occupation – Labour,
resident of Chirghat Layout, Warora,
Tahsil Warora, District Chandrapur.

... Applicant.

-Versus-

1.State of Maharashtra
through Police Station Officer,
Warora, District Chandrapur.

2.XYZ (Victim) In Crime No.399/2023,
registered on 29.05.2023 with P.S.O.
Warora, District Chandrapur.

... Non-applicants.

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Shri M. Rai, Advocate for the Applicant.
Shri M.J. Khan, A.P.P. for Non-applicant No.1.
Ms N. Dhoke, Advocate for Non-applicant No.2.

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CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : OCTOBER 09, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

Heard. Admit.

By consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. This is an application seeking to quash the first information report in Crime No. 399/2023 registered with Warora Police Station, Chandrapur for the offence punishable under Sections 376(2)(n), 406, 435, 417 of the Indian Penal Code and related charge-sheet bearing R.C.C.No.177/2023 pending on the file of the Judicial Magistrate First Class, Warora, on merits, as well as on the basis of settlement arrived in between the parties.

3. It is the contention of the applicant that the first information report along with investigation paper clearly disclose that it is a case of consensual relationship in between two adults, which cannot be termed as an offence of rape. It is submitted that both were in long standing relationship, enjoyed sexual relation as per their wish, but, due to misunderstanding, report has been lodged.

4. The facts in brief are – that the informant is 38 years old widow. It is her case that the applicant was friend of her husband. He was in visiting terms at her house. Love relationship developed in between them, out of which they had on and often indulged into sexual relations. The applicant had assured her to marry.

5. The informant stated that she owns a sound system, which was given to the applicant on hire basis. For some initial period, the applicant paid hire charges, but, later on discontinued. The informant asked for return of the sound system, however applicant not only refused, but, abused her and stated that it got damaged. Finally on 29.05.2023, the informant went to the police station and lodged the report alleging offence of rape as well as, for causing loss worth Rs.3,59,000/- on account of damage to the property i.e. sound system.

6. The learned counsel appearing for the applicant would submit that the entire episode discloses that it was a love relationship in between two adults. The victim never gave her consent for sexual relation on account of promise, but, on her own volition of mind she kept the relation. It is submitted that there are no allegations that by force or compulsion, the applicant has established relationship. According to the applicant, the victim was well educated grown up matured lady and therefore, the allegation about sexual relation on account of false compromise are inherently improbable. Moreover, it is contended that the real dispute was on account of non payment of higher charges of sound system. According to the applicant, in order to pressurize the applicant for paying the money, the false report has been lodged.

7. In this regard it is useful to make reference of the decision of Supreme 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 on 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/chargesheet. 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.”

8. In order to impress the submission that one has to see the facts of the case without getting influenced by the sections invoked, the Supreme Court in case of *Narinder Singh & ors. Vs. State of Punjab and anr.*, (supra) while dealing with the offence punishable under Section 307 of the Indian Penal Code, expressed that despite invoking the particular section, the High Court has to examine whether prima facie offence is made out under said section.

9. This Court in case of **Amit Kumar Arun Kumar Singh Vs. State of Maharashtra & anr. 2016 ALL MR (Crim) 1553**, 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 first information report on account settlement.

10. The learned Counsel appearing for the applicant has submitted that apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation. In this regard, reference to the decision of the Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608**

can be made. In said decision, 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.”

11. On the similar lines, reference can be made to 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.”

12. In case at hand, the victim is a well matured, grownup lady aged 38 years. It reveals from the first information report that both were acquainted with each other since long and had developed love relationship. The real cause canvassed by the victim is not of enjoying the sexual favour by deceitful means, but, for non-payment of higher

charges.

13. On Perusal of the Police papers 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 affidavit stating that under misconception, she has filed the report. In view of peculiar facts of this case, continuation of prosecution will be an 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 the application and pass the following order:-

ORDER

- (a) Criminal Application is allowed and disposed of.
- (b) The first information report bearing Crime No. 399/2023 registered with Warora Police Station, Chandrapur for the offence punishable under Sections 376(2)(n), 406, 435, 417 of the Indian Penal Code and related charge-sheet bearing R.C.C.No.177/2023 pending on the file of the Judicial Magistrate First Class, Warora, is hereby quashed and set aside.

(VALMIKI SA MENEZES, J)

(VINAY JOSHI, J)