

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

CRIMINAL APPLICATION (APL) NO. 1653/2022

Shivam Suraj Kapoor,
Aged 23 yrs., Occ. Contractor,
R/o. Binba Road, near Balaji
Sabhagruha, Balaji Ward,
Chandrapur, Dist. Chandrapur.

APPLICANT
(accused)

VERSUS

1. The State of Maharashtra,
through its Police Station Officer,
Police Station, Durgapur,
Dist. Chandrapur.
2. XYZ (Victim. Crime No. 386/2019)
Police Station, Durgapur, Dist. Chandrapur. (Informant)

NON-APPLICANTS

Mr. A. A. Dhawas, Advocate for applicant.
Mr. N. R. Rode APP for non-applicant No.1/State.
Mr. A. D. Ramteke, Advocate for non-applicant No.2.

CORAM : **VINAY JOSHI AND**
BHARAT P. DESHPANDE JJ.

DATE OF JUDGMENT : **30.03.2023**

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This is an application seeking to quash First Inform

Report ('FIR') in Crime No. 386/2019 for the offence punishable under Sections 376(2)(n), 417, 507 of the Indian Penal Code registered at Police Station Durgapur, Dist. Chandrapur and related charge-sheet bearing Sessions Case No.69/2021 pending on the file of District and Sessions Court, Chandrapur. The applicant seeks to quash FIR on merits as well as on account of settlement in between the parties.

4. It is applicant's contention that the FIR along with investigation paper clearly discloses 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 relationships, enjoyed sexual relation as per their wish, but due to misunderstanding, report has been lodged.

5. The facts in brief are that the victim aged 25 years lodged report on 04.11.2019. It is her case that she got acquainted with applicant (accused) in the year 2017. The accused expressed his desire to marry, to which she agreed. In the month of January 2018, both of them went to the temple and completed the formalities of marriage. In the month of February 2018, both of them went to the lodge, where first time had sexual relation. Thereafter, they went to Mumbai, Chikhaldara, and Nagpur lived together and had sexual relations. It is victim's case that accused

was saying that she is his wife and thus, established relationship. She stated that finally in the month of October 2019, accused refused to marry, therefore, the report.

6. The learned counsel appearing for the applicant would submits that the entire episode discloses that it was a love relationship in between two youngsters. 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.

7. The learned counsel appearing for the applicant has submitted that it is not a case of false promise of marriage, but the facts are indicative of consensual sex on account of love relation. For this purpose, he relied on the decision of the Supreme Court in case of **Ananda D.V. Vs. State & anr. 2021 ALL SCR (Crl.) 1175** to contend that in similar circumstances, on account of settlement, FIR relating to offence of rape was quashed. In the said decision, both got married and therefore, quashing was permitted. However, the facts herein being distinct, said decision would not help. The learned counsel for applicant

further relied on the decision of this 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 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/charge-sheet. 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 section invoked, 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 applicant 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 settlement.

9. 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, 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**. In the said decision, the Supreme Court took review of earlier decision 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.”

10. 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 acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.”

11. In said case, both victim and accused were well grown up, fell in love and resided together for considerable period. The relationship was for quite some time and enjoyed each others company. When victim came to know that accused had married with some other woman, she lodged report. The facts, in hand are similar one as herein also the victim was well educated grown up lady. She maintained relations with accused for considerable period. They had enjoyed physical pleasures on various occasion at different places. They went to different places, stayed together which conveys that the victim's consent was not actuated by some promise, but it was her desire.

12. On Perusal of the Police paper 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 additional affidavit stating that under misconception, she has filed the report. In view of 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 proceeding. We hereby allow the application and pass the following order:-

ORDER

FIR in Crime No. 386/2019 for the offence punishable under Sections 376(2)(n), 417, 507 of the Indian Penal Code registered at Police Station Durgapur, Dist. Chandrapur and related charge-sheet bearing Sessions Case No.69/2021 pending on the file of District and Sessions Court, Chandrapur is hereby quashed and set aside. The quashing is subject to applicant's depositing cost of Rs. 10,000/- with the Police Welfare Fund, Chandrapur.

13. The matter be placed on 11.04.2023 for noting compliance.

(BHARAT P. DESHPANDE, J.)

Gohane

(VINAY JOSHI, J.)