



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

CRIMINAL APPLICATION [APL] NO.1179/2019.

Azhar Ali s/o Qamar Ali,
Aged 24 years, Occupation -
Private Service, resident of
Plot No.23, Near Jama Masjid,
Jafar Nagar, Nagpur,
District Nagpur.

... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through its Police Station Incharge,
Sadar Police Station, Nagpur,
District Nagpur.

2.Archal Farheen d/o Abdul Karim
Sheikh, Aged about 21 years,
Occupation – business, resident
of flat No.16, 5th Floor, Gazal
Apartment, Chhaoni, Nagpur,
District Nagpur.

... **NON-APPLICANTS.**

Mr. R. Mirza, Advocate for the Applicant.
Mr. S.M. Ghodeswar, A.P.P. for Non-applicant No.1 State.
Mr. Sk.Sabahat Ullah, Advocate for Non-applicant No.2.

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

DATE : OCTOBER 04, 2023

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

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

2. This is an application in terms of Section 482 of the Code of Criminal Procedure seeking to quash the first information report bearing Crime No.459/2019 registered with Sadar Police Station, Nagpur for the offence punishable under Sections 376, 420, 417, 504 and 506 of the Indian Penal Code, on account of settlement as well as on merits. The learned Counsel for the applicant would submit that even if the contents of the first information report are taken at its face value, it does not make out ingredients of offence for cheating and rape. According to him, the relations were purely consensual, arising out of love and passion. It is submitted that due to misunderstanding the non-applicant no.2-informant has filed the report alleging that under the pretext of marriage they had relations.

3. The parties have settled their differences and filed a joint

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affidavit stating that due to misunderstanding first information report was lodged. It is stated that by the time the informant lady got married with some one else and now intending to permanently settle abroad. It is also stated that the applicant also got married with someone else and is having a child. It is contended that both are leading their happy life with their respective spouses. The informant has specifically stated that in order to maintain harmony she do not wish to prosecute the criminal case, as it was out of misunderstanding.

4. Today the informant lady is personally present before the Court and is identified by her Advocate. On query, the informant lady stated that she has settled the dispute and do not wish to prosecute the matter. She particularly stated that by the time she got married and her husband do not know about the existing proceeding. She stated that if the proceeding is continued, it may result into disturbance in her matrimonial life.

5. Apart from the settlement, we have examined the entire material to find out whether a prima facie case is made out. It is informant's case that in November, 2018 she started to visit hotel Blue Galaxy for collecting food parcel. The applicant/accused was working

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as a Manager in the said hotel. Due to frequent visits, they got acquainted and developed friendship. She used to visit various places with the accused by four wheeler. It is her contention that on 25.12.2018 in the late night, the accused came to her house on account of her birthday. He has expressed love, intention to marry and had forcible sexual intercourse with her. It is her contention that the applicant has also taken an amount of Rs.1,95,000/- from her under the pretext of personal work. The informant stated that as she learn that the applicant was engaged with somebody else, she questioned him to which the applicant abused and gave threats.

6. The learned Counsel for the applicant has taken us through a bunch of printouts of messages taken out from Facebook Messenger. We have examined the messages from which it is evident that out of love and passion, intimacy developed which resulted into maintaining sexual relations. Particularly some messages were pointed out to show that the informant was keen of having sexual relations.

7. As per informant's case, the first instance occurred on 25.12.2018, however, she has not ventilated her grievance for one year. It reveals that both were young, educated and enjoyed the physical

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relations for a period of more than one year. Some of the messages also disclose that after 25.12.2018 also they exchanged the messages expressing love and intimate connection. Therefore, it creates serious doubt about the informant's contention regarding forcible sexual relation dated 25.12.2018.

8. Order of this Court granting pre-arrest bail to the applicant has been tendered. The said order reflects that the amount which the applicant received, has been already returned to the informant. This Court has also formed a prima facie opinion that the relations were by consent of both the parties. Apart from that, on independent examination, it reveals that there was physical relationship between the well educated couple. There is no material to arrive on the conclusion that under pretext of marriage, the informant was compelled to give her consent. Besides that the matter has been amicably settled. Since the informant is not willing to go on with the prosecution, there are bright chances of her not supporting to the prosecution case. In view of above peculiar facts, continuation of prosecution would be an exercise in futility. No prima facie material exists to continue the prosecution, hence, we are inclined to invoke our inherent powers, and pass the following order.

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ORDER

- (i) Criminal Application is allowed.
- (ii) The first information report bearing Crime No.459/2019 registered with Sadar Police Station, Nagpur for the offence punishable under Sections 376, 420, 417, 504 and 506 of the Indian Penal Code, is hereby quashed and set aside.

(VALMIKI SA MENEZES, J)

(VINAY JOSHI, J)