



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CRIMINAL WRIT PETITION NO. 76 OF 2017

The State of Maharashtra

...Petitioner

Versus

Balaji @ Balasaheb Vyankatrao Perke
Age 30 years, Occ. Service,
Police Head quarter,
Sayan Worli, Mumbai
R/o. Pratapnagar, Nandkheda Road,
Parbhani

...Respondent

...
A.P.P. for the Petitioner : Mrs. M. L. Sangit
Advocate for Respondent : Mr. Manish P. Tripathi
...

AND
CRIMINAL WRIT PETITION NO. 938 OF 2017

Janabai Kishanrao Gaikwad
Age 35 years, Occ. Nil,
R/o. Nandkheda,
Tq. and district Parbhani

...Petitioner

versus

1. The State of Maharashtra
Through Parbhani (Rural) Police
station,
2. Balaji @ Balasaheb Vyankatrao Perke
Age 35 years, Occ. Service,
R/o. Nandkheda Road, Pratap Nagar,
Parbhani, District Parbhani
serving at Arms Police Head Quarter
Worli, Mumbai

...Respondents

...
Advocate for the Petitioner : Mr. Someshwar S. Birajdar h/f Mr.
Sudhir K. Chavan
APP for Respondent No.1: Mrs. M.L. Sangit
Advocate for Respondent No.2 : Mr. Manish P. Tripathi
.....

CORAM : SHIVKUMAR DIGE, J.
DATED : 20th SEPTEMBER, 2024.

ORAL JUDGMENT:-

1. By these two writ petitions, the State and the informant have challenged the common order dated 30.7.2016 passed by the learned Sessions Judge, Parbhani below Exh.1 and 9 in Sessions Trial No. 110 of 2013, discharging the accused-respondent for the offences punishable under Sections 376, 420 of Indian Penal Code (for short "I.P.C.").

2. Since the impugned orders are common in these two writ petition, both these writ petitions are being decided by this common order.

3. It is the contention of the learned A.P.P. and learned counsel for the petitioner that that the respondent sexually assaulted the informant on various occasions with promise of marriage but thereafter he refused to perform marriage with her. There are statements of witnesses to show that there was sexual assault made

by the respondent on the informant. The respondent is working in police department. For some period, there was break up in relations between the informant and the respondent but thereafter again he sexually assaulted the informant. But the learned Sessions Judge has not considered this fact and has discharged the respondent from the charges levelled against him, which is erroneous. Whether the physical relationship were under the promise of marriage, it can be proved through the evidence only but it is not considered by the Sessions Court and has passed the impugned order. Hence, requested to allow the writ petitions.

4. It is the contention of learned counsel for the respondent that the physical relations between the informant and the respondent were for nine years. The informant was already married so no question of giving false promise of marriage arises. The relations between the informant and the respondent were consensual. The informant is major. The learned Sessions Judge has passed a well reasoned order. No interference is required in it and requested to dismiss the writ petitions.

5. I have heard all the learned counsel. Perused the impugned order passed by the learned Sessions Judge. While passing the impugned order, the learned Sessions Judge has observed that the

informant is major. The relationship between the informant and the respondent were consensual. They were in relationship for nine years. The informant was already married; hence, no question of giving promise of marriage arises. On these grounds, the learned Sessions Judge has discharged the respondent from the charges levelled against him. In my view, the informant is major. The physical relationship between the informant and the respondent were for nine years. The informant was already married so no question of promise of marriage arises. Considering these facts, I do not find any merit in the petitions and I pass the following order:-

O R D E R

Both the writ petitions are dismissed.

(SHIVKUMAR DIGE, J.)

rlj/