



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL APPLICATION NO.679 OF 2023

ASHOKNATH SITARAM SHARMA

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. D.A. Madke, Advocate for applicant

Mr. V.K. Kotecha, APP for respondent No.1

Mrs. Renuka Ghule Palve, Advocate (appointed) for respondent No.2

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 04th SEPTEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing Charge Sheet bearing No.30/2021 i.e. proceedings in Special Case No.60/2021 pending before learned Special Judge, under the Atrocities Act, Jalgaon arising out of offence vide Crime No.54/2021 dated 15.02.2021 registered with Zilla Peth Police Station, Tq. & Dist. Jalgaon, for the offence punishable under Sections 376, 504, 506, 507 of the Indian Penal Code, 1860, under Sections 3(1)(r), 3(1)(W)((i), 3(1)(W)

(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 67 of the Information Technology Act.

2 Heard learned Advocate Mr. D.A. Madke for applicant, learned APP Mr. V.K. Kotecha for respondent No.1 and learned appointed Advocate Mrs. Renuka Ghule Palve for respondent No.2.

3 The learned Advocate appearing for the applicant has taken us through the First Information Report and the entire charge sheet. He submits that as per the First Information Report respondent No.2 i.e. informant/prosecutrix was 38 years old lady having two children, but she says that she has taken divorce from her husband. She has stated that she is a member of Scheduled Caste. She came to know the applicant, who was then Branch Manager of State Bank of India, Branch Shiv Colony, Jalgaon in September, 2017. Though she is stating that the physical relationship between them was due to constrained circumstances; yet, she has lodged the First Information Report on 15.02.2021, which indicates that the relationship between them was consensual in nature. There are chats between the applicant and respondent No.2, which would show that the relationship was consensual. Statements of witnesses would show that it was informed by

informant to the witness that there was love affair between herself and the applicant. There was no question of promise to marry that would have given. Further, statements of Bank sweepers would show that respondent No.2 used to cook food and bring tiffin for the applicant in the Bank. Taking into consideration these facts, it would be unjust to ask the applicant to face the trial.

4 Learned Advocate for the applicant relies on the decision in **Shambhu Kharwar vs. State of Uttar Pradesh and another** [AIR 2022 SC 3901], **Pramod Suryabhan Pawar vs. State of Maharashtra and another** [(2019) 9 SCC 608], **Devendra Vikas Pawar vs. State of Maharashtra and another** in Criminal Application No.495 of 2022 decided by Division Bench of this Court Bench at Nagpur on 22.12.2022 to support his contention. Further, he says that there was no question of invoking the Atrocities Act when it is stated that there was love affair.

5 Per contra, learned APP as well as learned Advocate Mrs. Renuka Ghule Palve appointed through Legal Aid to represent respondent No.2 strongly opposed the application and submitted that perusal of First Information Report would show that the applicant has literally laid a trap to get the sexual favours from respondent No.2. Even the first act, which is

stated to be in September, 2017, it was by giving some intoxicant in the cold drink. Even at that time the applicant had taken photographs of the informant as well as made a clip. Then by threatening to make those photographs viral as well as giving threat to commit suicide the First Information was not lodged. He has established the contact once again after a gap of time and even got a house on rent for her from January, 2019 to March, 2020. He had forced her to take divorce from her husband by stating that he would perform marriage. Later on she came to know that he was already married. The evidence has been collected in the form of clips having dialogues/conversation between the applicant and respondent No.2. Even the applicant had forwarded her video and photographs to one of his friends. All these facts would show that the relationship was not consensual and, therefore, when the charge sheet is already filed, let the trial take place.

6 Before turning to the merits, we would like to consider the legal position. In **Pramod Pawar** (supra) it has been observed by the Hon'ble Supreme Court that -

“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."

6.1 Further, in **Shambhu Kharwar** (supra) after reproducing paragraph No.18 from **Pramod Pawar** (supra) the facts in that case were considered and it was observed that "Even assuming all the allegations in the charge sheet are correct, the offence under Section 376 of the Indian Penal Code has not been made out. The facts of the case those were considered were that the appellant and the second respondent were in consensual relationship from 2013 till December, 2017. They were both educated adults. The second respondent i.e. informant had got married in 2014 to someone else and the said marriage ended in a decree of divorce by mutual consent in 2017.

Thus, these two decisions would indicate that the facts of the case are required to be considered.

6.2 Further, we would like to rely on the decision in **Shaikh Arif vs. The State of Maharashtra and another** [(2024) 4 SCC 463], wherein it is observed that -

“In view of the provisions of Section 375 of the Indian Penal Code, if the victim of the alleged offence of rape is not under 18 years of age, maintaining a sexual relationship with her consent, is not an offence. As held by this Court in the case of *Anurag Soni vs. State of Chhattisgarh* [(2019) 13 SCC 1], if the consent of the victim is based on misconception, such consent is immaterial as it is not a voluntary consent. If it is established that from the inception, the consent of the victim is a result of a false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out.”

6.3 Further, we are taking note of the decision in **Rajkumar vs. The State of Karnataka and another** [2024 SCC OnLine SC 257], wherein after considering the decision in **Shambhu Kharwar** (supra) it was observed that –

“A relationship may be consensual at the beginning but the same state may not remain so for all time to come. Whenever one of the partners show their unwillingness to continue with such relationship, the character of such relationship at it was when started will not continue to prevail and, therefore, by taking the view that the relationship had not remained consensual, they rejected the prayer to quash the First Information Report.”

This case was then relied by the coordinate Bench of this Court at Principal Seat in **Amol Bhagwan Nehul vs. The State of Maharashtra and another** in Criminal Writ Petition No.3181 of 2023 decided on 28.06.2023.

7 Thus, from all these decisions, it can be considered that the facts

would govern the point of consent. Here, the contents of First Information Report are therefore important. There are allegations that even in the beginning the sexual intercourse was done by giving some intoxicant in cold drink but she had not lodged the report because of threat to make her photographs and the clip viral. Though it appears that from January, 2019 to March, 2020 they were residing in a rented premises in Navi Mumbai, but then she also states that by giving promise to marry the applicant had forced her to take divorce from her husband. In April, 2020 she came to know that there is no divorce between the applicant and his wife. He had the knowledge that the informant is a member of Scheduled Caste and ultimately in April, 2020 he had abused her in the name of caste. She has specifically stated that the applicant has blackmailed her. Even he had forwarded her photographs and the clip to his friend. There are chats on record and the electronic evidence has been collected to that extent. Under such circumstance, when there is prima facie evidence, we do not find this to be a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure for quashing the First Information Report and the charge sheet. Application, therefore, stands rejected.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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