



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1577 OF 2024

Shrikant @ Balu Sonaji Ghatole
Age: 40 years, Occu.: Private Job,
R/o. New Narala,
Taluka Paithan, District Aurangabad

.. Applicant

Versus

1. The State of Maharashtra
Through Investigation Officer,
Paithan Police Station,
Taluka Paithan, District Aurangabad

2. XYZ

.. Respondents

...
Mr. G. J. Pahilwan, Advocate for the Applicant.
Mrs. P. R. Bharaswadkar, APP for Respondent No.1 – State.
Mr. Fajif Khan Jarif Khan, Advocate for Respondent No.2.
...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 05 AUGUST, 2024.

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings of Sessions Case No.107 of 2024 pending before the learned Sessions Judge, Aurangabad arising out of Crime No.305 of 2023 dated 13.10.2023 registered with Paithan Police Station,

District Aurangabad for the offences punishable under Sections 376(2)(n), 324, 323, 504, 506 of Indian Penal Code.

2. Heard learned Advocate Mr. G. J. Pahilwan for the applicant, learned APP Mrs. P. R. Bharaswadkar for respondent No.1 – State and learned Advocate Mr. Faij Khan Jarif Khan for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that respondent No.2 is a married lady having grown up children. Perusal of the FIR and the entire charge-sheet would show that the relationship was consensual. There is huge delay in lodging the FIR. In fact, even as per the contents of the FIR, the relationship between them was of long standing eight years, still she is not complained about the pressure or forcible alleged act by the applicant even to her husband. The FIR has been lodged just to harass him. It would be unjust to ask him to face the trial.

4. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that perusal of the FIR would show that the present applicant had impressed upon respondent No.2 by saying that he loves her and she should give divorce to her husband and he would

perform marriage with her as well as would look after her children. The said promise he never intended to fulfill, but then that promise made her to succumbed to the lust of the applicant. The last incident was of 10.10.2023. The applicant had even assaulted her and then committed forcible intercourse and even threat was given. Ultimately, she was required to disclose the entire incident to her husband and, therefore, the case definitely comes within the definition of Section 375 of the Indian Penal Code.

5. In ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another, 2019 (9) SCC 608***, it is observed that, “consent with respect to Section 375 of the Indian Penal Code involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other’s houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions then it was held

that it cannot be said that acts fulfill or occurred offence under Section 375 of Indian Penal Code punishable under Section 376 of Indian Penal Code was attracted.”

6. In ***Sheikh Arif Vs. State of Maharashtra, 2024(4) SCC 463***, it has been observed that “in view of the provisions of Section 375 of 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 *Anurag Soni Vs. State of Chattisgarh [(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 by the victim is a result of false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out.”

7. In the case of ***Rajkumar Vs. State of Karnataka, 2024 SCC OnLine SC 257***, taking into consideration the facts of the case it was observed that they are accepting the view taken by the Co-ordinate Bench in ***Shambu Kharwar Vs. State of Uttar Pradesh, [2022 INSC 827/2022 : SCC OnLine SC 1032]*** but, differentiating the same, taking into consideration the facts, 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 FIR.”

8. Taking into consideration the above legal position, we are required to consider as to whether the facts of the case would attract Section 375 punishable under Section 376 of Indian Penal Code and especially in this case sub-section (2)(n) of the Indian Penal Code is then invoked. Perusal of the FIR and the other contents of the charge-sheet would show that the relationship between the applicant and respondent No.2 is since last eight years. She was already married and at that time she was having two children daughter and son. The FIR and the further statements would show that they use to involve in the physical activities after the husband of respondent No.2 use to go out of the house, especially at his work place. She also stated that when the husband got to know about their relationship, he had warned her and asked her to stay away from the applicant, but then she

says that thereafter the applicant threatened to make their photographs viral and thereupon used to keep the physical relationship. She has then stated that after her husband used to go for work she used to go with the applicant on his motorcycle in hotel. All the time, same hotel has been chosen by them. She also stated that from the applicant, she begotten the son, who was aged 3 years on the date of FIR. She also stated that on 14.09.2023 as well as 10.10.2023 the applicant had assaulted her and then had forcible sexual intercourse and when she had gone to hospital for taking treatment and doctor opined that it is a police case, still she has not gone to police to lodge the report. Perusal of the statement of the husband would rather show that he had the knowledge about the illicit relations between his wife and the applicant. He has used the word “अनैतिक संबंध” i.e. illicit relationship and then he says that he had assaulted his wife when he came to know about illicit relationship. He has not stated as to why he had not gone along with the wife to lodge the report. Obviously, when he was using the word illicit relationship, it indicates that the informant was a consenting party. He states about incidents dated 14.09.2023 and 10.10.2023 also. Thus, it is to be noted that the facts may as appear that initially the

relationship was consensual in nature, however, there are averments in the FIR that for subsequent acts, her consent is stated to be taken under coercion or threat. We are required to consider the *prima facie* case. Mere long period and the acts intermittently will not absolve the applicant from criminal liability of facing trial. We are in agreement with the above legal position that sometimes the initial consensual relationship may not be a consensual relationship later on and it might be forced one i.e. without a free consent, thereby at that time attributing offence under Section 375 of the Indian Penal Code.

9. We, therefore, 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. The application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm