



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1523 OF 2023

Dr. Punjaram @ Pankaj Haribhau Bhojane,
age 38 years, Occ. Medical Practitioner,
R/o. At Post Jamkhed, Tq. Ambad,
District Jalna.

Applicant.
(orig. accused no.2)

Versus

1. The State Of Maharashtra,
through Investigation Officer,
Crime No.78 of 2023,
Ambad Police Station,
Tq. Ambad, District Jalna.

2. XYZ (victim)

Respondents.
(complainant)

...

Advocate for Applicant : Mr. S.B. Rajebhosale

APP for Respondents: Mr. N R Dayma

Advocate for Respondent no.2 : Mr. V. B. Dhage (appointed)

...

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

Reserved on : September 24, 2024

Pronounced on : October 14, 2024

...

JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. The applicant has approached this Court under section 482 of the Criminal Procedure Code for quashment of the First Information Report in Crime No.78 of 2023 dated 3.2.2023 registered with Police Station Ambad, District Jalna for the offences punishable under section 376, 376 (2)(n), 506

r/w 34 of the Indian Penal Code (for short IPC) as well as consequential charge-sheet in R.C.C. No.157 of 2023 filed before the Judicial Magistrate First Class, at Ambad, District Jalna.

2. Respondent No.2 lodged a report dated 3.2.2023 alleging that her family is involved in agriculture, whereas since last three years she was working as a Nurse at 'Jamuvant Hospital'. On 10.1.2022 at about 4.30 p.m. while she was resting on arm chair, accused Tukaram Tarde, who runs a medical shop abutting to Jamuvant Hospital, approached her and said that he likes her. The informant slapped him and also reported incident to Dr Pankaj Bhojane (applicant/owner of the hospital). However, he ignored while putting blame of incident on her, therefore, she did not disclose the incident to anyone. Later on, applicant/accused gained her confidence and made her to believe that wife of Tukaram Tarde is insane, he would take divorce and marry with her. It is further alleged that since applicant is her relative, she believed him. After 8 to 10 days, accused Tukaram Tarde gained her trust and impressed upon her that he is taking divorce from his wife and willing to marry with her. He took her to Pathology Lab situated in backyard of the hospital and established physical relations under the pretext of marriage. The applicant kept watch outside the Lab and facilitated act of accused Tukaram. Further, the applicant/accused assured her that he will support her relationship with the accused Tukaram. It is alleged that since then, accused Tukaram Tarde continued sexual relationship with her. Accused Tukaram Tarde as well as

applicant were assuring her that accused Tukaram would marry with her. She persuaded accused Tukaram to perform marriage at the earliest. On 29.1.2023, he assured to marry her. In that night both stayed in the house of Tukaram at Jamkhed, where he continued to engage in sexual relationship with her till 1.2.2023. Since she had left home without informing her father, a missing report was lodged at police station Ambad. In pursuance of such report, police reached at Tukaram's home and took them to police station Ambad, however, due to threats given by Tukaram, she did not lodge report against him. In pursuance of assurance of marriage by accused Tukaram, she recorded her statement accordingly. However, she complains that accused Tukaram Tarde repeatedly committed rape on her which was abetted by the applicant, who use to keep watch to make safe passage for such relationship.

3. In pursuance of the report, crime no.78 of 2023 has been registered with police station Ambad against both accused persons for aforesaid offences. On completion of investigation, charge-sheet no.77 of 2023 dated 1.4.2023 is filed before the JMFC, at Ambad.

4. Mr. Rajebhosale, learned advocate appearing for the applicant submits that applicant has been falsely implicated in the aforesaid crime. He would submit that it is a case of consensual sexual relationship between respondent no.2 and accused no.1. Respondent no.2 voluntarily maintained her sexual relationship with accused no.1 for a period of one year

and lastly filed false report implicating the applicant as co-accused. He would submit that allegations in FIR are regarding sexual relationship is only against accused no.1 where as applicant is alleged to have abetted commission of offence. Mr. Rajebhosale would submit that owing to Grampanchayat dispute applicant has been falsely implicated. He would submit that respondent no.2 had voluntarily left home with accused no.1 and stayed with him till they were apprehended by the police on missing report by father of respondent no.2. Mr. Rajebhosale would further submit that on the basis of omnibus and concocted allegations, no case for abatement to commit rape can be made out against the applicant. The applicant is a medical practitioner. His reputation is at stake. Continuation of criminal proceeding against the applicant would harm his reputation and trust of patients as Medical Practitioner.

5. Mr. Rajebhosale, would rely upon judgments of the Supreme Court of India in case of *Mandar Deepak Pawar v/s the State of Maharashtra and another reported in 2022 Livelaw (SC) 649*, *Ansaar Mohammad Vs. State of Rajasthan and another reported in 2022 Livelaw (SC) 599*, *Pramod Suryabhan Pawar Vs. State of Maharashtra and another reported in (2019) 9 SCC 608*, *Sonu @ Subhash Kumar Vs. State of Uttar Pradesh reported in 2021 ALL SCR (Cri) 648* and *Archana Rana Vs. State of Uttar Pradesh reported in 2021 ALL SCR (Cri) 652* to contend that in the matter of consensual sexual relationship, offence under section 376 of IPC cannot be made out.

6. Per contra, Mr. N.R. Dayama, learned APP and Mr. V.B. Dhage, learned advocate for respondent no.2 vehemently submits that FIR clearly stipulates origin of sexual relationship under false promise of marriage by accused no.1. Apart from statements in the FIR, history narrated before the Medical Officer and statement recorded under section 164 Cr.P.C. before the Magistrate also advances case of respondent no.2. They would submit that on 8.2.2023 informant's statement under section 164 of Cr.P.C. has been recorded before the JMFC, at Ambad, wherein respondent no.2 has further elaborated act of abatement by the applicant/accused. She narrated that a video in compromising position was recorded by the accused persons and same was used to blackmail her. Further, the applicant gave her certain medicines/sedatives that facilitated accused Tukaram in sexual act. They would therefore urge to reject the application.

7. We have considered submissions advanced on behalf of the learned advocates appearing for the respective parties. We have minutely considered stipulations in the FIR and statements of witnesses recorded during course of the investigation. The gist of the allegations in the FIR is that since 10.1.2022 accused Tukaram Tarde had established sexual relations with respondent no.2. It is specifically alleged that accused Tukaram was a married person. However, he assured to divorce his wife. Then, continued with sexual relations with respondent no.2. Such relationship continued for more than one year. On 29.1.2023 respondent no.2 and accused Tukaram left home and stayed together at Jamkhed in the house of

accused no.1. Father of respondent no.2 lodged missing report. Consequently, police apprehended accused no.1 and respondent no.2 from the house of accused Tukaram. Statement of respondent no.2 was recorded by police in the missing report case wherein she has not uttered anything regarding offence of rape. However, after two days, present FIR has been lodged with allegations of rape.

8. The role attributed against the applicant is that, initially when accused Tukaram established sexual relations with her, the applicant alleged to have guarded such relationship. Similarly, he alleged to have instigated respondent no.2 to maintain such relationship under the pretext that he will make accused no.1 Tukaram to marry her. Further, applicant/accused gave her certain medicines that had sedative effect while Tukaram had sex with her. Except these stipulations there is no further stipulation against the applicant. In this background, the question before us is whether the case of rape as defined under section 375 of the IPC can be made out in the facts.

9. Admittedly, basic allegation as regards to commission of rape as defined under section 375 of the IPC is against accused no.1 Tukaram. It is alleged that he obtained consent of respondent no.2 for sexual relationship under promise of marriage. Therefore, if it is established that respondent no.2 was made to engage in sexual relations on false promise of marriage and/or her consent is based on misconception of fact, the offence under section 375 of IPC can

be made out only against the accused no.1. Therefore, even it is assumed that respondent no.2 maintained consensual sexual relations with accused no.1 on the basis of false promise to marry her, applicant can not be said to have committed any offence as defined under section 375 of the IPC. Pertinently respondent no.2 maintained such relationship with accused No. 1 for more than one year, even she flee away with him and resided at his home till police apprehended them. Pertinently, FIR nowhere stipulate that accused no.1 had made false promise to marry informant in a bad faith or with intention to deceive her. Similarly, there is no extension of further allegations that the applicant induced her to engage in sexual relationship with accused no.1. Evidently, respondent no.2 was well aware about the fact that accused no.1 is a married person and during subsistence of his marriage promise to marry with her could not have been lawfully fulfilled by the accused no.1.

10. Respondent no.2 in her 164 CrPC statement recorded before the Magistrate, added some more stipulations to attract the offences against the applicant. She states that accused persons had taken a video to black mail her and also gave threats that they will kill wife of Tukaram and put blame on her. So also applicant-accused used to give her certain sedatives. However, even from these improved version of the allegations, ingredients of section 375 of IPC cannot be made out against the applicant. Pertinently, 164 CrPC statements of the parents of respondent no.2 nowhere stipulates any sort of allegation against the applicant. Even from material in the charge-sheet, no support could be gathered to the allegations

as against the applicant. No such video recording could be recovered nor traces of sedative medicine allegedly given by accused could be collected during investigation. Pertinently there is nothing on record to depict motive of applicant behind commission of offence.

11. Although charge u/s 109 is not added in the charge-sheet, we have examined as to whether on the basis of material in charge sheet case of abatement can be made out against the applicant-accused. Section 107 of the IPC defines abatement. Section 108 defines the term 'abettor.' It would be apposite to refer both sections that reads thus :-

*Section 107. Abetment of a thing.
A person abets the doing of a thing, who—*

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

“108. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.”

12. The plain reading of aforesaid sections depict that the abettor is the person who intentionally instigates, aid or engage in commission of offence by principal offender. In present case there is nothing to depict that applicant had intentionally instigated accused no. 1 to extend false promise of marriage to respondent No. 2 and/or maintain sexual relation with her. At the most from allegations in FIR it can be inferred that applicant accused assured to support marriage of respondent No. 2 with accused Tukaram. Even it is assumed that accused No. 1 extended false promise of marriage and induced Respondent No.2 to maintain physical relations with him, the applicant cannot be blamed for such acts of accused No. 1.

13. We are, therefore, inclined to exercise our jurisdiction under section 482 of the Criminal Procedure Code and quash and set aside the impugned FIR and criminal proceeding as against the applicant. Hence, we proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report in Crime No.78 of 2023 dated 3.2.2023 registered with Police Station Ambad, District Jalna for the offences punishable under section 376, 376 (2)(n), 506 r/w 34 of the Indian Penal Code as well as consequential proceeding in pursuance to charge-sheet in R.C.C. No.157 of 2023 filed before the Judicial Magistrate First Class, at Ambad, District Jalna is hereby quashed and set aside as against the applicant herein i.e. Dr. Punjaram @ Pankaj Haribhau Bhojane.
- iii. Criminal application stands **disposed of**.
- iv. Since, advocate Mr. V. B. Dhage, is appointed to represent the cause of Respondent No.2, fees of the learned advocate is quantified at Rs.10,000/- (Rs. Ten Thousand), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

...

aaa- (f)