



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1806 OF 2023

Sagar Bhima (Bhimrao) Vaidya,  
age 22 years, Occ. Nil,  
R/o. Tongaon, Tq. Bhadgaon,  
District Jalgaon

Applicant.

Versus

1. The State of Maharashtra,  
through it's Bhadgaon Police Station,  
Tq. Bhadgaon, District Jalgaon.

2. XYZ.

Respondents.

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Advocate for Applicants : Mr. V B Patil  
APP for Respondents: Mrs. P R Bharaswadkar  
Advocate for Respondent no.2 : Mr. V Y Patil

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

Dated : 01<sup>st</sup> October, 2024.

**ORDER :-** (Per S.G. Chapalgaonkar, J.)

1. The applicant has approached this Court under section 482 of the Criminal Procedure Code for quashment of the FIR in Crime No.18 of 2023 registered with Bhadgaon Police Station, District Jalgaon dated 21.01.2023 for the offences punishable under section 376, 376(2)(n), 354-C of IPC and section 66(e) and 67 of the I.T. Act, 2008, as well as consequential proceeding in Sessions Case No.33 of 2023 pending before the Sessions Judge, at Jalgaon for the offences punishable under section 376, 376(2)(n) of the IPC.

2. The respondent no.2 lodged a report dated 21.01.2023 alleging that, in the year 2014 she had married with one Suraj Chavan r/o Raybareli. From said matrimonial relationship, she got a son Lavkush aged about 7 years and Khushabu aged about 6 years. However, because of persistent dispute with him she started residing at her maternal home from the year 2018. In the year 2019, she came in contact with Mannu Raju Pavaskar, developed affinity with him and performed second marriage with him. However, in the year 2020, Mannu died in a road accident. In the year 2022, she came in contact with the applicant through Facebook. They had frequent conversation leading to love affair. She came to Nashik from Surat alongwith her friend Punam Chavan in pursuance of job in a company namely Fortune. The applicant/accused called her to Bhadgaon. Accordingly, she went to Bhadgaon and resided at his house for two days. During this period, accused assured her to perform marriage with her. During those two nights, they had physical relations. Then, she went to her home at Bili Mora (Gujrat) and after return again stayed with the applicant/accused at his home. During this period, again they had physical relations. Thereafter, accused joined her at Nasik and stayed in rented room, had physical relations and snapped certain photographs in compromised position. She worked in Fortune company alongwith the applicant for one and half month. Then, he left to Bhadgaon. The applicant also left to Surat. After some days, pregnancy was detected. She called the applicant and informed him about the pregnancy and persuaded for marriage. Thereafter, she came to Bhadgaon. His family

members objected applicant while they were living together. Therefore, he asked her to stay at Nasik. However, thereafter, he did not contact her and shut-off his mobile. Hence, she filed complaint alleging that accused maintained physical relationship under the pretext of marriage resulting into pregnancy.

3. On the basis of aforesaid report, crime no.18 of 2023 was registered. On completion of investigation, charge-sheet is filed for the offence punishable under section 376, 376 (2)(n) of the IPC.

4. At present, trial is pending in Sessions Case No.33 of 2023 pending before the Sessions Judge, at Jalgaon.

5. Mr. V.B Patil, learned advocate appearing for the applicant vehemently submits that, respondent no.2 had consensual physical relations with the applicant. The respondent no.2 is a married lady having two children from first husband. Thereafter, she had second marriage and thereafter developed relations with the applicant. Both of them were in live-in relations for sufficient long time and resided as husband and wife. In these circumstances, no offence under section 376 of the IPC can attract. Therefore, he urges to quash and set aside the FIR and consequential proceeding against the applicant.

6. Per contra Mrs.Bharaswadkar, learned APP appearing for respondent no.1-State and Mr. V.Y. Patil, learned advocate appearing for respondent no.2 opposed the

application contending that the applicant developed physical relations under the promise of marriage. Respondent no.2 was induced to engage in sexual relations under such promise. Therefore, this is not a case of consensual relations but would amount to rape under the false pretext of marriage.

**375. Rape.—**

*A man is said to commit "rape" if he—*

*(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*

*(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

*(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*

*(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions :-*

*(First.)— Against her will.*

*(Secondly.) — Without her consent.*

*(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,*

*(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*(Sixthly.) — With or without her consent, when she is under eighteen years of age.*

*(Seventhly.) — When she is unable to communicate consent.*

*Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.*

*Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:*

*Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.*

*Exception 1.— A medical procedure or intervention shall not constitute rape.*

*Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.*

7. Section 90 defines the consent known to be given under fear of misconception, which reads as under :-

***90. Consent known to be given under fear or misconception—***

*A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or*

8. In light of the aforesaid provisions, if we examine allegations in the FIR, following important aspects can be observed :-

- i. Respondent no.1 is a married lady and had two children from her first marriage.
- ii. The FIR nowhere stipulates that she had divorced her husband.

- iii. She had second marriage in the year 2019 with one Mannu Pavaskar, who died in the year 2020 in road accident.
- iv. In the year 2022, she developed contact with the applicant through Facebook. Affinity was developed between them.
- v. She came from Surat to Nasik and joined a job in Fortune Company.
- vi. Thereafter, she went to the house of applicant at Bhadgaon and resided with him where she had physical relations with him. She stated that, on that day, he assured that he would marry with her.
- vii. Thereafter, she had continuously engaged in the physical relations with him. Thereafter, they resided together in the Nasik in a rented room.
- viii. After some period, applicant went back to Bhadgaon and she went back to Surat. Lateron, she detected pregnancy. Then came back to bhadgaon. Again resided with the applicant. Then, they rented room at Nasik and stayed together for some period. During this time also she had continuous physical relations with him.

9. If this background is considered, it is difficult to believe that the respondent no.2 engaged in physical relationship with the applicant accused under mis-conception or false promise of marriage. Apparently, respondent no.2 is a mature lady and comes with the case that she had two earlier marriages and children out of such marriage. In that view of the matter, it cannot be accepted that she engaged in physical relations only because the promise or it cannot be believed that

she was induced to engage in physical relations owing to the promise of the applicant.

10. The Supreme Court of India in case of ***Pramod Suryabhan Pawar Vs. The State of Maharashtra and another reported in (2019) 9 SCC 608*** summarized the legal position as regards to consensus sexual relations. Paragraph no.18 reads thus :-

*“18. To summarize 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.”*

11. In yet another judgment, in case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra reported in (2019) 18 Supreme Court Cases 191**, the Supreme Court observed in paragraph no.23, thus :-

*“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual*

*intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under [Section 376](#) of the IPC.”*

12. When we apply aforesaid parameters/principles of law to the facts of the present case, it can be noticed that inception of physical relations between respondent no.2 and the applicant cannot be said to be on the basis of false promise of marriage. Their engagement appears to be natural due to affection developed initially, through Facebook and thereafter the meetings. She made complaint only when pregnancy was detected. Statement of the witnesses, which are made part of the charge-sheet depict that respondent no.2 and applicant were residing together as husband and wife, they maintained open relationship without marriage. In case, the applicant had intention to deceive her, he would not have maintained such live-in relations. It is not a case that the respondent no.2 was a immature lady and she would engage in physical relations only on the word of marriage given by the applicant. In our considered view, this is a case of consensual sexual relations and, in the facts of the case, even by taking contents of the FIR and charge-sheet on it's face value, no offence under section 376 of the IPC can be made out 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.18 of 2023 registered with Bhadgaon Police Station, Tq. Bhadgaon, District Jalgaon dated 21.01.2023 for the offences punishable under section 376, 376(2)(n), 354-C of the IPC and section 66(e) and 67 of the I.T. Act, 2008, as well as the consequential proceeding in Sessions Case No.33 of 2023 pending before the Sessions Judge, at Jalgaon for the offences punishable under section 376, 376(2)(n) of the Indian Penal Code is hereby quashed and set aside.
- iii. Criminal application stands **disposed off**.

( S. G. CHAPALGAONKAR )  
Judge

( SMT. VIBHA KANKANWADI )  
Judge

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