



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2754 OF 2024

Dinesh Pandurang Choudhary
Age: 54 years, Occu.: Service,
R/o. Plot No.14, Vidya Nagar,
Kasgaon Road, Parola, Tq. Parola,
District Jalgaon.

.. Applicant

Versus

1. The State of Maharashtra
Through its Ramanand Nagar
Police Station, Jalgaon,
Taluka and District Jalgaon.

2. X.Y.Z.

.. Respondents

...
Mr. Vijay B. Patil, Advocate for the applicant.

Dr. Kalpalata Patil Bharaswadkar, APP for the respondent No.1 – State.

...

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

DATE : 13 AUGUST, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed by the original accused for quashing the FIR vide Crime No.63 of 2024 dated 23.02.2024 and the proceedings in Sessions Case No.83 of 2024 pending before the learned Sessions Judge, Jalgaon for the offences punishable under Sections 376, 376(2)(n), 323, 506 of Indian

Penal Code.

2. Heard learned Advocate for the applicant and learned APP for respondent No.1 – State. It is not even necessary to issue notice to respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR and the entire charge-sheet would show that respondent No.2 aged 40 is a married lady having two daughters. Even she runs a beauty parlour thereby earning and, therefore, she cannot be considered as a layman. She states that her acquaintance with the accused was by way of journey in railway, as the applicant had given her space to sit. However, according to her, when she had given her mobile on the request of applicant to make a call, then she started receiving phone call from the applicant and at that time, he had introduced his name and also stated that he is employed in railway police. He started saying that he likes her and want to meet her. But then she says that in May 2023, applicant had called her to meet near Jalgaon railway station and then she says that the applicant had taken her to a house in Shivaji Nagar and had established sexual relationship. Thereafter, there were such intercourses between

them in lodge. All these things would show that the relationship was voluntary. The prosecutrix has every knowledge about the acts done by her and, therefore, the ingredients of the offence under Section 375 of the Indian Penal Code are not at all attracted. It would be a futile exercise to ask the applicant to face the trial.

4. 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.”

5. Learned APP strongly opposed the application by submitting that perusal of the FIR would show that the consent was not voluntary and it appears that the applicant has taken disadvantage of the acquaintance.

6. The first and the foremost fact to be noted is that from the pleadings in the petition, it can be seen that the applicant is interested in denying the contents of the FIR. At no point of time, he says that the relationship that was developed was voluntary from his side also. According to him, he has friendly relationship with respondent No.2 and respondent No.2 has obtained certain amounts from him. He has evidence to the effect of making payments for respondent No.2. When the applicant has not come with the clear case that he had the said physical relationship with respondent No.2 voluntarily, it cannot be so presumed at the initial stage i.e. without there being any evidence led by the prosecution. In an application under Section 482 of the Code of Criminal Procedure what is required to be seen by this Court is the contents of the FIR and the material collected in the charge-sheet. In the FIR it can be seen that there was no prior acquaintance between the applicant and respondent No.2, but it developed in travelling in railway. Though she says that she was

called upon by the applicant at Jalgaon Railway Station and she went accordingly, yet when she was taken to Shivajinagar in the house of a lady, at that time, she says that the applicant had established physical relations with her forcibly. Then she says that after eight days, the applicant had given a call to her and asked her to meet her and gave threat that if she fails to come, he would tell the fact to her husband. This went on several occasions. When it comes to threats, we cannot say that the consent is voluntary. The next thing which she says that she was forced to have relationship with the applicant under threat that the photographs would be made viral. She says that even their photographs were shared by the applicant to the son of the friend of respondent No.2 on 27.12.2023. All these aspects are then required to be considered to see whether the relationship was consensual or not which cannot be gone into at this stage.

7. Definitely, we are guided by the decision in **Pramod Suryabhan Pawar** (Supra), however, we would also like to consider the decision in **Rajkumar Vs. State of Karnataka; 2024 SCC OnLine SC 257**, wherein taking into consideration the facts of the case, it was observed that the Court is accepting the view taken by the Coordinate Bench in **Shambu Kharwar**

Vs. State of Uttar Pradesh, 2022 INSC 827 :: 2022 SCC OnLine SC 1032, but differentiating the same, it was observed that “a relationship may be consensual at the beginning but 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 as it was when started will not continue to prevail” and therefore, by taking a view that the relationship had not remained consensual, the prayer for quashing the FIR was rejected. Similar view has been taken by the Division Bench at the Principal Seat in **Criminal Writ Petition No.3181 of 2023 (Amol Bhagwan Nehul Vs. State of Maharashtra and another)** and, therefore, 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 and, therefore, the application stands dismissed at the threshold.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm