



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 CRIMINAL APPLICATION NO.2501 OF 2021

Sayyad Fayyaz Sayyad Karim,
Age 32 yrs., Occ. Education & private job,
R/o Rahimnagar, Super Market,
Parbhani, Tq. & Dist. Parbhani.

... Applicant

... Versus ...

- 1 The State of Maharashtra
- 2 X.Y.Z.

... Respondents

...

Mr. R.P. Patwardhan, Advocate h/f Mr. S.S. Jadhav, Advocate for applicant

Mr. A.V. Lavte, APP for respondent No.1

Mr. R.N. Dhakane, Advocate h/f Mr. S.S. Thombre, Advocate for respondent
No.2

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CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 26th NOVEMBER, 2024

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

1 Present application has been filed under Section 482 of the Code
of Criminal Procedure, 1973 initially for quashing First Information Report

vide Crime No.276/2021 dated 17.09.2021 registered with Police Station, Sailu, Tq. Sailu, Dist. Parbhani and after amendment to quash and set aside the Charge Sheet No.68/2022 i.e. proceedings in Regular Criminal Case No.81/2022 pending with Judicial Magistrate First Class, Sailu, Tq. Sailu, Dist. Parbhani, for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. R.P. Patwardhan holding for learned Advocate Mr. S.S. Jadhav for applicant, learned APP Mr. A.V. Lavte for respondent No.1 and learned Advocate Mr. R.N. Dhakane holding for learned Advocate Mr. S.S. Thombre for respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 It can be seen that the First Information Report is lodged by respondent No.2, who is a major married lady having two kids aged 10 and 8 on the day of First Information Report. However, it is stated by her that there was divorce between herself and her husband in 2017. She was serving as Teacher in a private school. She got acquainted with one person and got married to him on 13.01.2020. The present applicant is the cousin brother of her second husband. Since the date of her second marriage she was knowing the applicant. Thereafter marital discord arose between the informant and

her second husband and she was residing separately from him. She was residing with her mother. She has then stated that she used to call applicant on phone and thereafter they fell in love with each other. The applicant had brought her to Sailu in a lodge on 06.08.2020 from Aurangabad. The applicant had forceful sexual intercourse with her on that day and as well as on the next day in lodge. It was then stated that the applicant had promised her to marry. Thereafter on 22.08.2020 as well on 23.08.2020 again they had gone to the same lodge at Sailu, Dist. Parbhani and at that time the applicant had sexual intercourse with her. She left her job from Aurangabad and started to serve in a school at Nandkheda, Parbhani, Tq. & Dist. Parbhani, which she got due to the acquaintance of the applicant. Thereafter, the applicant had shifted her along with her belongings and two children from Aurangabad to Parbhani. Applicant was staying with her in the said rented house since 26.08.2020 and the applicant had forcible sexual intercourse under the promise to marry on 28.08.2020 with her. In February, 2021 also under the same promise the applicant had established physical relationship and the said act continued between February, 2021 to May, 2021 in the same lodge in Sailu. In July also the same act was made and at that time in front of her mother the applicant had promised that he would marry the informant. Thereafter, she was taken to Pune by the applicant on 06.09.2021 in a hotel where they stayed till 09.09.2021. It is said that again, under the

promise to marry the applicant had established the sexual intercourse. The informant says that as the applicant has not performed marriage with her though he had given promise to marry and had established the physical relationship, she has lodged the report.

4 Important point to be noted from the charge sheet is that on the next day of First Information Report dated 17.09.2021 her statement under Section 161 of the Code of Criminal Procedure appears to have been taken i.e. on 18.09.2021. When after repeating everything she has stated that on that day i.e. on 18.09.2021 she had gone along with her second husband and she does not want to proceed with the First Information Report, she says that at the time of her second marriage the present applicant was present and when differences arose between herself and her second husband, she was requesting the applicant to mediate, but as the applicant had not given any response, in a rage of anger she has lodged the report. In a categorical terms she has stated that there was no physical relationship nor she was forced by the applicant to have sexual intercourse with him and now, when her husband has undertaken to cohabit with her, she does not want to go ahead. It is to be noted that the said statement has been taken in presence of three persons including the member of Dakshata Cell. Further, it appears that on the same day she has given it in her handwriting that she does not want to

get medically examined as she was not raped and she has no complaint to make. She has signed that document. However, it appears that the police did not stop the investigation and the investigation has been completed. Even an affidavit sworn before the Notary Public on 18.09.2021 that she had lodged a false report was submitted before Police Inspector, Police Station, Sailu. The documents also show that why on the same day i.e. on 18.09.2021 she was produced before Judicial Magistrate First Class, Sailu, but at that time she has supported to the First Information Report by making the same allegations. We are unable to get the sequence of the events, but it may be a fact that her statement under Section 164 of the Code of Criminal Procedure would have been recorded first on 18.09.2021 and then the statement before the three persons and when she was tried to be sent for medical examination, she has given it in handwriting that she had given a false report.

5 The other evidence that has been collected is in the form of lodge record and the statement of the lodge owner as well as statement of her mother. Of course, the mother has only stated about the acquaintance and then the information that was given by her daughter to herself. One more supplementary statement of the informant has been taken on 17.10.2021, which is nothing but the repetition of the First Information

Report. There is also statement of landlord Sayyad Taukhir Sayyad Mahammad of Parbhani, who says that the applicant had taken the said flat on rent and had kept the informant and her children in that flat. It was told to him that they are the relatives, but when the landlord felt that there is something wrong in their relationship, he asked the informant to vacate the premises.

6 Thus, we have taken note of the entire material which is on record. We are mainly concerned with the contents of the First Information Report i.e. the prosecution story. The informant is an adult married lady. In fact, she got married twice and then since 2020 for about a year she appears to have gone along with the applicant at different places like lodge and then there was physical relationship between her and the applicant. In the First Information Report she has absolutely not stated that there was divorce between herself and the second husband. Under such circumstance, how she could have believed in the promise to marry allegedly given by the applicant. It is nowhere in the First Information Report or in the entire charge sheet as to what is the status of the applicant, that is, whether he was married or not. Unless the informant herself would have taken divorce from her husband, she could not have married to the applicant. Therefore, her statement that she believed in the promise allegedly given by the applicant cannot be accepted

at all. The present case appears to be that of consent and, therefore, no offence can be said to be made out, which can be said to be punishable under Section 376(2)(n) of the Indian Penal Code. It would be unjust to ask the applicant to face the trial with this kind of evidence. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) First Information Report vide Crime No.276/2021 dated 17.09.2021 registered with Police Station, Sailu, Tq. Sailu, Dist. Parbhani and the Charge Sheet No.68/2022 i.e. proceedings in Regular Criminal Case No.81/2022 pending with Judicial Magistrate First Class, Sailu, Tq. Sailu, Dist. Parbhani, for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 stand quashed and set aside as against applicant viz. Sayyad Fayyaz Sayyad Karim.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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