



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.78/2024

Akash Shanker Gawali,
age about 36 Yrs., Occ. Private Service,
R/o Srirampur, Pusad, Tq. Pusad,
Distt. Yavatmal.

... Applicant

- Versus -

1. The State of Maharashtra,
through P.S.O. Vasant Nagar,
Pusad, Tq. Pusad, Distt. Yavatmal.

2. XYZ
Crime No.67/2023
P.S. Vasant Nagar,
Tah. Pusad, Distt. Yavatmal.

... Non-applicants

Mr. K. Rawandhe, Counsel for the Applicant.
Mr. S.A. Ashirgade, A.P.P. for Non-applicant No.1.
Mr. L.G. Tiple, Counsel for Non-applicant No.2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 7.5.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. This is an application seeking to quash F.I.R. in Crime No.0067/2023 registered by non-applicant No.1 for the offence punishable under Sections 376(2)(n), 294, 337, 323, 504 and 506 of Indian Penal Code.

3. The informant, a married lady, aged about 36 years, has lodged the report alleging that the applicant has sexually exploited her under false pretext of marriage. It is the prosecution case that in the year 2017-2018 the informant (victim) got acquainted with applicant through face-book which culminated into love affair. It is victims case that from the year 2018 to 2022 on various occasions the applicant had established physical relations by expressing his desire to marry. It is alleged that sometime there was a quarrel between them and the applicant assaulted as well as threatened the victim. The victim realized that the promises were false hence she has lodged the report on 15.2.2023.

4. Informant has appeared through her Advocate and filed reply stating that they had consensual relations and out of misunderstanding she has lodged the report. The informant is present before us who is identified by her Advocate. She has stated about her no objection to quash the proceedings.

5. Apart from this we have examined the entire material to see whether *prima facie* case is made out. Admittedly the victim got married long back in the year 2007 and during subsistence of her marriage all this has happened. It is informant's case that from 2018 to 2022 time to time applicant has sexually exploited her. It is apparent that the victim was well aware that due to existence of her marriage she could not marry. Therefore, it is impossible to believe her version that only because the applicant assured her to marry she has submitted herself. It reveals that the relationship was long standing for near about 4 years. It is apparent that both are well grown up. The victim despite the marriage maintained and continued the relationship for about 4 years and thus it is a case of consensual relationship.

In the circumstances, even if the prosecution case is taken at its face value it does not constitute the offence of rape. Moreover the victim herself has stated about the consensual relationship. The learned Counsel for the applicant expressed willingness to deposit Rs.10,000/- with Library, High Court Bar Association, Nagpur within two weeks.

6. In view of the above, the application is allowed.

We hereby quash and set aside the F.I.R. in Crime No.0067/2023 registered by non-applicant No.1 for the offence punishable under Sections 376(2)(n), 294, 337, 323, 504 and 506 of Indian Penal Code.

The applicant shall deposit costs of Rs.10,000/- within two weeks from today with the Library, High Court Bar Association, Nagpur.

Stand over to 11.6.2024 for noting compliance.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)