



Judgment

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

CRIMINAL APPLICATION (APL) NO. 300/2024

Samrudha s/o Murlidhar Telang,
A/a 32 yrs., Occ. Private Job,
R/o. near Buddha Vihar Samrat
Ashok Nagar, Ward No.7, Wani,
Dist. Yavatmal – 445304.

... **APPLICANT**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station – Wani, Dist. Yavatmal.
2. XYZ,
Crime No. 973/2022, Police Station,
Wani, Dist. Yavatmal

...**NON-APPLICANTS**

Mr. A. Vyas Advocate for applicant.
Mr. A.B. Badar, APP for non-applicant No.1.
Ms. A. Kolhe, Advocate (appointed) for non-applicant No.2.

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

DATE : 30.08.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

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3. This is an application seeking to quash Sessions Case No. 35/2023 arising out of Crime No. 973/2022 registered with Police Station Wani, Dist. Yavatmal for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code, 1860. It is informed that till date charge has not been framed by the Trial Court.

4. The learned counsel appearing for applicant would contend that it is a case of consensual relationship between the two adults. The First Information Report ("FIR") and the material collected during the course of investigation do not make out a prima facie case. It is submitted that the report is lodged with oblique motive to settle the score.

5. The learned APP as well as the learned counsel for non-applicant No.2 has resisted the application by submitting that reading of FIR indicates that under false pretext of marriage, the applicant has sexual abused the lady. It is submitted that the supplementary statement discloses that not only under promise but also by use of force, the lady has been abused. Lastly it is contended that there is ample material to make out prima facie case. Hence, quashing may not be permitted.

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6. With the assistance of both sides, we have gone through the entire police paper. The informant lady aged 28 years has lodged report on 30.12.2022. It is her case that at the relevant time, she was college going girl. She accidentally met with the applicant in one marriage ceremony few years before police report. On an often, they interacted and later on love relationship was developed. The informant stated that on 10.06.2019, the applicant telephonically called her at his house and by assuring for marriage had established sexual relation. Then, on and often for the period of three years, they had physical relationship. It is her contention that on 21.04.2022 at the time of her engagement ceremony with someone else, the applicant arrived, interrupted and assured to marry, but later on denied, hence report.

7. Precisely, it is alleged that though both were in love relationship, on 10.06.2019, the applicant expressed his desire to marry and had sexual relation which continued for next three years. The Investigating Agency has recorded statement of some other witnesses, but they are quite insignificant having regard to the nature of allegation. The informant in her initial statement, never expressed that she was exploited by use of force. We have gone through statement of informant recorded by the Magistrate in terms of

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Section 164 of the Code of Criminal Procedure (“Code”). In the said statement she never stated that under the pretext of marriage, the applicant had established relationship. Rather the statement conveys that they had a long standing lover affair, but finally the applicant refused to marry.

8. In the like cases, the central issue is whether the consent of lady was obtained by deceitful means. Besides that it is important to note whether lady has submitted herself only because she has believed the promise to marry and in that case only the consent would vitiate. Taking over all view of the matter, it reveals that the informant was well matured college going lady. She had maintained relationship for long period of three years. She used to visit the applicant where both of them established physical relation. Notably, the informant has opted to marry with someone else and accordingly her engagement was fixed on 21.04.2022. This fact is indicative that the informant has not seriously believe on the promise to marry as her marriage was settled elsewhere.

9. The learned counsel appearing for applicant relied on the decision of the Supreme Court in case of *Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608* to contend that there is distinction between false promise and breach of promise. Unless the

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applicant carries deceitful intention since beginning consent would not vitiate. The law in this regard is summarized in para 18 of the decision which reads as below:-

“18. To summarise 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.”

10. In order to attract the penal consequence, the promise to marry must be false promise given in bad faith. In case at hand, the reading of FIR couple with statement under Section 164 of the Code never indicates that because of only the applicant assurance for marriage, she consented. Rather it emerges that it was a love affair between two young matured which was maintained for long and thus, there is no prima facie material to constitute the offence.

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11. Inherent powers of this Court are widely vested with the aim to secure ends of justice and to ensure that the process of law is not abused. Taking over all view of the matter, it emerges that it is a case of consensual relationship. The material is not indicative of any deceitful means on the part of the applicant. The case squarely falls in category Nos. 1 and 3 of the guidelines issued by the Supreme Court in case of *State of Haryana Vs. Bhajan Lal*, AIR 1992 SC 604.

12. In view of above, a case is made out to invoke our inherent powers. The application is allowed. We hereby quash and set aside Sessions Case No. 35/2023 arising out of Crime No. 973/2022 registered with Police Station Wani, Dist. Yavatmal for the offence punishable under Sections 376(2)(n), 417 of the Indian Penal Code, 1860.

13. Fees to the learned appointed counsel appearing for non-applicant No. 2 be paid as per Rules.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)