



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

CRIMINAL APPLICATION (APL) NO. 387 OF 2024

Vipul @ Ram Praful Mhaisane,
Age – 28 years, Occ: Cultivator,
R/o Lohari Khurd, Post Jalgaon Nahate, Tq.
Akot, District Akola

...Applicant

// VERSUS //

1. State of Maharashtra,
through Police Station Officer, Dahihanda,
Akot, Tq. Akot, District Akola
2. Victim / Complainant XYZ,
through Police Station Officer, Dahihanda,
Akot, Tq. Akot, District Akola

... Non-applicants

Shri Vipul B. Bhise, Advocate for the applicants.

Shri M.K.Pathan, APP for the non-applicant no.1/State.

Shri S.P.Bhandarkar, Advocate for the non-applicant no.2.

**CORAM : SMT. VIBHA KANKANWADI, AND
MRS. VRUSHALI V. JOSHI, JJ.**

Reserved on : 11th July, 2024

Pronounced on : 31st July, 2024

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. Present application has been filed under Section 482 of the
Code of Criminal Procedure for quashing the First Information Report
No. 53 of 2024 registered with Police Station Dahihanda, Tq. Akot,

District Akola for the offence punishable under Sections 376, 376(2)(n), 377 and 417 of the Indian Penal Code.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the non-applicant no.2 is aged 28 years. She got to know the applicant in 2018, through the Facebook chatting. Thereafter, they developed the love relationship and started to meet each other and at that time the applicant gave promise to marry her. Non-applicant no.2 states that in November, 2019 (she is unable to remember date) when she was in the house, the applicant who is resident of Lohari, Taluka Akot (not from her village) came to meet her at night time, after her parents and younger sister went to sleep. She says that she called him in her room and thereafter, by giving promise to marry her, the applicant had established the physical relationship with her. Thereafter, they used to meet with each other in their house and used to establish physical relationship. She further states that thereafter they used to establish the physical relationship since July, 2023 in the house of her friend, which is at a different place. When she used to ask the applicant when they are going to perform marriage, at that time the applicant used to say that he has good acquaintance in politics and let him be the President of the District and at that time he would perform marriage with her. She has also stated that she become pregnant twice in the year 2020 from the applicant. However, the applicant told her that she should get herself aborted and accordingly, she had got her aborted. He had borrowed an amount of Rs.90,000/- from her and he had returned only Rs.10,000/-. Such physical relationship under the promise to marry was

also established on 14th January, 2024 but, then differences arose between them while in the act and the non-applicant no.2 told that she will not perform marriage with him. He left the place and thereafter whenever non-applicant no.2 was trying to call him, he has not picking up the phone, therefore she went to police station on 16th January, 2024, but the applicant along with his maternal uncle came to the police and stopped her from lodging the report by giving promise of marriage. However, when the relative took meeting for settlement of marriage, it was not attended by the applicant and he then refused to marry with the non-applicant no.2 and therefore, she lodged the report. All these contents would show that the relationship was voluntary. She had every knowledge of the acts done by her and therefore the ingredients for the offence under Section 375 of the IPC are not attracted.

4. Learned counsel for the applicant relies on the decision of Pramod Suryabhan Pawar Vs. State of Maharashtra and another; 2019(9) SCC 608, wherein it is observed that, “consent with respect to Section 375 of the IPC 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 fulfil or occurred offence

under Section 375 of IPC punishable under Section 376 of IPC was attracted”.

5. Learned Additional Public Prosecutor as well as learned counsel for the non-applicant no.2 have strongly opposed the application.

6. Learned Additional Public Prosecutor submits that he has police papers with him, which show that there is material against the applicant and therefore, the police proposed to invoke Sections 376(2) (n), 377, 417 of the Indian Penal Code.

7. Learned Advocate for the non-applicant no.2 submits that perusal of the First Information Report would show that the consent was obtained by the applicant under the pretext of promise to marry and even twice, the abortion was required to be done only because the applicant was not ready for the marriage. Even on 16th January, 2024 because of the intervention of the applicant and his maternal uncle, she could not lodge the report which shows that force has been applied and therefore consent is not a free consent. He relies on the case of Sheikh Arif .Vs. State of Maharashtra; 2024 (4) SCC 463, in which it has been observed that “in view of the provisions of Section 375 of IPC, if the victim of the alleged offence of rape is not under 18 years of which, maintaining a sexual relationship with her consent, is not an offence. As held by this Court in Anurag Soni (Anurang Soni Vs. State of Chattisgraph (2019) (13) SCC 1), if the consent of the victim is based of misconception, such consent is immaterial as it is not a voluntary consent. If it is established

that from the inception, the consent by the victim is a result of false promise to marry, there will be no consent, and in such a case the offence of rape made out”.

8. He also relies on the decision in the case of Rajkumar Vs. State of Karnataka; 2024 SCC Online SC 257, wherein taking into consideration of the fact of this case, it was observed that they are accepting the view taken by the Co-ordinate Bench in Shambu Kharwar Vs. State of Uttar Pradesh; 2022 INSC 827/2022 SCC Online SC 1032 but, differentiating the same, taking into consideration the facts, it was observed that “a relationship may be consensual at the beginning but same state may not remain so far all time to come. Whenever one of the partners show their unwillingness to continue with such relationship, the character of such relationship at it was when started will not continue to prevail and, therefore by taking the view that the relationship had not remained consensual, they rejected the prayer to quash the FIR”.

9. Further, reliance is placed on the decision 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), whereupon taking into consideration the facts and almost on the similar line of *Rajkumar* (supra), the petition was dismissed. He relies on the decision by the Single Bench of Hon’ble High Court Punjab and Haryana in the case of Narendra Singh Vs. State of Haryana in CRM-46063-2021 decided on 3rd November, 2021 on the similar line.

10. It is to be noted that in XYZ Vs. State of Gujarat and another; 2019 (10) SCC 337, the three judge Bench of the Hon'ble Supreme Court after referring to the decision in Pramod Pawar (supra) observed that "whether in a given case power under section 482 of the Code of Criminal Procedure has to be exercised or not depends on the contents of the complaint and the material placed on record". Therefore, the facts are required to be considered to arrive at a conclusion as to whether they disclose the offence under Section 375 of the Indian Penal Code. As already the contents of the FIR are reproduced, we do not want to reproduce it again.

11. As regards the acts in the year 2019 are concerned, it can be seen that they were consensual in nature. Even it is to the extent that though there were family members in the house, yet the non-applicant no.2 used to call the applicant in her room and then they had sexual intercourse. It is to be noted that the FIR was lodged on 17th January, 2024 and on the next date itself her statement under section 161 of Code of Criminal Procedure has been recorded, which is nothing but the reproduction of the contents of the FIR. However, her supplementary statement is recorded on 10th March, 2024 and she states that due to fear of father and uncle, she had not given the further details. Then she had stated in her supplementary statement that she has accepted the initial facts that she got acquainted with the applicant on Facebook and thereafter they were in love relationship and started to meet each other. She had a desire that they should keep physical relationship after marriage. But as the applicant used to say that they are going to perform

marriage soon, they used to establish the physical relationship. She also states about two abortions undergone in December, 2020 and says that it was due to the medicine provided by him, the abortion had taken place.

10. As the entire police papers are produced, we have the occasion to go through the statement of the parents of the girl, which does not show anything regarding the fact that they were aware about the two abortions, which the non-applicant no.2 had undergone. In the supplementary statement dated 10th March, 2024 she says that on 8th October, 2020, the applicant had come to her house around 12 am and had established forcible sexual intercourse with her and then left the house but, he forgot his gun in her house. On the next date he came again and under the fear of gun he used to have sexual intercourse with her. She had then developed the story that he used to say to her that he is always keeping country made pistol (desi katta)/knife/gupti and therefore she got frightened that she would be killed, as the applicant has criminal mind. Then, again she says about refusal to marry and the incident dated 24th January, 2024, which alleges offence under Section 377 of the Indian Penal Code. Thus, it is to be noted that the story has been further developed. Supplementary statement has been then recorded. The family members were totally unaware about her relationship though it is her own story that the applicant used to come at her house in the night time and then used to have sexual intercourse. All these facts denote that the relationship was consensual as held in *Rajkumar* (supra). The relationship though initially consensual may not remain consensual later on but here taking into consideration the facts, which have been later on

developed by the non-applicant no.2, it appears that when the relationship became strained the First Information Report has been lodged with an ulterior motive.

11. From the police papers we could also get that when the police wanted to make inquiry with the friend of the non-applicant no.2, the non-applicant no.2 told the police that the friend has gone to Pune and also when she was asked to produce the chatting between herself and the applicant, she had not provided the same. This happened twice and when again the police had asked her to bring her friend, she told that the girl is frightened and has gone to her relative's house. One of the noting shows that when the non-applicant no.2 was asked to contact the said friend, then the non-applicant no.2 told that friend has stated that since she has been unnecessarily included in the episode, she is giving threat that the non-applicant no.2 should not bring police to her house. Thus, we are taking note of this conduct of the non-applicant no.2 and therefore, only on the basis of sole statement of the non-applicant no.2, we hold that the relationship was consensual in nature and therefore the case falls under the parameters laid down in the case of State of Haryana v. Bhajan Lal; 1992 AIR 604 for quashing the First Information Report as it would be unjust to ask the applicant to face the trial with such kind of evidence. We, therefore, by exercising our powers under Section 482 of the Code of Criminal Procedure, pass the following order.

i Criminal application no. 387 of 2024 is allowed;

ii First Information Report No. 53 of 2024 registered with Police Station Dahihanda, Tq. Akot, District Akola for the offence punishable under Sections 376, 376(2)(n), 377 and 417 of Indian Penal Code stands quashed and set aside against the applicant - Vipul @ Ram Praful Mhaisane;

iii. Rule stands allowed in aforesaid terms.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]