



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

CRIMINAL APPLICATION (APL) NO. 479/2022

Nitesh s/o Shambhu Pardhe,
Aged about 24 years, Occ. Service,
R/o. Chichkheda, Tq. Chichkheda,
Dist. Amravati.

At present post as Asipoy at Panagarh,
Tq. Duragapur (West Bengal).

APPLICANT.

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Kotwali, Amravati,
Tq. & Dist. Amravati.
2. XYZ, Victim,
Crime No. 920/2021,
Police Station, Kotwali,
Amravati, Tah. & Dist. Amravati.

NON-APPLICANTS.

Mr. D. S. Khushalani, Advocate for applicant.
Mr. N. Joshi, APP for non-applicant No.1.
Ms. J. A. Deshpande, Advocate (appointed) for non-applicant No.2.

CORAM

: **VINAY JOSHI AND**
MRS. VRUSHALI V. JOSHI JJ.

DATE

: **08.04.2023**

JUDGMENT : (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. By this application, the applicant is seeking to quash charge-sheet arising out of Crime No.920/2021 registered with Police Station Kotwali, Tq. and Dist. Amravati for the offence punishable under Section 376(2)(n) of the Indian Penal Code.

4. At the instance of report lodged by the informant lady aged 23 years, crime has been registered. It is informant's case that the applicant is step brother of informant's cousin sister. They met in the year 2018 and then relationship was developed. They used to telephonically chat with each other. The relationship continued for few years. On 03.03.2020, the applicant came to Amravati, called informant to meet him at lodging house. Both of them went to the lodging house, where they slept on bed after having food. Then, the applicant demanded for sexual relation and on assurance of marriage established sexual relations.

5. The informant stated that after few days i.e. on 15.03.2020, again both went to Badnera. They stayed at lodging house as usual, they slept on bed after having food. Thereafter, once again, the applicant demanded for sexual favour and by giving promise of marriage, had repeatedly established sexual relations. The informant went to the hospital where, the applicant was taking treatment and stayed there for

15 days. The parents of the applicant also agreed for marriage, but latter on, the applicant refused to marry, hence police report.

6. The learned counsel appearing for the applicant would submit that the First Information Report and material collected during the course of investigation makes out a case of consensual relationships. It is argued that the informant was in relationship for three years and on several occasions, she went with the applicant to the lodging house for sex. It is submitted that both being young, out their own wish, they had maintained relations and thus, it is not a case of obtaining consent under false pretext of marriage.

7. The learned APP as well as appointed counsel for informant resisted this application by contending that the consent vitiates since under false pretext of marriage, the applicant has obtained victim's consent. Moreover, there is material to indicate that both of them lived together in lodging house, where they established relationship. There are statements of witnesses who say about their proximity and relationships.

8. In order to find out prima facie case, we have to see whether circumstances indicate that since inception the applicant carried deceitful intention. It is apparent that the parties were in relationship for three years. Each time informant went at lodging house, had food and slept with stranger. Each time, she says that when they slept

together, he demanded sexual favour and on promise to marry, had established relation. It is difficult to understand as to how the informant went to the lodging house and slept with stranger. These circumstances itself indicates that she was very much consenting party to the entire episode. In this regard, reliance is placed on the decision of the Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608**, wherein the Supreme Court took review of earlier decisions and summarized the legal position in para 18 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.”

9. On similar line, reliance is placed on the decision of the Supreme Court in case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & ors, 2019 AIR (SC) 327**. In the said case, the Supreme Court has once again highlighted the distinction in between mere breach

of promise and false promise. The relevant observation made in para 20 are as follows:-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.”

10. In said case, the relationship was for quite some time and enjoyed each others company. The victim was well educated grown up lady. She maintained relations with accused for near about thee years. They had enjoyed physical pleasures on various occasion at different places. They went to different places, stayed together.

11. From perusal of the Police paper and the material produced in the form of charge-sheet, we are satisfied that the ingredients of offence alleged are not fulfilled. In view of that we deem it appropriate to invoke our inherent powers to quash the proceeding. Hence, application stands allowed. We hereby quash and set aside charge-sheet arising out of Crime No.920/2021 registered with Police Station Kotwali, Tq. and Dist. Amravati for the offence punishable under Section 376(2)(n) of the Indian Penal Code.

12. Application stands disposed of in above terms.

13. Fees be paid to the appointed counsel as per Rules.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)