



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

CRIMINAL APPLICATION NO.499 OF 2024

Manish s/o Venudhar Buradkar, aged
34 years, Occ- Interior Designer, r/o
Plot No.41, Amrapali Nagar,
Hudkeshwar Road, Nagpur.

...APPLICANT

VERSUS

1. State of Maharashtra, through
PSO Belatrodi Police Station, Nagpur.
2. XYZ, Age about years, Occ –
Airhostess, r/o ABC, Nagpur.

... NON-APPLICANTS

Shri R.K. Tiwari, Advocate for the applicant.
Mrs. Deshmukh, Addl.P.P. for the State.
Shri M.G. Pullarwar, Advocate h/f Shri A. Borkar,
Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 19.09.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.** Heard finally with the consent of

both sides.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure ('the Code) seeking to quash the criminal prosecution bearing Sessions Trial No.103 of 2024 arising out of First Information Report (FIR) No.642 of 2023 registered with the Beltarodi Police Station, Nagpur City for the offence punishable under Sections 376(2)(n), 342, 294, 323, 504 and 506 of the Indian Penal Code.

3. The applicant is principally facing prosecution for the offence of repetitive sexual intercourse by obtaining consent of the victim by deceitful means. Learned Counsel appearing for the applicant would submit that the FIR coupled with the material collected during the course of investigation would indicate that the contents of the report are maliciously false, made out of vengeance. He would submit that rather the material indicates that the informant made several false statements while lodging the report. It is submitted that the

very foundation of prosecution is false and on such nebulous material, the applicant cannot be compelled to face the ordeal of trial.

4. The application is resisted by the learned Counsel appearing for the informant as well as the learned Addl. Public Prosecutor by submitting that *prima faice* case has been made out. The informant has specifically stated that the applicant has obtained her consent by deceitful means. Moreover, this is not a stage to evaluate or marshall the worth of evidence, which is the domain of trial.

5. The facts in brief are that, the informant lady aged 23 years has lodged the report on 03.11.2023, on the basis of which crime has been registered. The Police carried the investigation, and on completion, filed the charge-sheet. It is informed that till date charges have not been framed. The informant lady has studied Interior Designing course. In the year 2021, she was doing internship, where she got

acquainted with her fellow colleague applicant Manish. It is her case that Manish pretended to be bachelor and on said pretext has proposed her for marriage. In the month of December, 2021 despite her resistance, Manish had physical relations with her in the service apartment of a Hotel. Later, she insisted for the marriage, however the applicant used to avoid the subject. The Informant discontinued her employment. The applicant insisted her to join at new establishment, which she did in the month of the year 2022. At that time, she learnt that Manish was married long back in the year 2014 and also having two daughters from the marriage. On query, Manish replied that he is about to take divorce.

6. It is alleged that in the month of April, 2022 Manish took informant to the service apartment at Besa under the pretext of site visit. He tried to make physical advances to which she resisted. However, Manish beat her and by putting her under threat of making viral her obscene photographs,

had sexually abused her. The informant stated that again in the month of July 2022, Manish took her to Hotel Arjun at Ganeshpeth, Nagpur, and established sexual relations. Rather on that day, he has confined the informant till the next morning. The informant got rid of the sexual harassment and to escape from the situation got married on 22.11.2022 with her erstwhile friend (not Manish).

7. After marriage, she started to reside at her matrimonial house at Bhiwapur, Taluka Umred, District Nagpur. In the month of November 2022, she has joined as a Cabin Crew Member in the Indigo Airlines. During the period of March 2023 to June 2023, she has undergone the training at Delhi. In the month of May 2023, Manish asked her to come back failing which threatened to expose her obscene photographs to her in-laws. The informant returned from Delhi and at that time, Manish confined her for 4 to 5 days in the office at Sakkardara and during said period sexually exploited her. Finally, the things went unbearable which

caused her to approach to the police for lodging the report on 03.11.2023. During the course of investigation, the Police have recorded statement of various witnesses and on completion filed charge-sheet.

8. It is applicant's case that, both were in relationship since long and it is purely a case of consensual relations. The Informant was well aware of his marital status but she willingly maintained extra-marital relations even after her marriage. The applicant stated that the false report is lodged with ulterior motive.

9. The entire thrust of the applicant Manish is on the electronic material, which he produced to expose the falsity of the police report. The applicant has produced several photographs, What's App chats and voice messages to impress that there was consensual relationship between two well educated adults. At the inception we may note that the informant has not disputed the printout of electronic

communication produced on record. While exercising our exceptional powers, we see no difficulty in going through the material, since the very object of investing inherent powers to this Court is to secure the ends of justice and prevent the abuse of the process of Court. Moreover, these Photographs, What's App chats forms a part of the charge-sheet, thus we can very well go through for the purpose of this petition.

10. In order to make out a case of consensual relationship, we have been taken through various printout of communication to which we are coming one by one. The applicant has produced photographs (pages 121-122) to show the friendly relations between the informant with the applicant's family. Particularly, our attention has been drawn to the photographs snapped on 12.12.2021 and 14.12.2021, wherein the informant was seen with the applicant and his two daughters. The purpose of showing these photographs is to falsify the informant's case that till March 2022, she was unaware about the marital status of the applicant Manish.

These photographs snapped prior to March 2022, particularly with the applicant and his two kids, heavily goes against the informant's statement that till March 2022, she was unaware about the marital status of the applicant.

11. The applicant has produced voice chats and messages exchanged in between the informant and the applicant's wife Kiran dated 17.07.2022 (page 124-127). These messages are clear enough to convey the close relations between the both. Rather the informant conveyed to Kiran that she was aware about the marital status, but she has a passion with her husband and desires to continue the relationship. The very fact that the informant was transacting with the applicant's wife itself discloses that she knows everything, but still she is not ready to leave the applicant. The Police have recorded statement of the applicant's wife Kiran, which has thrown much light on the episode. She stated that she came to know about illicit relations. She tried to convince the informant to spare her marital life, but the

informant was not ready to leave her husband. It is quite evident that there is no substance or ring of truth in the informant's contention that the applicant pretended to be bachelor and under threat maintained relations.

12. The applicant took us through various voice messages in between the both, and curiously in between the applicant with the informant's husband and sometime all three talked together (page 131 to 157). As per the informant's own case, she got married with someone else on 22.11.2022. In that context, we have seen the conversation in between the parties. Voice message dated 02.11.2022 was soon before the marriage in between all three, wherein the informant despite her engagement was conveying everything and was cursing her would be husband. Our attention has been invited to voice message dated 29.11.2022 i.e. after one week from her marriage, wherein she has expressed that she has relations with the applicant and asked her husband to accept and compromise the situation. Another voice message

dated 29.11.2022 (page 142) indicates that she conveyed to the applicant that her husband came to know that yesterday she had sex and on said count there was quarrel. The conversation is in series, but we have gone through some like part of conversation dated 06.04.2023 (page 156), wherein she has specifically expressed her love and relationship with the applicant though already married. Thus, it is evident from the entire material, which is a part of charge-sheet, that despite knowing applicant's marital status, she had maintained relations with him.

13. Learned Counsel for the informant would submit that both may be in relationship, but she has been exploited under the threat of making her photographs viral. In this regard, he took us through the statement of the informant's father-in-law (page 89), wherein he stated that on 29.05.2023, they had a meeting perhaps to resolve the issue. At the relevant time, applicant Manish made certain physical advances with the victim. When the father-in-law has

questioned, the applicant stated that he is in relationship with the informant and he would make viral her obscene videos and photographs. Similar statement of one Sushant (page 83) has been pressed into service. Pertinent to note that, the informant never spoke about such meeting dated 29.05.2023 and threats given to her in-laws as alleged. Rather these statements indicate that, threat was given to desist the informant's husband's family members from coming in the way of their relationship.

14. Looking the matter from another angle, we can understand that under threat a lady may submit herself against her wish, but it is unconscionable that continuously she was expressing her love in disregard to her own marriage. Obviously, that cannot be under a threat but it would expose the intimacy and relationship in between them. Rather most of the messages convey her instinct, zeal and passion for the applicant. Moreover, the chats indicate that despite her marriage, in total disregard to the sanctity of relationship, she

continued her extra-marital relations. Since inception, she expressed that she would be loyal to the applicant and not to her husband.

15. As regards to the allegation of her confinement in the month of May 2023 in the office at Sakkardara, we have been taken through two statements (page 84 and 85) of the office employees, who have stated that during the said period the informant returned from Delhi and at her own stayed in the office. During said period, she was quite free as she was moving out as and when she wishes. These statement shatters the very allegation that she was kept in confinement.

16. The informant is well educated lady. She was well versed with worldly affairs. She has joined Airline Company as a Crew Member meaning thereby she was not rustic lady rather was having a good ken of understanding. The informant's employment in Aviation Industry persuades us to presume that she is sagacious lady knows well worldly affairs.

The material indicates that she had knowingly maintained relations with her office colleague despite his marital status. On an often, they visited at various places to cater their physical need. Despite her marriage with someone else, she was keen in continuing relations with the applicant. In such a background, it is not possible to accept that under pretext of false assurance of marriage, she has been sexually exploited.

17. Facing a criminal trial may attract various disadvantages. In order to remedied the situation, this Court is vested with inherent powers. True, the powers are to be exercised sparingly in befitting cases, but Court should not be hesitant to step in when a deserving case is made out to achieve the very object of such powers. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

18. Taking over all view of the matter, it is evident that it is purely a case of consensual relationship. The allegations levelled in the FIR have been completely shattered by the

material, which is the part of charge-sheet. The case squarely falls in the category no.7 as laid down by the Supreme Court in case of *State of Haryana and ors. vs. Ch. Bhajan Lal and ors. AIR 1992 SC 604*. In these circumstances, continuation of prosecution amounts to abuse of the process of Court. The overwhelming material falsifies the informant's case, but tends to show that with ulterior motive case has been filed. Thus, it is a kind of case where the Court must exercise its inherent powers to secure the ends of justice.

19. In view of above, the application is allowed. We hereby quash and set aside the criminal prosecution bearing Sessions Trial No.103 of 2024 arising out of First Information Report (FIR) No.642 of 2023 registered with the Beltarodi Police Station, Nagpur City for the offence punishable under Sections 376(2)(n), 342, 294, 323, 504 and 506 of the Indian Penal Code.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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