



Judgment

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

**CRIMINAL APPLICATION [APL] No. 775 OF 2024**

Tushar s/o Arun Bangani,  
Aged about 30 years,  
Occupation-Business,  
R/o. At post – Patel Nagar,  
Tahsil and District-Amravati-444607. ... **APPLICANT.**

**VERSUS**

1.State of Maharashtra,  
through Police Station Officer,  
Police Station, Rajapeth,  
Tah. & Distt. Amravati.

2.XYZ (Victim) in Crime No.142/2024  
Aged about...years, Occ.: Nil,  
Police Station, Rajapeth,  
Tah. & Dist. Amravati-444607. ... **NON-APPLICANTS.**

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Mr. P.R. Agrawal, Advocate for the Applicant.  
Mr. A.B. Badar, A.P.P. for Non-applicant No.1/State.  
Mr. A.S. Ambatkar, Advocate for Non-applicant No.2.  
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CORAM : VINAY JOSHI AND  
VRUSHALI V. JOSHI, JJ.  
DATE : AUGUST 20, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

2. By consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

3. This is an application seeking to quash the first information report bearing Crime No.142/2024 registered with Police Station, Rajapeth, Amravati City, Amravati for the offence punishable under Sections 376 (2)(n), 417 and 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(1)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 on merits as well as settlement.

4. The informant a married lady aged 34 years has lodged a report alleging sexual assault under false pretext of marriage. It is

informant's contention that though she is a married having two children, but was staying separately from her husband due to differences. The applicant was of her old acquaintance with whom she has again developed relationship in the year 2021. The informant stated that during the period three years, time and again, the applicant has established sexual relations by giving promise to marry. However, finally he has refused to marry, therefore, the report.

5. The learned counsel appearing for the applicant would submit that this is a pure case of consensual relationship in between two adults. Our attention has been invited to the observations made by the Supreme Court in para 18 of the decision in the case of ***Pramod Suryabhan Pawar .vs. State of Maharashtra and another, (2019) 9 SCC 608***, 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."*

6. Besides that, it is submitted that the informant was married lady, her marriage was in subsistence and thus it is not probable that believing on the promise to marry, she has submitted herself to the applicant. Moreover, the informant has appeared through Advocate and filed reply stating that out of misunderstanding, she has filed report and now she do not wish to proceed with the prosecution.

7. Taking overall view of the matter, it is evident that the informant was well matured married lady having two children. During subsistence of marriage, she developed relationship with the applicant which continued for long three years. We find considerable force in the submissions about consensual relations, since informant was well aware that during subsistence of marriage, she cannot remarry and, therefore, the contention about promise is unacceptable. It is not a case that only for the reason of promise to marry, she gave her consent, but it reveals that there was long standing relationship. Moreover, the informant appeared before us and stated about their

relationship and filing of report due to misunderstanding.

8. Thus, the essential ingredients to constituting the offence of rape are not made out. In the circumstances, continuation of prosecution would be abuse of process of Court. In above peculiar facts, we are inclined to exercise our inherent jurisdiction to secure the ends of justice. In the circumstances, we proceed to pass the following order.

### **ORDER**

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.142/2024 registered with Police Station, Rajapeth, Amravati City, Amravati for the offence punishable under Sections 376 (2)(n), 417 and 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(1)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and proceeding arising thereof, is hereby quashed and set aside.

**JUDGE**

**JUDGE**