



Judgment

901 apl 1463.22

1

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

CRIMINAL APPLICATION (APL) NO. 1463/2022

Shrikant Gulabrao Wankhade,
Aged 43 yrs., Occ. Service,
R/o. Ramai Sankul Samarth
Nagar, Khamgaon.

... **APPLICANT**

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Khamgaon (City),
Tq. Khamgaon, Dist. Buldhana.

2. XYZ (Victim) in Crime No.225/2022,
registered by the Police Station
Khamgaon (City), Tah. Khamgaon,
Dist. Buldhana

} **Amendment as per
order dated 15.09.2023**

... **NON-APPLICANTS**

Mr. Cedric Fernandis Advocate with Mr. S.K. Wankhade, Advocate
for applicant.

Mr. B.M. Lonare, APP for non-applicant No.1.
Mr. R.D. Karode, Advocate for non-applicant No.2.

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

DATE : 14.03.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

2

Heard.

2. **Admit.**

3. By this application, the applicant is seeking to quash charge-sheet arising out of Crime No.225/2022 registered with Police Station Khamgaon City, Dist. Buldhana for the offence punishable under Sections 376, 376(2)(n), 354(C), 201, 506 of the Indian Penal Code, Sections 66(B), 67(C) of the Information Technology Act.

4. At the instance of report lodged by a married lady aged 36 years, crime has been registered. The informant was serving as an Assistant Teacher in Zilla Parishad Primary School. Her husband was also serving as a Teacher in the School. The applicant was Headmaster of the School who was acquainted with the informant's husband. During the period from 2018, the informant and her husband used to commute to Khamgaon by four wheeler of applicant. They had friendly relations with each other.

5. The informant stated that once the applicant called her at

3

his house. On her arrival, the applicant locked the door, expressed his desire and then on the point of knife had established sexual relations. The applicant also took her objectionable photographs. She stated that the applicant by giving a threat to expose photographs had repeatedly established sexual relations from the year 2019 to 2022. Sometime, the applicant used to commit sexual intercourse at informant's house as well as sometime she was called at his house for sexual relations. The informant stated that on 26.04.2022 and onward the applicant sent informant's obscene photos and messages to her husband and thereafter, the report on 29.04.2022.

6. The learned counsel appearing for applicant strenuously argued that this is a purely case of consensual relations. The applicant has produced printouts of WhatsApp messages exchanged by both which are running into four volumes. It is argued that both were in illicit relations from the year 2018 onward. The allegations of establishing relations on threat are false. The learned counsel took us through some of the messages exchanged by the couple to demonstrate consensual relations. As against this, the learned

4

counsel appearing for informant would submit that it is a matter of trial to see the worth of the WhatsApp messages. He would submit that though the relations may be consensual, however it amounts to offence of rape. In support of said contention, he relied on some decisions. We have gone through all the decisions, however those were purely on facts.

7. On the basis of facts of each case, it is to be decided whether prima facie case is made out. Reading of the First Information Report itself indicates that from the year 2018 to 2022, they had physical relations on umpteen time at different places. Sometime, the things were done at the informant's house whilst on several occasions, she went to the applicant's house for sexual relations. We have gone through the printouts of WhatsApp messages. It is evident that on a single day, there are hundreds of messages exchanged in between them. Most of the WhatsApp messages rather indicates the informant's desire in keeping relations. Some of the messages convey that the informant expressed her love towards the applicant. Some messages conveys that she has also conveyed her relationship to her sister. All above material

5

unequivocally conveys that it is a case of illicit relationship in between them.

8. Though the learned counsel appearing for informant argued that the applicant tried to blackmail her, but there is no material in the charge-sheet. It is difficult to accept that four years, the lady was submitting herself to the stranger even at different places.

9. Considering all above circumstances, we are of the considered view that it is a case of consensual relations which cannot be termed as an offence of rape. Taking the entire material collected during the course of investigation as its stand, still the ingredients to constitute the offence have not been made out. In view of that, it is a fit case to exercise our judicial discretion to quash the prosecution which is a sort of harassment. Hence, application is allowed. We hereby quash and set aside charge-sheet arising out of Crime No.225/2022 registered with Police Station Khamgaon City, Dist. Buldhana for the offence punishable under Sections 376, 376(2)(n), 354(C), 201, 506 of the Indian Penal Code, Sections 66(B), 67(C) of

the Information Technology Act.

10. Application stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)