



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

CRIMINAL APPLICATION (APL) NO.1067 OF 2023

Jagdish S/o. Chulbuldas Gadpayale

.Vs.

The State of Maharashtra, through its PSO Bhandara and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr N. R. Tekade, Advocate for the applicant

Ms Ritu Sharma, APP for the State/respondent Nos.1 and 2

Ms Archana Murray, Advocate (appointed) for respondent No. 3.

CORAM : G.A. SANAP J.

DATE : JULY 08, 2024

Heard finally.

2. In this application, the challenge is to the judgment and order dated 26.04.2023 passed by the learned Sessions Judge, Bhandara, whereby the learned Sessions Judge set aside the order passed by the learned Judicial Magistrate First Class, Bhandara dated 20.06.2022 whereby the application made under Section 156(3) of the Code of Criminal Procedure (for short 'the Cr.P.C.'), was rejected and directed the learned Magistrate to proceed with the said application, as per the provisions of Section 200 of the Cr.P.C.

3. The complainant is a serving police constable. According to her, the applicant/accused is married. It is

stated that they came into contact with each other and intimacy developed between them. The accused made a promise to marry her. Under the false promise to marry, he committed sexual intercourse with her. It is alleged that the accused is married. He concealed this fact from the complainant. It is stated that this crime was reported to the police. However, the FIR was not registered and therefore, she was constrained to file the application under Section 156(3) of the Cr.P.C. Learned Magistrate for the reasons recorded in the order dated 20.06.2022 rejected her application.

4. In the revision, the learned Sessions Judge, after granting an opportunity of hearing to the parties, held that the order rejecting the application under Section 156(3) of the Cr.P.C. cannot be interfered with. However, the learned Sessions Judge observed that the learned Magistrate ought to have treated it as a complaint and conducted the inquiry under Section 200 of the Cr.P.C., keeping in mind the serious allegations made in the complaint. Learned Sessions Judge, restored the said application and directed the learned Judge to exercise the other options in his discretion as provided under the Cr.P.C.

5. I have heard learned Advocate Mr N. R. Tekade for the applicant, learned APP Ms Ritu Sharma for respondent Nos.1 and 2/State and learned appointed Advocate Mr Archana Murray for respondent No.3. Perused the record and proceedings.

6. The Hon'ble Apex Court in the case of ***Kailash Vijayvargiya .v/s. Rajlakshmi Chaudhari and others***¹, has held that the Magistrate is required to examine, apply his judicious mind and then exercise the discretion whether or not to issue direction under Section 156(3) of the Cr.P.C. or whether he should take cognizance and follow the procedure under Section 202. It is further held that the Magistrate could also direct a preliminary inquiry by the police. This settled legal position has been taken into consideration by the learned Sessions Judge.

7. Learned Sessions judge observed that, keeping in mind the serious nature of the allegations, even after rejecting the application under Section 156(3) of the Cr.P.C., the Magistrate could have opted to exercise his discretion and proceeded ahead in accordance with the provisions of the Cr.P.C. In my view, the learned Sessions Judge, by his order, has not issued any specific direction to the learned Magistrate to proceed one way or

1 (2023) 6 SCR 135

the other in the matter. Learned Sessions Judge has observed that the learned Magistrate could explore the possibility of proceeding in accordance with the procedure provided under Section 200 of the Cr.P.C. It needs to be stated that the learned Sessions Judge agreed with the learned Magistrate that, on account of certain legal flaws, the order under Section 156(3) of the Cr.P.C. could not be passed. However, the learned Sessions Judge observed that those legal flaws could not be a hurdle to proceed under Section 200 of the Cr.P.C. In my view, the learned Sessions Judge was cognizant of the serious nature of the allegations. He, therefore, set aside the order. The reasons have been recorded. On going through the order, I do not see any substance in the revision application. It is accordingly **dismissed**.

8. Learned appointed advocate for respondent No. 3 is entitled for professional fees, as per the rules

9. The criminal application stands **disposed of**, accordingly.

(G. A. SANAP, J)