



Judgment

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

CRIMINAL APPLICATION [APL] NO. 1093/2023.

Shri Asaram Eknath Aware,
Aged 32 years, Occupation – Agriculture,
resident of at Post Matmal,
Tahsil Lonar, District Buldhana. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
Through Police Station Officer,
Lonar Police Station,
Tahsil Lonar, District Buldhana.

2.X.Y.Z.
Crime No.199/2023,
Police Station Lonar, Tahsil and
District Buldhana. ... **NON-APPLICANTS.**

Mr. G. Mate, Advocate for the Applicant.
Mr. S.B. Bissa, A.P.P. for Non-applicant No.1.
Mr. V.B. Rath, Advocate for Non-applicant No.2.

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

DATE : APRIL 18, 2024.

Rgd.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Admit.

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

2. This is an application seeking to quash the first information report bearing Crime No.199/2023, registered with Lonar Police Station, District Buldhana for the offence punishable under Sections 452, 376, 376[2][n] and 506 of the Indian Penal Code.

3. The informant, a married lady aged 25 years has lodged a report regarding the occurrence. It is the prosecution case that the applicant was neighbouring agriculturist. The informant used to do labour work in the field of the applicant. On 02.11.2022 in the afternoon the applicant rushed into the house of the informant and despite her resistance had forcible sexual intercourse. The applicant

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also threatened her for not to disclose the things, failing which she would face dire consequences. Then the things were repeated on and often for next 6 months. On 06.05.2023, while the informant went in the near by field to answer nature's call, the applicant again had forcible sexual intercourse against her wish. The informant did not disclose the things to her husband because of the fear. Finally at the things went unbearable, she disclose the happening to her brother and then she came to the police station with her husband and lodged the report.

4. The learned Counsel appearing for the applicant assailed the registration of the first information report by contending that it is purely a case of consensual relations in between two adults. For a period of 6 months both were maintaining extra marital relations, but, when the things were exposed to the husband of the informant, it resulted into lodging of the first information report. In support of defence, the applicant has produced certain documents.

5. The learned counsel appearing for the informant on the

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other hand justified lodgment of the first information report by stating that though there was forcible sexual intercourse out of fear the lady has maintained silence, and thus, it is a matter of trial.

6. Admittedly both were married, having adjacent land to each other. The informant specifically alleged that the applicant for a period of 6 months has sexually abused her against her will by putting her under threat. In order to demolish the case of informant, the applicant has produced copy of divorce petition filed by the husband of the informant (H.M.P.No.117/2023), wherein the husband has sought divorce on the ground of adultery as contemplated under Section 13[1][i] of the Hindu Marriage Act.

7. We have gone through the divorce petition which bears a specific stand of husband of informant that his wife i.e. the informant was having extra marital relations with the applicant. It is pleaded that the husband of informant tried to persuade her, but, she did not and was always talking on phone with the applicant. Finally on 25.02.2023, a meeting was arranged in which the

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informant admitted her relationship with the applicant. Besides that the applicant has produced call detail report [CDR] from the month of January 2023 to May 2023, to show that each day there were several calls between both. The said material loudly conveys that it is a case of extra marital relationship. It reveals that later on the divorce petition was withdrawn, but, the pleading itself discloses that there was a extra marital relations between two adults.

8. The case squarely falls in the category no.7 as laid down by the Supreme Court in paragraph no.108 of the judgment in case of **State of Haryana .vrs. Bhajanlal – AIR 1992 SC 6011**. It is one of the criteria to quash the proceedings when the prosecution is manifestly attended with malafides or maliciously instituted with ulterior motive. The contention of the informant about alleged forcible sexual intercourse is demolished by the credible documents filed by the applicant which are not denied. It is apparent that the informant and her husband have settled the dispute and thereafter, they have lodged the report with false contentions. In the circumstances, continuation of prosecution would amount to abuse

of the process of the Court. Hence, Criminal Application is liable to be allowed, we therefore, proceed to pass the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.199/2023, registered with Lonar Police Station, District Buldhana for the offence punishable under Sections 452, 376, 376[2][n] and 506 of the Indian Penal Code, is hereby quashed and set aside, against the applicant.

JUDGE

JUDGE