



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

CRIMINAL APPLICATION NO.1226 OF 2023

Niraj s/o Jogendra Dufare,
aged about 31 years, Occ- Service,
Permanent R/o Mundikota, Gondia –
441 911

... APPLICANT

VERSUS

1. The State of Maharashtra, through
Police Station Officer, Bhandara
Police Station, District Bhandara.
2. Complainant in FIR No.474/2022
registered at Police Station
Bhandara, District Bhandara.

... NON-APPLICANTS.

Shri Mahesh Rai, Advocate for the applicant.
Shri S.S. Doifode, Addl.PP. for the State.
Smt. C.S. Bhute (appointed), Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 21.03.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

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

3. By this application, the applicant is seeking to quash the Charge-sheet arising out of First Information Report bearing Crime No.474 of 2022 registered on 12.10.2022 with the Bhandara Police Station District Bhandara for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code.

4. The learned Counsel appearing for the applicant would submit that the FIR and material collected during the course of investigation, does not make out an offence alleged. It is submitted that reading of police paper indicates that it is a case of consensual relations between two adults and thus, continuation of prosecution is unjustified. The State as well as learned Counsel for the non-applicant no.2/informant resisted the application by stating that the informant lady has specifically stated about obtaining her consent under misconception of fact and thus, *prima facie* case is made out.

5. The crime has been registered on the basis of FIR lodged by the grown-up married lady aged 33 years. It is her case that she got married in the year 2011 however her husband died in the year 2015. While her husband was taking treatment, the applicant who was

husband's relative developed intimacy by showing sympathy. Both have exchanged their mobile number and were frequently talking with each other. Within six to seven months, the applicant has expressed his desire to marry with her. In the year 2016, both went to lodging house where by giving assurance of marriage, the applicant had sexual intercourse with her. Later on, at various places in different lodging houses sexual relations were maintained. Finally, in the month of October 2022, the informant learnt that the applicant got married with someone and therefore, the report.

6. We have gone through the entire police papers. It reveals from the FIR itself that from the year 2016 to 2022 for near-about 5 years, both were in relationship. Pertinent to note that both have maintained sexual relations at different places in different lodging houses. It is difficult to accept the informant's contention that each time under false promise of marriage, they had relations. In order to establish that the consent was given on the misconception of fact, the intention of accused must be of deceitful since inception. There is marked distinction between false promise and breach of promise.

7. Learned Counsel for the applicant relied on the decision of the Supreme Court in case of *Pramod Suryabhan Pawar vs. State of*

Maharashtra and anr. (2019) 9 SCC 608, wherein the Supreme Court has expressed that mere breach of promise does not amount for obtaining consent under misconception. In said decision after considering the earlier pronouncement, the position is summarized in paragraph 18, 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.”

8. On the similar line, reliance is placed on the decision of the Supreme Court in case of ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & ors, 2019 AIR (SC) 327***. In the said case, the Supreme Court has once again highlighted the distinction in between mere

breach of promise and false promise. The relevant observation made in para 20 are as follows:-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of

rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.”

9. In said case, both victim and accused were well grown up, fell in love and resided together for considerable period. The relationship was for quite some time and enjoyed each others company. When victim came to know that accused had married with some other woman, she lodged report. The facts, in hand are similar one as herein also the victim was grown up lady. She maintained relations with accused for near about five years. They had enjoyed physical pleasures on various occasion at different places. They went to different places, stayed together which conveys that the victim's consent was not actuated by some promise, but it was her desire.

10. From the perusal of the Police paper and the material produced in the form of charge-sheet, we are satisfied that the ingredients to constitute the alleged offence are not made out. In view of peculiar facts of this case, continuation of prosecution would be exercise in futility. Therefore, to secure the ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceeding. In view of above, the Criminal Application is allowed and disposed of.

11. Charge-sheet arising out of First Information Report bearing Crime No.474 of 2022 registered on 12.10.2022 with the Bhandara Police Station District Bhandara for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code is hereby quashed and set aside.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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