



Judgment

apl 1324.24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.  
CRIMINAL APPLICATION (APL) NO. 1324/2024

Dyaneshwar Kisan Nankar,  
Aged about 40 yrs., Occ. Business,  
R/o. Kinhhi Naik, Chikhali,  
Dist. Buldhana.

... APPLICANT

VERSUS

1. State of Maharashtra,  
through PSO, PS Amdapur,  
Dist. Buldhana.
2. XYZ Victim,  
Crime No. 35/2021,  
Amdapur, Dist. Buldhana.

... NON-APPLICANTS

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Mr. G. Ansari, Advocate for applicant.  
Mr. A. Badar, APP for non-applicant No.1.  
Mr. M. N. Ali, Advocate for non-applicant No.2.  
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CORAM : VINAY JOSHI AND  
MRS. VRUSHALI V. JOSHI, JJ.  
DATE : 13.09.2024.

**ORAL JUDGMENT (PER: VINAY JOSHI, J.) :**

Heard.

2. **Admit.**

3. This is an application seeking to quash criminal prosecution namely Sessions Case No. 24/2021 arising out of Crime No. 35/2021 registered with Police Station Amdapur, Dist. Buldhana for the offence punishable under Sections 376(1), 506, 452 of the Indian Penal Code on account of merits as well as settlement.

4. The informant is married lady aged 26 years has lodged report alleging offence of rape. It is her case that on 28.08.2020 in the evening, she was alone at her house along with kids. Around 08.00 p.m., the applicant who is village Sarpanch came to her house and under threat has sexually exploited her. On the very night, she has disclosed the things to her husband, however he neglected. The informant insisted for lodging report, but her husband did not cooperate her. Later, she filed application to the Superintendent of

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Police, but no cognizance was taken. Finally, on 28.01.2021 with the assistance of some lady Advocates, she went to the Police Station and lodged report. The Police have carried investigation and filed final report. It is informed that yet the Trial Court has not framed charge.

5. The learned counsel appearing for applicant would submit that it is purely a case of consensual relations. It is submitted that since husband was knowing about the relations, he did not cooperate for lodging report. Our attention has been invited to the bail order passed by this Court, wherein the said aspect was considered. Moreover, it is argued that for ulterior motive, after five months report has been lodged. On the other hand, the learned APP resisted this application by attracting our attention to the statement of victim recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure.

6. It is submitted that the informant is a married lady having two kids. She was having acquaintance with the applicant as resident of same village. The informant stated that the alleged occurrence took

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place on 28.08.2020. Though she has informed the things to her husband, as per her own contention, the husband neglected. The said very approach of the husband supports the defence argument that there was possibility of consensual relations.

7. Though informant stated that after few days she has applied to the Superintendent of Police, but the entire charge-sheet does not bear a material to support said contention. It is apparent that after long period i.e. five months from the alleged occurrence, report has been lodged. The statement of husband has been recorded who did not support the informant's contention made before the Magistrate that husband desisted her from lodging the report.

8. The informant lady has filed affidavit-reply stating that she has consensual relations with the applicant and now the matter has been amicably settled. Apart, the applicant has also pointed out from the bail order that in past, similar allegations were levelled by informant against one Pramod Giri, in which, later he was acquitted. Besides settlement, we have carefully examined the material on record

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and submissions made by the rival. We do not see any plausible explanation for such long delay of five months in lodging the report. Despite knowing the thing at the very day, the husband did not support the wife in lodging report. On the other hand, the applicant's contention that it is a case of extra marital relations seems probable as the husband has stated that he is desiring to take divorce.

9. In totality of circumstances, it is apparent that it was a case of extra marital relationship. Moreover, the informant wife has appeared and by reply stated about such relations. Since informant is not interested to go with the prosecution, there are high chances that she may not support the prosecution case.

10. Having regard to all above facts, continuation of prosecution would be abuse of the process of Court. In order to secure ends of justice, we deem it appropriate to invoke our inherent powers. The learned counsel for applicant made a statement that the applicant would deposit sum of Rs. 25,000/- for rotating the Police Machinery.

11. In view of above, application is allowed. We hereby quash and set aside criminal prosecution namely Sessions Case No. 24/2021 arising out of Crime No. 35/2021 registered with Police Station Amdapur, Dist. Buldhana for the offence punishable under Sections 376(1), 506, 452 of the Indian Penal Code on account of merits as well as settlement.

12. The applicant shall deposit sum of Rs. 25,000/- with the Government Pleader Library, High Court Nagpur within a period of two weeks from today.

13. Application stands disposed of in above terms.

14. Stand over to 27.09.2024 for noting compliance.

**(MRS. VRUSHALI V. JOSHI, J.)**

**(VINAY JOSHI, J.)**