



Judgment

apl1391.23

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

CRIMINAL APPLICATION [APL] NO.1391/2023.

Mitesh s/o Sanjay Rewatkar,
Aged 28 years, Occupation – Private,
resident of Nagar Parishad Shala No.5,
Near Dodkipura, Katol – 441302,
Tahsil Katol, District Nagpur
(Maharashtra State)
Mobile No.9075959294.

... **APPLICANT.**

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station M.I.D.C., Nagpur,
Tahsil and District Nagpur.
(Maharashtra State).

2.XYZ, Crime No.745/2023
Police Station MIDC,
Nagpur.

... **NON-APPLICANTS.**

Ms A.H. Dangre, Advocate for the Applicant.
Mr. S.S. Doifode, A.P.P. for Non-applicant no.1- State.
Ms F. Badani, Advocate [Appointed] for Non-applicant No.2.

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

DATE : JANUARY 03, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Admit.

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

2. By this application filed under Section 482 of the Code of Criminal Procedure, the applicant/accused is seeking to quash the charge sheet bearing Sessions Case No.554/2023 pending on the file of District Judge 11 and Additional Sessions Judge, Nagpur arising out of Crime No.745/2023 registered with MIDC Police Station, Nagpur for the offence punishable under Section 376[2][n] of the Indian Penal Code.

3. The learned Counsel appearing for the applicant would submit that the material collected during the course of investigation is totally inadequate to make out a prima facie case. Besides that it

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is submitted that the matter is amicably settled between the parties.

4. The facts in brief are that a lady, aged 23 years has lodged a report on 31.07.2023, which led the police to register the aforesaid crime and carry out investigation. It is informant's [victim] case that she has completed engineering and was serving as System Engineer with a private company. Since the year 2016, she was acquainted with the applicant. They used to meet frequently and thus love relationship developed. The applicant has expressed his love which she approved. In the month of March, 2022 the victim expressed her desire to meet the applicant by sending phone message. On 05.03.2022, they met in a cafe and thereafter both exchanged their willingness to marry. In the month of April, 2022 the applicant took the victim to a lodging house where by expressing desire to marry had established sexual relation. The victim became pregnant, however, the foetus aborted. Thereafter also they continued to meet each other. They use to visit different lodging houses where they had sexual relations. It is victim's case that each time the applicant assured for marriage and enjoyed sexual

relationship. Again in the month of July, 2023 she became pregnant and therefore, insisted for marriage. Since the applicant denied for marriage, she has lodged the report.

5. The learned Counsel appearing for the applicant would submit that the victim was well educated, grown-up lady, and she has consensually maintained sexual relations with the applicant. It is submitted that they were in deep love from last 7-8 years. Though both were desirous to marry and thus out of love and passion, they had relations which are purely consensual one.

6. On the other hand the learned A.P.P. resisted the application by submitting that the offence is of serious nature, therefore, quashing is not permissible. He would submit that the consent of victim was obtained under misconception of facts, and thus, it is no consent in the eyes of law. He would submit that samples were sent for DNA profiling and there is clinching material against the applicant.

7. The learned Counsel appearing for the applicant would submit that it is not a case of false promise to marry, but, the facts are indicative of consensual sex on account of love relation. Moreover, our attention has been invited to the reply filed by the victim stating that they were in love relationship and out of misunderstanding she has lodged the report. The learned Counsel has relied on the decision of Supreme Court in case of **Kapil Gupta .vrs. State of NCT of Delhi and another – Criminal Appeal No.1217/2022 decided on 10.08.2022**, wherein on account of settlement the offence punishable under Section 376 of the Indian Penal Code has been quashed by considering the non-inclination of the victim to go on with the trial.

The learned counsel appearing for the applicant has submitted that apart from settlement, the emerging facts are clear enough to convey that it is a case of consensual relation. In this regard, reliance is placed on the decision of the Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and anr. (2019) 9 SCC 608**. In the said decision, the Supreme Court took review of earlier decisions and summarized the legal position in para

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 similar line, reference can be made to the decision of 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 between mere breach of promise and false promise. The relevant observation made in para 20 are as follows:-

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“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 well educated grown up lady. She maintained relations with accused for near about six 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. Notably, though victim's child was aborted, still she continued with the relationship.

10. From perusal of the Police paper and the material collected during investigation, we are satisfied that the ingredients of offence alleged are not fulfilled. Moreover, the parties have mutually resolved the dispute therefore, the chances of conviction are remote and bleak. The victim has also filed reply stating that

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under misconception she has filed the report. In view of peculiar facts of this case, continuation of prosecution would be an exercise in futility. Therefore, to secure the ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceeding. Hence, the following order:-

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Sessions Case No.554/2023 pending on the file of District Judge 11 and Additional Sessions Judge, Nagpur arising out of Crime No.745/2023 registered with MIDC Police Station, Nagpur for the offence punishable under Section 376[2][n] of the Indian Penal Code is hereby quashed and set aside.
- (iii) Fees of the appointed Counsel be paid as per Rules.

JUDGE

JUDGE