



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

CRIMINAL APPLICATION (APL) NO. 1697 OF 2024

Shubham Raju Harne,
Age 33 years, Occupation – Business,
R/o. Flat No.14, Elegant Apartment,
Bhagyoday Nagar, Survey No.50/47,
Near Jamia Quadria Masjid, Kondhwa
Road, Pune – 411 048.

.... APPLICANT

VERSUS

1) State of Maharashtra,
through Police Station Sitabuldi,
District Nagpur.

2) XYZ (Victim).

.... NON-APPLICANTS

Mr. M.I. Haque, Counsel for the applicant,
Mr. A.M. Ghogare, Addl. P.P for non-applicant No.1,
Mr. A. Khwaja, Counsel for non-applicant No.2.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE OF RESERVING THE JUDGMENT : 04-12-2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 12-12-2024

JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Admit.** With the consent of the parties, the application is heard finally.

2. This is an application seeking to quash First Information Report No.890/2024 registered with Police Station Sitabuldi, Nagpur, for the offence punishable under Section 376(2)(n) of the Indian Penal Code.

3. Mr. M.I. Haque, learned Counsel for the applicant, and Mr. A. Khwaja, learned Counsel for non-applicant No.2, have submitted that the matter has been amicably settled between the parties out of court. Accordingly, non-applicant No.2 filed the affidavit, stating that “*the physical relationship between her and the applicant was consensual. However, she lodged the first information report against him due to a misunderstanding. Therefore, she does not want to proceed with the report and is ready to withdraw the criminal case.*”

4. Succinctly, the facts of the case are that -

In August 2021, non-applicant No.2 got acquainted with the applicant from ‘Tinder Dating App’. After that, they were on talking terms on WhatsApp, and intimacy was developed between them. Thereon, friendship was converted into a love relationship. Both used to meet each other as and when they got the opportunity. The first time, on 28-06-2022, the applicant visited her house and had sexual intercourse with her on the pretext that he would marry her. Afterwards, the things were repeated till 18-03-2024. For about two years, they were in a consensual sexual relationship. However, in April 2024, the petitioner got married to another girl and, therefore, on 26-08-2024, non-applicant No.2 lodged the report with Police Station Sitabuldi, Nagpur. Hence, the applicant filed this application.

5. Mr. M.I. Haque, learned Counsel for the applicant, has submitted that it is a case of consensual sexual relationship for about two years between the applicant and non-applicant No.2. Non-applicant No.2 is above 25 years of age at the time of the first incident and capable of understanding the consequences of the physical relationship. He has also drawn our attention to the affidavit filed by non-applicant No.2, wherein she has categorically stated that the physical relations between her and the applicant were consensual; however, due to a misunderstanding, she lodged the report. Therefore, she does not want to proceed with the complaint and is ready to withdraw the criminal complaint/case against the applicant. It is further submitted that though the applicant and non-applicant No.2 had a sexual relationship, the same was consensual and, therefore, cannot be termed as Rape. *Moreover*, non-applicant No.2/victim was a major, was well educated, and has secured a degree in engineering from the College of Engineering. She is doing service. She knew the consequences of the physical relationship. Therefore, he has prayed to quash the first information report against the applicant.

6. Non-applicant No.2/victim has appeared through learned Counsel, Mr. A. Khwaja, who identified her. Non-applicant No.2/victim admitted the contents of the affidavit filed by her. Non-applicant No.2 and her counsel supported the applicant's case and prayed to quash the first information report.

7. Considering the aforesaid submissions, record and the affidavit filed by non-applicant No.2/victim, it reveals that non-applicant No.2 categorically admitted that she was having a consensual physical relationship with the applicant. However, due to a misunderstanding, she has lodged the first information report, and therefore, she does not want to proceed with the same. Moreover, non-applicant No.2 has submitted that she wants to forget the past and for a better future; she has given no objection to quashing the first information report and the proceedings that would arise from the same.

8. This Court, in Writ Petition No.272/2022 (Ganesh Shankar Pilane V. State of Maharashtra and another), decided on 11-03-2022, under similar circumstances, has exercised the inherent power to quash the proceedings.

In the said case, the victim was minor; however, in the case in hand, the victim was major, well-educated, and aware of the consequences of the physical relationship. Therefore, the observations made in the said decision cover the case at hand.

9. Apart from this, we have examined the record. It reveals that the relationship between the applicant and non-applicant No.2 was developed from the Tinder Dating App. The same was converted into friendship, and afterwards, intimacy was developed between them, and, by the consent of non-applicant No.2, had a physical relationship with the applicant for

about two years. The same is admitted by non-applicant No.2/victim by filing the affidavit. However, she has lodged the report against the applicant due to a misunderstanding. It is to be noted that it is not a case of non-applicant No.2 that the applicant has forcibly exploited her by use of force.

10. With regard to the peculiarity of the fact that the relationship was consensual and due to misunderstanding, the report was lodged by non-applicant No.2. Since she has to forget her past and for a better future, she does not want to proceed with the first information report. In such an eventuality, we deem it appropriate to exercise our inherent powers to secure the ends of justice. Peculiar facts of the case show that both the applicant and non-applicant No.2 do not wish to continue with the prosecution. The laws are made to give justice and not disturb the people's lives. In such peculiar facts, we are inclined to exercise inherent powers.

11. In view of the above, the application is allowed. We hereby quash and set aside the First Information Report No.890/2024 registered with Police Station Sitabuldi, Nagpur, for the offence punishable under Section 376(2)(n) of the Indian Penal Code against the applicant.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)