



Judgment

apl1708.23

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

CRIMINAL APPLICATION [APL] No. 1708 OF 2023.

Sarfaraz Khan s/o Habib Khan,
Age 31 years, Occupation – Business,
resident of Mominabad Colony, Pandharkawada,
Taluq Kelapur, District Yavatmal
445001.

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APPLICANT.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Pandharkawada,
Taluq Kelapur, District Yavatmal
445001.

2.(XYZ) Victim in Crime No.946/2018
registered with Police Station
Officer, Pandharkawada,
Taluq Kelapur, District Yavatmal
445001.

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NON-APPLICANTS.

Shri F.R. Kashif, Advocate for the Applicant.
Shri M. Khan, A.P.P. for Non-applicant No.1/State.
Shri S.S. Sheikh, Advocate for Non-applicant No.2.(VC).

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

DATE : JANUARY 30, 2024.

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 criminal prosecution bearing Sessions Case No.34/2019 pending on the file of the Sessions Court, Kelapur arising out of first information report bearing Crime No.946/2018 registered with Pandharkawada Police Station, District Yavatmal for the offence punishable under Sections 376[2][n] and 417 of the Indian Penal Code.

3. The informant lady aged 24 years, has lodged the report alleging offence of repeated sexual intercourse. On the basis of said report dated 15.10.2018, the police have registered aforesaid crime and after completion of investigation filed final report. It is the case

of informant that she got acquainted with the applicant 4 years preceding to the lodgment of the police report. Love relationship developed in between them during the said period. The informant has stated that in the month of August, 2014 the applicant assured to marry and under said pretext had established sexual relations, despite resistance. The informant has further stated that the things were repeated on and often for next 4 years, but, finally the applicant refused to marry, therefore, the report.

4. The learned Counsel for the applicant would submit that it is purely a case of consensual relationship between two adults. He would submit that from 4 years preceding the report, both had relations which itself shows that out of love and passion the relationship was maintained. Our attention is invited to the aspect that the informant is well educated graduate lady, and was preparing for competitive examination. He would submit that having regard to the long standing relation it is not a case of obtaining consent by deceitful means.

5. We have examined the material collected during the

course of investigation. True the statement of informant was recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure, wherein she stated about alleged forcible sexual intercourse on the promise of marriage. On examination, it is evident that from the month of August, 2014 for next 4 years, both were in relationship. It is difficult to digest that on each and every occasion she has submitted herself to the applicant on same promise for marriage. There are no allegations that he has used force or compulsion. The informant never ventilated her grievance nor perceived suspicion though from 4 years, they had sexual relations.

6. In several decisions the Supreme Court after considering similar situation has expressed that there is marked distinction between false promise to marry and failure to perform the assurance. We may profitably refer to the decisions of Supreme Court in cases of - (1) **Pramod Suryabhan Pawar .vrs. State of Maharashtra and another – [2019] 9 SCC 608**, (2) **Dr. Dhruvaram Murlidhar Sonar .vrs. State of Maharashtra – 2019 AIR SC 327** and (3) **Amit Kumar Arun Kumar Singh .vrs. State of Maharashtra and another –**

2016 All MR (Cri) 1553. In the aforesaid decisions, it has been observed that when two adults are in relationship from long time it is indicative of consensual relationship.

7. We could not see from the material that only because the applicant has assured for marriage, the informant has succumbed to his wishes. Rather it is evident that both were educated young people and out of love and passion the relationship continued for long 4 years. Moreover, the informant lady has filed an affidavit stating that out of misconception she has lodged report and she has no objection to quash the proceedings. Keeping aside her no objection, we have examined the entire material and we are of the considered opinion that it is a case of consensual relationship and thus, a prima facie case to constitute the offence of rape has not been made out.

8. In view of above, Criminal Application needs to be allowed, hence the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.

- (ii) The criminal prosecution bearing Sessions Case No.34/2019 pending on the file of the Sessions Court, Kelapur arising out of first information report bearing Crime No.946/2018 registered with Pandharkawada Police Station, District Yavatmal for the offence punishable under Sections 376[2][n] and 417 of the Indian Penal Code, is hereby quashed and set aside.

JUDGE

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