



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

Criminal Writ Petition No.520/2024

Mangesh Mrinmay Mandal,
Aged about 28 years, Occ.-Project Manager,
Mahindra and Mahindra,
R/o. Dinkar Nagar Arjuni Morgaon, Gondia
currently residing at celestial City raved Pimpri Chinchwad
Municipal Corporation Pune. Petitioner.

Versus

1. State of Maharashtra, through Police Station Officer
Police Station Keshori, District Gondia.
2. X.Y.Z. Victim in F.I.R. Crime No.29/2024,
Registered at Police Station Officer, Police Station,
Keshori, District Gondia. Respondents.

Mr. Akshay Sudame, Advocate for petitioner.
Mr. D.V. Chouhan, Public Prosecutor for respondent no.1.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ
Date : 02-07-2024.

J u d g m e n t (Per Smt. Vibha Kankanwadi, J.)

. The petitioner by invoking the constitutional powers of this Court under Article 226 of the Constitutional of India and inherent powers under Sections 482 and 483 of the Code of Criminal Procedure ('Cr.P.C.', for short), prays for calling the record and proceedings pertaining to the FIR lodged by respondent no.2 against him for the offence punishable under Section 376(1)(2)(n), 417 r/w 34 of the Indian Penal Code, 1860 ("IPC", for short) and to quash and set aside the same.

2. Heard learned Counsel for the petitioner and learned Public Prosecutor, after learned Public Prosecutor waives for respondent no.1. After hearing them, we do not find that case is even made out for issuing notice to respondent no.2.

3. Learned Advocate for the petitioner vehemently submits that the respondent no.2 is a adult girl. She knew the petitioner since 2023. She also says that after they had approved each other, when the marriage proposal was given, even a function was organized to declare that their marriage is settled. In presence of relatives the marriage date was fixed as 09-05-2024. However, then she says that the petitioner sought sexual favour from her and they indulged in the said acts. However then she says that, thereafter the marriage was called off that means whatever acts were done between the petitioner and respondent no.2 were with consent. Prior to the FIR in question respondent no.2 had gone to Police and lodged non-cognizable report for the offence punishable under Section 504, 506, 507 of the IPC on 22-03-2024. She could have lodged the report in respect of offence under Section 376 and 417 on 22-03-2024 itself, but she did not do that. This shows the *malafide* intention on her part. It appears that there were growing differences between the petitioner and respondent no.2 after they had engaged; and in fact they were in live-in relationship from November, 2023. It cannot be said that any act was against her wish or her consent was taken by cheating her. The ingredients of the offences are not made out. After relying on **Pramod Suryabhan Pawar vs State of Maharashtra and another**, reported in **(2019) 9 SCC 608**, he submits that the FIR deserves to be quashed and set aside.

4. At this stage, we are required to consider the *prima facie* contents of the FIR as the investigation is still pending and it is at preliminary stage. It is required to be seen whether on the face of the record, whether that FIR makes out the ingredients of the offence or not. For that purpose we are required to consider the facts. In the nutshell it is stated that, the petitioner saw the bio-data of the informant on an on-line matrimony website. They exchanged their mobile numbers and thereafter started talking to each other. Enquiry was made in respect of the families and then the families decided that there should be marriage between the petitioner and the respondent no.2. A function was organized to fix the date of the marriage which was attended by the relatives and thereupon date of the marriage was fixed. Definitely she says that, thereafter upon the suggestion by the parents, she shifted to Pune, where the petitioner was staying by leaving her job at Bengluru. It is then stated that at the time of taking flat it was represented to the flat owner that they are husband and wife. She then states that when the petitioner sought sexual favour from her, she had refused. She specifically states that the petitioner told her that when they are about to get marry and then by force he had sexual intercourse with her. The marriage was fixed on 09-05-2024, but it was refused by the petitioner on 24-02-2024. Now though it was not expected, but when the petitioner wants to invoke the constitutional as well as inherent powers, has not stated as to why he refused to marry the respondent no.2. According to the petitioner, it is a cooked up story. We cannot go into the real story at this stage. In the pleadings the petitioner is not saying that, there was no sexual intercourse between him and her. Further if he wants to say that the act was with consent, then there has to be a specific pleading to that effect, otherwise the facts

would be brought on record and the petitioner would be having an opportunity to cross examine the respondent no.2.

5. The petitioner cannot take help of the decision in Pramod Pawar (supra) for the simple reasons that it is observed in this case itself that 'where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eyes of the law' -- 'Where this Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action'.

6. Reference has also been taken from the observations in *Kaini Rajan vs State of Kerala*, reported in (2013) 9 SCC 113, wherein it was held that "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. Those circumstances would be in the trial itself and not prior to that'.

7. The other earlier criminal prosecutions filed by the respondent no.2 may help the petitioner in the trial but, at this stage she has a choice to explain as to why she had not lodged the FIR involving Sections 376 and 417 of the IPC in the beginning itself. As regards why she has lodged the report on 29-03-2024 is concerned, she has stated that she was hoping that the petitioner would marry her on one or the other day. How to assess the so called delay would depend on the trial Court, and therefore that cannot be taken as even one of the grounds to quash the FIR. The present petition appears to be at a very premature stage; and therefore on the available material before us, we are of the opinion that no case is made out for exercising either the constitutional powers or inherent powers of this Court.

8. Petition stands dismissed.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)