



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

CRIMINAL APPLICATION (APL) NO. 344 OF 2024

Pramod s/o Balram Kherde,
Aged about 50 yrs, Occ. Business,
R/o Flat No. 202-B, Chintamani
Complex, Besa Road, Nagpur

..... **APPLICANT**

...V E R S U S...

1. State of Maharashtra,
through Police Station Officer,
Hudkeshwar, Nagpur, Dist. Nagpur

2. XYZ (Victim in Crime No. 561/2023)'
Through PSO HuDkeshwar, Nagpur

.....**NON-APPLICANTS**

Mr. A.M. Chandekar, Advocate for Applicant.
Mr. V.A. Thakare, APP for non-applicant Nos.1 & 2/State.
Mr. S.M. Wandre, Advocate for non-applicant No. 2.

CORAM:- AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.
DATE : 17.12.2024

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

Heard finally with the consent of the learned Advocate
for the parties.

2. The applicant has invoked the inherent jurisdiction of
this Court u/s 482 the Code of Criminal Procedure to quash the First
Information Report dated 17.07.2023 (for short- 'FIR') bearing
Crime No. 561/2023, registered with Police Station, Hudkeshwar,

Nagpur for offences punishable under Sections 376, and 376(2) (n) read with Section 34 of the Indian Penal Code (for short-“*IPC*’,) read with Section 3(1)(W)(i)(ii), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and filing of the Charge Sheet bearing No.286/2023 pursuant to the said ‘*FIR*’.

3. **Factual Matrix:-**

a) On 17.07.2023, non-applicant No. 2 lodged a report against the applicant and one Hemraj stating that they had good investment plans with them and took her to the applicant’s house, where both the accused drank alcohol, and the applicant offered her a cold drink and asked her to go to the bedroom and drink it. She, accordingly, went inside the room, where she was raped by accused No. 2 Hemraj under the influence of liquor. However, at the applicant's request, she did not complain.

b) In the meantime, the applicant developed friendly relations with non-applicant No. 2. He used to help her with household work. Thereupon, the applicant had sexual intercourse with non-applicant no.2 by giving false assurance to her that he would marry her after obtaining a divorce from his wife, the result of which she became pregnant. She informed the said fact to the

applicant, but he asked her to abort. Afterwards, she learned that the applicant was having a relationship with another lady, Mamta when she was caught holding them red-handed. At the suggestion of the applicant, the fetus was aborted, and then non-applicant No. 2 lodged this report. Based on the report, the offence vide Crime No. 561/2023 came to be registered against Hemraj as stated above.

4. The Investigating Agency conducted the investigation and, upon its completion, filed a charge sheet against the applicant and Hemraj. During the investigation, IO recorded statements of witnesses and non-applicant No. 2 under Section 164 of the Code. Aggrieved by this, the applicant has filed this application for quashing the same.

5. Mr. Chandekar, the learned Counsel for the applicant, vehemently contended that the applicant had not committed any offence, but the entire story was concocted and false. Non-applicant No. 2 was blackmailing and harassing the applicant for extracting money from him. Hence, he lodged a report on 16.06.2023 to give a setback to said report. Non-applicant No. 2 has filed this false complaint; in fact, the applicant has not committed any of the

offences. It is canvassed that even assuming that the physical relationship was established between them out of the love affair and was consensual. The applicant never promised her to marry her as alleged, and therefore, even if the averment of FIR has been taken as it is, it does not constitute the case as alleged. Hence, he has urged to allow the application.

6. *Per contra*, the learned APP for respondent No.1 /State and Mr. Wandhare, the learned Counsel for non-applicant No. 2, strenuously argued that bare perusal of averment in the FIR and charge sheet itself denotes the commission of the offence by the applicant and Hemraj. Non-applicant No.2 has categorically alleged that the applicant, under the false promise of marriage after the divorce from his wife, developed a physical relationship with her. This fact is also supported by a DNA report produced on record; therefore, the applicant has failed to make a case for quashing the FIR.

7. We have appreciated the rival contentions of the learned Counsel for both sides and perused the FIR and the Charge sheet.

8. It is undisputed that the applicant was a married person. Besides, he established a physical relationship with non-applicant No. 2 under the misconception that he would marry her after obtaining a divorce from his wife. A bare perusal of FIR and the statement of non-applicant No. 2 recorded u/s 164 of the Cr. P. C (for short- "*the 164 statement*"), prima facie, denotes that the applicant, under the pretext of the false promise of marriage, developed physical relations with the non-applicant No. 2. In the 164 statement, non-applicant No. 2 further alleges that Pramod was having a physical relationship with one Mamta. She got them red-handed on the bed. The applicant has also abused her on her caste name. Prima facie said averment itself is sufficient to make out the offence as alleged. Besides, the applicant was married. The applicant had sexual intercourse with non-applicant no.2 by giving false assurance to her that he would marry her after obtaining a divorce from his wife, the result of which she became pregnant. *Moreover*, the alleged consent is said to have obtained by the applicant was not voluntary consent, and the applicant indulged in sexual intercourse with her by misconstruing to her his true intentions. This fact clearly denotes that the accused/applicant was merely intending to indulge in sexual intercourse with her. The

aforesaid averment in the FIR is corroborated by the DNA report dated 05.02.2024. The report shows that the applicant and non-applicant No. 2 were biological parents of the abortions of non-applicant No. 2/victim. Prima facie ingredients of Sections 375 and 376 of the IPC have been made out.

9. Apart from the above, it is a settled position of law that the sole testimony of the victim if found trustworthy, is sufficient to convict the accused, and no corroboration by other witnesses is required. It appears that the application against the applicant prima facie makes out the ingredients of Sections 375 and 376 of the IPC; therefore, in our view, it would not be proper to invoke inherent powers in favour of the applicant. Hence, the application is dismissed. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)