



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

CRIMINAL APPLICATION (APL) NO.1040/2024

Harshal Rajendra Dakore,
Aged about 31 years, R/o Ward No.2,
Loni, Tq. Loni, Dist. Amravati.

....APPLICANT

...VERSUS...

1. State of Maharashtra, through
Police Station Officer,
Police Station Sadar,
Tq. Dist. Nagpur.
2. Bhagyashree Rajesh Saneshwar
Aged about 33 years
R/o Block no.8, Juna
Mangadwari, Gangabai Ghat
Road Mantagpura, Near Boudh
Vihar, Lakadganj
Tq. And Dist. Nagpur

...NON-APPLICANTS

Shri S.P. Bhandarkar, Advocate for applicant
Ms S.S. Jachak, Addl.P.P. for respondent No.1
Shri Yash Bhelande, Advocate for respondent No.2

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

DATED : 07/08/2024

ORAL JUDGMENT (PER : VINAY JOSHI, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of learned Counsel for both the parties.

3. This is an application seeking to quash criminal prosecution case (Special Case No.393/2024) arising out of Crime No.289/024 registered with Police Station Sadar, Nagpur for the offences punishable under Sections 376 (2)(n) and 417 of the Indian Penal Code and Section 3(1) (w)(i)(ii), 3 (2)(v) of the Prevention of Atrocities Act, 1989 on merits as well as due to settlement. It is informed that yet the learned Trial Court has not framed the charges.

4. At the instance of informant lady, aged 33 years, the crime has been registered. The informant got married in the year 2015 with someone else and she had a son from said wedlock. Since informant's marriage does not run smoothly, she started to reside separately from the year 2021 and obtained a divorce in the

month of May 2024.

5. It is informant's contention that somewhere in the month of October 2021, she got acquainted with the applicant through facebook. Both were frequenting with each other on social media and then developed love relationship. In the month of October, 2022, the applicant took her at his room and by giving promise to marry had sexually exploited. Later on, the things were repeated on an often, they also visited lodging houses where they had established sexual relations. Finally in the month of April, 2024, the applicant denied for marriage and, therefore, the report. The police have completed investigation and filed chargesheet.

6. The learned Counsel appearing for applicant would submit that it is a case of consensual relation in between two adults. It is argued that the informant was well matured lady and with her own volition of mind, she maintained the relationship with the applicant and thus it is not a case of false promise to

marry.

7. We have gone through the First Information Report from which it is evident that informant is aged 33 years, having a son aged 8 years. It reveals that during subsistence of her first marriage, she has developed a love relationship with the applicant and also during existence of first marriage, she had established sexual relations with the applicant. Not only that they were intermittently establishing relations for the period of 2 years at different places and sometimes at lodging houses. Pertinent to note that the alleged occurrence first time took place in the month of October, 2022, the informant did not raise any grievance, but submitted herself for next 2 years. It reveals that both had developed intimacy and as they were planning to marry, the relationship developed.

8. Learned Counsel appearing for applicant relied on the following decisions:

1) *Rahulsingh s/o Balbirsingh Sengar Vs. State of Maharashtra*

and another, 2014 ALL MR (Cri.) 2889

2) *Mr. Binoy Kodyeri Vs. State of Maharashtra and Ors. In Criminal Writ Petition No.3670/2019*

3) *Prathamesh Surendra Sohale Vs. State of Maharashtra and Ors. In Criminal Application (APL) No.480/2023*

4) *Kapil Gupta Vs. State of NCT of Delhi and Anr. 2022 (8) W.L.C. 587*

5) *Pramod Suryabhan Pawar Vs. The State of Maharashtra and Anr. 2019 (4) J.K.J. 233*, to contend that it is a case of love relationship, which does not have an element of deception. Particularly we have adverted to the observations made by the Hon'ble Supreme Court in case of *Pramod Pawar (supra)* of which paragraph 18 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."

9. Likewise in case of *Dhruvaram Murlidhar Sonar V. State of Maharashtra, 2019(1) RCR (Criminal) 674*, it has been explained that the promise to marry must have been a false promise, given in bad faith with no intention to perform. The penal provision would attract if since inception, there was intention to deceive and the lady has given consent only because she relied on the promise. Taking overall view of the matter, it reveals that it is a case of relationship with consent.

10. Apart from that, the informant herself has appeared before us and reiterated that it was consensual relationship and out of misconception, she has lodged the report. She has also filed an affidavit stating the said fact. Learned Counsel for applicant would submit that the applicant is ready to deposit sum of Rs.20,000/- towards costs as the police machinery has been rotated.

11. The First Information Report and the material collected during the course of investigation, does not make out a *prima facie* case to constitute the offence alleged. In the circumstances, continuation of prosecution would amount to abuse of the process of Court. In view of that we pass the following order:

ORDER

- i) The Criminal Application is allowed.
- ii) We hereby quashed and set aside the Criminal prosecution case i.e. Special Case No.393/2024, pending on the file of learned Additional Sessions Judge, Nagpur arising out of Crime No.289/024 registered with Police Station Sadar, Nagpur for the offences punishable under Sections 376 (2)(n) and 417 of the Indian Penal Code and Section 3(1) (w)(i)(ii), 3 (2)(v) of the Prevention of Atrocities Act, 1989.
- iii) The applicant shall deposit costs of Rs.20,000/- with Government Pleader Library within one week from today.

12. List the matter on 19/08/2024 for reporting compliance.

13. Rule is made absolute in above terms. No costs.

JUDGE

JUDGE

R.S. Sahare