



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 582 OF 2024

Mohammed Shamsul Hudda Mohammed Bashir,
Age : 34 Years, Occu. : Service,
R/o. Magdum Nagar, Nanded,
Dist. Nanded.

.... Applicant

VERSUS

1. The State of Maharashtra,
Through In charge of New Mondha
Police Station, Parbhani.

2. XYZ

.... Respondents

....
Advocate for Applicant : Mr. Mahesh K. Bhosale
APP for Respondent No.1-State : Mr. N.R. Dayama
Advocate for Respondent No.2 : Ms. Sayali Tekale

....

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

Dated : 15th July 2025

ORDER [PER SANJAY A. DESHMUKH, J.] :-

1. Heard learned Advocate for both sides as well as learned
APP for the State.

2. This is an application for quashing the First Information
Report (hereinafter referred to as “the F.I.R.”) and charge-sheet in

Special Case No.123 of 2023, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), pending before the learned Sessions Court, Parbhani, arising out of Crime bearing No.0293 of 2023, registered with New Mondha Police Station, Parbhani, Dist. Parbhani, dated 23.08.2023, for the offences punishable under Sections 376, 376(2)(j) and 376(2)(n) of the Indian Penal Code, 1860 (hereinafter referred to as “the I.P.C.”) and Sections 3(1)(r)(s), 3(1)(w)(i)(ii) and 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (hereinafter referred to as “the Atrocities Act”).

3. Learned Advocate for the applicants pointed out the report dated 23.08.2023, in which respondent No.2/informant averred that she is residing with her parents, brother and sister. She is married. She has filed an application for divorce. In the year 2015, when she was serving as a nurse, she got acquainted with the applicant, who was a lab technician. They became friends and later on, love affair started between them.

4. The informant further averred in her report that on 15.06.2016, at 11.00 p.m., the applicant came to meet her at a house, where she was residing on rent. He made her to drink the liquor and

established physical relationship with her without her consent. Thereafter, he started to blackmail her by saying that he has photographs of her and by pressurizing, repeatedly subjected her to sexual assault. She requested him for the marriage, but he gave evasive answers and avoided to marry with her. On 18.08.2023, the applicant called the informant at Nanded Court to meet with an Advocate for consulting on marriage. They both went in the court at Nanded. When she asked him for the marriage, he said that he is going to call the advocate. Thereafter, he came with his friend and brother Mohammad Sohel. He said to Mohammad Sohel that she is forcing him to marry her and following him. Upon enraging on it, she brought the five bottles of All Out mosquito killer and consumed before him. Thereafter, the applicant and others fled away. She informed the said incident to her sister's son Sainath Sonkamle. He came there and took her for treatment at Asha Hospital.

5. The informant further averred in her report that, on 15.06.2016, the applicant again came to her and committed sexual intercourse with her. She requested the applicant for the marriage, however, he avoided. On 18.08.2023, at about 11.00 a.m., again she consumed poison and attempted to commit suicide.

6. The informant averred in the supplementary report that, in the year 2018, she came to know that the applicant is married. She questioned him about performing of marriage with her. He said to her that in Muslim community, multiple marriages are permitted, she is his first love and assured her to perform the marriage. In the year 2019, she got married. She lived and cohabited with her husband for six to seven months. As her husband was not working and only staying at home, she decided to take the divorce. The petition for divorce is pending in the Court. Once she called the applicant to meet outside. He took her on his motor cycle to a remote area at the farm house of his friend and assured her to perform the marriage and committed sexual intercourse with her. However, subsequently when she insisted for marriage, he refused. Therefore, she lodged the report.

7. Learned Advocate for the applicant submitted that the applicant is falsely implicated in the present crime. The informant had attended the marriage ceremony of the applicant in the year 2018. Therefore, there cannot be sexual intercourse under the pretext of marriage. They had a consensual relationship. The essential ingredients of rape, etc. are not established against the applicant. If

he is compelled to face the trial, it would certainly be an abuse of the process of the Court. It is lastly prayed to allow the application.

8. Learned APP for the State and learned Advocate for respondent No.2/informant strongly opposed the application and submitted that the applicant has repeatedly committed rape on the informant on the assurance of performance of marriage with her. When the informant insisted him for marriage, he refused. There are specific incidents mentioned in the F.I.R. that, from time to time, the applicant took the informant at different places and committed rape on her. In such fact situation, the powers under Section 482 of Cr.P.C. cannot be exercised. It is lastly prayed to reject the application.

9. We would like to rely on the decision of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another, [2019(9) SCC 608]***, wherein it is observed that, the consent with respect to Section 375 of the Indian Penal Code 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. The informant and the applicant met

regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions, then it was held that it cannot be said that acts fulfilled or occurred the offence under Section 375 of the Indian Penal Code punishable under Section 376 of the IPC was attracted. We are also taking note of the decisions in *Shambhau Kharwar Vs. State of Uttar Pradesh*, [2022 SCC Online SC 1032]. Of course this was differentiated on the facts in *Rajkumar Vs. State of Karnataka*, [2024 SCC Online SC 257]. However, the core is the same as that of *Pramod Suryabhan Pawar Vs. State of Maharashtra and Another (Supra)*.

10. We have gone through the charge-sheet, particularly the report and statements of witnesses. The witnesses have stated similar facts as stated by the informant in her report. From the face value of the report, it is crystal clear that, it is a case of consensual relationship between the informant and the applicant.

11. The informant in her report stated that the incident of 15.06.2016 occurred at about 11.00 p.m. At that time, the applicant came to her, made her to drink liquor, she felt giddiness and without her consent, he committed sexual intercourse with her. He snapped

her naked photographs. At that time, he assured that he will perform the marriage with her. The informant did not lodge the report of that incident. She has further alleged that repeatedly the applicant came to her and committed sexual intercourse with her upon the assurance of marriage. When the applicant refused, she consumed poison in order to commit suicide.

12. In her supplementary statement also, the informant has stated that the applicant committed forcible sexual intercourse with her by assuring to perform the marriage with her. Admittedly, the informant and the applicant/accused are of different religion. The FIR and the supplementary statement is silent on the point as to how they had planned to overcome the situation. There were opportunities in the past to her to go to police and lodge report; however, she has not taken that step. What was the history given by her, when she was admitted to the hospital after trying to commit suicide, has not come on record.

13. All these conducts of the informant show that it was consensual relationship between her and the applicant as per the general exception under Section 90 of the I.P.C. It is not the case of the informant that she was under fear of injury or under the

misconception of the fact that the applicant to have a sexual relationship with her. Therefore, in view of the law laid down in *Pramod Suryabhan Pawar (Supra)* and *Shambhau Kharwar and Rajkumar (Supra)*, the essential ingredients of rape as defined under Section 375 of the I.P.C. i.e. sexual relationship without the consent and against the will of the informant are not establishing. Further, it is not a case of the informant that her consent was obtained by putting her under fear of death.

14. In the case of *Deepak Gulati Vs. State of Haryana, [(2013) 7 Supreme Court Cases 675]*, the Hon'ble Supreme Court held that mere breach of promise of marriage without mala fide intention cannot amount to deception.

15. The essential ingredients of Section 376(2)(j) of the IPC are that whosoever commits rape, on a woman incapable of giving consent, are not establishing as the informant has not stated her incapability to give consent. Though Section 376(2)(n) of the IPC contemplates that rape has been committed repeatedly, in this case, the sexual intercourse between the informant and applicant occurred repeatedly with her consent and her consent was not obtained under fear of death or of hurt. The alleged sexual intercourse was not committed against her will and without her consent.

16. It is not in dispute that the informant belongs to Scheduled Caste. In the report and charge-sheet, it is not averred by the informant or stated by the witnesses that the applicant insulted and abused her intentionally in the name of caste within public view and touched her intentionally. The criminal intention on the part of the applicant is lacking as contemplated under Section 3(1)(w)(i)(ii) of the Atrocities Act. Further, he did not use the words or gestures of sexual nature towards the informant, who belongs to the Scheduled Caste to attract Section 3(2)(v) of the Atrocities Act. The essential ingredients of Sections 376, 376(2)(j) and 376(2)(n) of the I.P.C. and Sections 3(1)(r)(s), 3(1)(w)(i)(ii) and 3(2)(v) of the Atrocities Act are not established from the charge-sheet against the applicant.

17. Considering all these aspects, above reasons and the law laid down in the authorities cited supra, if the applicant is compelled to face the trial, it would certainly be an abuse of the process of the Court. We are, therefore, inclined to exercise our powers under Section 482 of the Cr.P.C. to quash the report and charge-sheet in the interest of justice to prevent the abuse of the process of the Court. The application deserves to be allowed. Hence, the following order.

ORDER

- I) The application is allowed.
- II) The First Information Report and charge-sheet in Special Case No.123 of 2023, pending before the learned Sessions Court, Parbhani, arising out of Crime bearing No.0293 of 2023, registered with New Mondha Police Station, Parbhani, Dist. Parbhani, dated 23.08.2023, for the offences punishable under Sections 376, 376(2)(j) and 376(2)(n) of the Indian Penal Code, 1860 and Sections 3(1)(r)(s), 3(1)(w)(i)(ii) and 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 stands quashed as against the applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd