



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

8 CRIMINAL APPLICATION NO. 601 OF 2025

Samadhan S/o. Sitaram Manmothe
Age: 30 Years, Occu. : Advocate,
R/o. Taktonda, Tq. Sengaon,
Dist. Hingoli.

.... Applicant

VERSUS

1. The State of Maharashtra
Through In-charge of Police Station,
City Chowk Police Station,
Tq. & Dist. Aurangabad.

2. XYZ

.... Respondents

....
Advocate for Applicant : Mr. Bharat S. Doifode
APP for Respondent No.1-State : Mr. A.D. Wange
....

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

Dated : 06th March 2025

PER COURT :-

1. The present application has been filed for quashing the charge-sheet i.e. proceedings in Sessions Case No.37 of 2025, pending before the learned Additional Sessions Judge-6, Aurangabad, arising out of the First Information Report (for short “the F.I.R.”) vide C.R. No.294 of 2024, registered with City Chowk Police Station, Aurangabad on 31.08.2024, for the offences punishable under

Sections 376, 376(2)(n), 507 of the Indian Penal Code, 1860 (for short “the I.P.C.”).

2. Heard learned Advocate appearing for the applicant. He has taken us through the contents of the F.I.R. and charge-sheet and submits that taking the case of the prosecution as it is, it can be seen that respondent No.2/informant is a twenty five years old lady, who was married and had daughter aged four years on the day when she lodged the F.I.R.

3. Respondent No.2/informant has stated that there was marital discord between herself and her husband. Therefore, she was residing separately and was pursuing her application for maintenance against the husband. She has further stated that her brother had introduced the applicant on 27.01.2022. The applicant is a practicing Advocate. Then, they had exchanged the mobile numbers and she says that she had developed friendship. The applicant used to talk about her maintenance case and used to give her assurance that everything will be alright.

4. Respondent No.2/informant has further stated that then the applicant had later on given her promise to marry. She says that she was resisting for the said proposal. But then, she says that, on

several occasions, she was taken to hotel and by giving promise to marry, physical relationship was established. Even she was pregnant from the applicant and then she was asked to abort. Ultimately, she says that on the last occasion i.e. on 20.05.2024, she asked him about marriage, but then, at that time, he told that he has no intention to marry with her and thus, the F.I.R. has been lodged on 31.08.2024.

5. According to the learned Advocate appearing for the applicant, respondent No.2/informant was asking for the money and when he refused, the F.I.R. has been lodged. It was also tried to be submitted that the relationship between them was consensual in nature and that is so observed while granting bail to the applicant. He then relies on the decision in **Mahesh Damu Khare Vs. State of Maharashtra and Another; 2024 SCC Online SC 3471** and then it is stated that after taking note of several earlier decisions, it was observed that “ In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man such as personal liking for the male partner without insisting

upon formal marital ties. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.”

6. Here, the investigation is completed and the charge-sheet is filed. However, taking into consideration the fact that the last physical relationship was stated to be in May 2024 and the medical examination is on 02.09.2024, there is least possibility of direct medical evidence. Here, we would like to say that the basic nature of medical evidence is always corroborative in nature and if the direct evidence is there, we may not rely on the medical evidence. Further, if there is discrepancy between the oral and medical evidence, then the law states that the oral evidence will prevail. This is prima facie opinion in respect of the medical evidence.

7. Now it has been tried to be stated that the relationship between the applicant and respondent No.2/informant was

consensual in nature, but, in the memo of the application, there is no such direct statement and only inference has been taken note of. Here, we would like to rely on **Ganga Singh Vs. State of Madhya Pradesh; 2013 Cri.L.J. 3966**, wherein the Hon'ble Supreme Court has stated that unless there is specific defence of consensual relationship, such defence cannot be inferred. When the questions were asked regarding this, the learned Advocate for the applicant had come up with a prayer to allow him to amend the application. The amendment cannot be based on the questions those have been asked by this Court.

8. In **XYZ Vs. State of Gujarat and Another; 2019(10) SCC 337**, the three Judge Bench of the Hon'ble Supreme Court after referring to the decision in **Pramod Suryabhan Pawar Vs. State of Maharashtra and Another; 2019(9) SCC 608**, has observed that "whether in a given case power under Section 482 of the Code of Criminal Procedure has to be exercised or not depends on the contents of the complaint and the material placed on record." Therefore, the facts are required to be considered to arrive at a conclusion as to whether they disclose the offence under Section 375 of the I.P.C. or not. Certainly the facts in **Mahesh Khare (Supra)** and the present case are different.

9. Here, we would like to harp upon the relationship. The applicant was stated to be introduced by the brother of respondent No.2/informant when there was dispute between the informant and her husband and when she had filed application for maintenance. The question then arises with the background in the F.I.R. that when the applicant had put the proposal for marriage, the informant had stated that she had bitter experience of earlier marriage and therefore, she has no intention to marry. Then, whether the consent was a clear consent or not as contemplated under Section 19 of the Indian Contract Act, 1872 would be a question. Even in **Pramod Pawar (Supra)**, it is observed 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 alternatives actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action”.

10. In the same line, we also take a note of a decision of the Hon’ble Supreme Court in *Shambhu Kharwar Vs. State of Uttar Pradesh; 2022 INSC 827/2022 SCC Online SC 1032*. However, the Co-ordinate Bench of the Hon’ble Supreme Court in *Rajkumar Vs. State of Karnataka; 2024 SCC Online SC 257* has observed by

differentiating that “a relationship may be consensual at the beginning but same state may not remain so far all time to come. Whenever one of the partner show their unwillingness to continue with such relationship, the character of such relationship as it was when started will not continue to prevail and, therefore by taking the view that the relationship had not remained consensual, they rejected the prayer to quash the FIR”.

11. Thus, the first and foremost fact is that the applicant has not come with a clear case of consensual relationship and only on the basis of observations by the bail court, he cannot be built up his defence. Taking into consideration the fact that the applicant was discussing the maintenance case of respondent No.2/informant with her, it can also to be said a fiduciary relationship whatever created and therefore, there has to be a trial when the informant says that whatever happened between them was against her wish. We do not take this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure, 1973. The application stands rejected at the threshold.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE