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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1263 OF 2024

Prashant Rameshchandra Darak

APPLICANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

.....
Mr. Swapnil S. Rathi, Advocate for the Applicant
Mr. S. J. Salgare, APP for respondent - State
Mr. V. A. Bagdiya, Advocate for Respondent No.2
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[CORAM : NITIN B. SURYAWANSHI, &
MANJUSHA DESHPANDE, J. J.]

DATE : 7th MAY, 2025

ORDER :

1. By this application, filed under section 482 of the Code of Criminal Procedure, Applicant seeks quashing of FIR in Crime No. 99 of 2016 registered with Kalamnuri Police Station, District Hingoli for the offence punishable under section 376 (2) (n), 312, 417 and 512 of the Indian Penal Code and proceedings of Sessions Case No. 30 of 2018 pending before learned Additional Sessions Judge, Hingoli. The Applicant seeks quashing of the prosecution on merits as well as on account of settlement with the victim / Respondent No.2.
2. The victim, aged 23 years, lodged FIR on 8th June, 2016 alleging that she is orphan residing with her aunt and younger

brother. In February, 2015, she had been to the shop of the Applicant along with her aunt Dhrupadabai to buy cloths. At that time, Applicant handed her a chit containing his three mobile numbers to her. She tore the said chit. On the same day, in the evening, her aunt disclosed to her that the Applicant obtained her mobile number from her. Thereafter time and again the Applicant used to call her on mobile, but she did not respond. One phone call was attended by her and the Applicant expressed his willingness to keep relations with her and promised that he will marry her. In the month of April, 2015, the Applicant had been to her house, when she was alone and he forcibly established physical relations with her. At that time, when she was going to police station for lodging report, the Applicant assured her that he will marry her. Thereafter, on every night, the Applicant used to come to her room and on false promise of marriage, used to have physical pleasure with her. In the month of February, 2016, she, along with the Applicant went to Shirdi and there also the Applicant continued to have physical relations with her. Due to the physical relations, she become pregnant and the Applicant gave her some tablets for termination of pregnancy. When she insisted for marriage, he disclosed that he is already married and cannot perform marriage with her. Therefore, she lodged the FIR against the Applicant.

3. Learned Advocate for the Applicant submits that, from the allegations made in the FIR and the material collected during the investigation, it is clear that relations between the applicant and the second Respondent, were consensual, therefore, no case for offence punishable under section 376 (2) (n) of the Indian Penal Code is made out. He submits that, there is no material on record to sustain charge under sections 312, 417 and 512 of the Indian Penal Code against the Applicant. There is amicable settlement between the Applicant and the Second Respondent and she does not wish to continue with the prosecution and she has given no objection for quashing of the prosecution against the applicant. Therefore, by relying on following citations, he submits that this is a fit case to quash the FIR and proceedings.

1. *“Kapil Gupta V/s State of NCT of Delhi and Another” AIR Online 2022 SC 1300.*
2. *Criminal Application No. 1107 of 2024 (“Ashwin Sahadeo Chinchulkar V/s State of Maharashtra and Another”) at Nagpur*
3. *Criminal Application (APL) No. 232 of 2021 (Praful Dhanraj Tembekar V/s The State of Maharashtra and Another”) at Nagpur*
4. *“Shivam Suraj Kapoor V/s State of Maharashtra and Another” AIR Online 2023 Bom 813*
5. *Criminal Writ Petition No. 2641 of 2022 (Tarun Pratapmal Lohar V/ State of Maharashtra and Another”) At Principal Seat*

6. *Criminal Application No. 743 of 2021 (“Mukesh Baban Rawtale @ Pawara V/s State of Maharashtra”) at Aurangabad*
7. *“Amit Kumar Singh V/s State of Maharashtra and Another” 2015 (1) Mh.L.J. (Cri) 344*

4. Learned APP has vehemently opposed the application submitting that the offence of rape being serious offence and offence against society, in the light of decision of the Apex Court in **“Daxaben V/s State of Gujraath and Others”, 2022 LiveLaw (SC) 642** prosecution against the Applicant is not liable to be quashed. He further submits that facts in **“Kapil Gupta”** (*supra*), are different. In the present case, charge is already framed and prosecution has examined one witness. Therefore, considering the stage of the Trial, the FIR and the prosecution is not liable to be quashed. In the alternate, he submits that, in case this Court is inclined to allow the application, then heavy cost be imposed on the Applicant and the second Respondent.

5. We have heard learned Advocate for the Applicant, learned APP for the State and learned Advocate for the Second Respondent – victim at length, perused the record.

6. The victim – Respondent No.2 is present in the Court. She states that her relations with the Applicant were consensual and she has lodged the FIR due to misunderstanding. She has compromised the matter with the Applicant and by forgetting the

past, she wants to move ahead in life. She may not be made to undergo agony of trial. She confirms that the consent given by her for quashing of the proceedings is voluntary, without any coercion and duress and she has no objection to quash the prosecution against the Applicant.

7. Admittedly, at the time of lodging of the FIR, the victim was 23 years old and the Applicant was 37 years old. Considering age of the Applicant, it is not possible to believe that the Applicant assured to marry with her and, therefore, she kept physical relations with him. Material on record indicates that relations between the Applicant and the victim were consensual. In the affidavit filed by the victim, consensual relations are admitted. She has further stated in the affidavit that she lodged the FIR due to dispute with the Applicant. Looking to her age and bright future, she does not wish that prosecution against the Applicant should continue. These facts are also confirmed by the victim in the court, which is clear from her statement that she has compromised the matter with the Applicant and by forgetting past, she wants to move ahead in life and she may not be made to undergo agony of trial and that consent given by her for quashing of the proceedings is voluntary and without any coercion or duress.

8. In the light of aforementioned peculiar facts, it is clear that relations between the Applicant and the victim were consensual and it appears that the FIR is lodged when relations went sour. She has categorically admitted that due to misunderstanding, she lodged the FIR. Since the victim has compromised the matter with the Applicant and she does not wish to face rigors of Trial, we are of the view that if in these facts, prosecution is permitted to continue, it will necessarily result in acquittal of the Applicant. Conducting of trial would be an empty formality and would be a futile exercise and it would amount to waste of judicial time and energy. Therefore, to secure ends of justice, we deem it appropriate to invoke our inherent powers to quash the proceedings against the Applicant.

9. A gainful reference can be made to the judgment of the Apex Court in **Kapil Gupta** (*supra*), wherein the Apex Court has quashed proceedings under section 376 of the Indian Penal Code against the Appellant therein, on the basis of compromise, observing that -

“Complainant felt that if she is made to face trial, rather than getting relief, she would face agony of undergoing trial. Considering that the Complainant was not supporting the prosecution case, even if criminal trial is permitted to go on, it would end in acquittal”.

10. We are conscious of the decision of the Apex Court in **“Daxaben”** (*supra*), wherein it is held that crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature and in no circumstance, can prosecution be quashed on compromise, when the offence is serious and grave and falls within the ambit of crime against society.

11. In **Kapil Gupta** (*supra*), the Apex Court has observed in paragraphs No.13 and 17 as under :

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

17. In that view of the matter, we find that though in a heinous or serious crime like rape, the Court should not normally exercise the powers of quashing the proceedings, in the peculiar facts and circumstances of the present case and in order to give succour to Respondent No. 2 so that she is saved from further agony of facing two criminal trials, one as a victim and one as an accused, we find that this is a fit case wherein the extraordinary powers of this Court be exercised to quash the criminal proceedings.

Applying aforesaid ratio to the facts of the present case, we find that in view of compromise, affidavit of the victim and her statement made in the open court, continuation of the prosecution will be a futile exercise and the case is likely to result in acquittal. By continuation of the prosecution, the victim would be required to undergo rigors of trial and it would be embarrassing for her to depose in the Court. In view of these peculiar facts and by relying on the aforesaid observations in ***Kapil Gupta*** (*supra*), we are inclined to allow this application.

12. Decision in Criminal Application No.1107 of 2024 (Ashwin Sahadeo Chinchulkar V/s State of Maharashtra) dated 12th March, 2025 is rendered in similar facts by Division Bench at Nagpur, to which one of us (N. B. Suryawanshi, J.) was a party, wherein proceedings against the Applicant therein for offence punishable under sections 376 (2) (n), 506 of the Indian Penal Code and under section 3 (1) (w) (i) (ii), 3 (1) (v) (5) and 3 (2) (va) of the Atrocities Act, were quashed by observing that;

“In view of the compromise arrived at between the parties and the affidavit, no useful purpose would be served by continuing prosecution against the applicant. Even if prosecution is permitted to continue, it would amount to waste of judicial time and energy and abuse of process of Court.”

13. This Court, in similar facts, has quashed prosecution under

section 376 of the Indian Penal Code, on the basis of compromise, in following cases:

- a. *Criminal Application No. 232 of 2021, (Praful Dhanraj Tembekar V/s State of Maharashtra) (Nagpur Bench)*
- b. *“Shivam Suraj Kapoor V/s State of Maharashtra” AIR Online 2023 Bom 813 (Nagpur Bench)*
- c. *Criminal Writ Petition No. 2641 of 2022 (Tarun Pratapmal Lohar V/s State of Maharashtra) (Principal Seat)*
- d. *Criminal Application No. 743 of 2021 (Mukesh Baban Rawtale V/s State of Maharashtra) (Aurangabad Bench)*

14. Applicant's case is squarely covered by these decisions.

15. At this juncture, we deem it appropriate to consider argument of the learned APP that, since charge is framed and one witness is examined in Sessions trial. In view of the observations made by the Apex Court in **“Kapil Gupta”** (*supra*) this is not the stage to quash the proceedings.

16. It is true that in the present case, charge is framed and one witness is examined, so far. Admittedly, in the charge sheet and sessions trial, the prosecution has cited 25 witnesses. In **“Narender Singh V/s State of Punjab” (2014) 6 SCC 466**, it is held:

“Likewise those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court

can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances / material mentioned above.”

Learned APP, in reply to our query, has stated that the witness examined by the Prosecution is a Panch witness.

17. Since only Pancha witness is examined in the present case, it is clear that evidence is still at infancy stage. Thus, it can be said that the trial is at initial stage and hence this Court can show benevolence in exercising its powers favourably.

On assessment of the material of the present case, we have already arrived at a conclusion that material on record clearly indicates that relations between the applicant and the victim were consensual and almost for more than one year they were in physical relations, either at the house of the victim or outside, which is confirmed by the victim in her affidavit as well as in the statement made in the open court. Therefore, she is not likely to support the prosecution case and hence the trial will necessarily result into acquittal. Conducting of the trial, therefore, would be a futile exercise. Hence, we are exercising extraordinary jurisdiction to quash the proceedings against the Applicant.

18. For the aforestated reasons, following order is passed

ORDER

- A. Criminal Application No.1263 of 2024 is allowed.
- B. FIR in Crime No. 99 of 2016 registered with Kalamnuri Police Station, District - Hingoli for offences punishable under sections 376 (1), 376 (2)(n), 312, 417, 512 of the Indian Penal Code and proceedings of Sessions Case No. 30 of 2018 pending before Additional Sessions Judge, Hingoli, are hereby quashed and set aside.
- C. Cost of Rs.1 lakh is imposed on the Applicant. Amount of cost should be deposited by the Applicant in Government Cancer Hospital, Chhatrapati Sambhaji Nagar (Aurangabad) within a period of four weeks from the date of uploading of this order.
- D. The second Respondent shall deposit the amount of Rs.1 lakh received by her towards compensation after lodging of the FIR in question, with the Government Cancer Hospital, Chhatrapati Sambhaji Nagar (Aurangabad) within four weeks from the date of uploading of this order.
- E. List the matter for compliance on 9th June, 2025.

[MANJUSHA DESHPANDE] **[NITIN B. SURYAWANSHI]**
JUDGE **JUDGE**