



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 CRIMINAL APPLICATION NO.1798 OF 2023

Rajkumar Gopal Poddar,
Age 35 yrs., Occ. Service,
R/o Railway Colony, Mukhed,
Tq. Mukhed, Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station Officer,
Police Station, Mukhed,
Tq. Mukhed, Dist. Nanded.
- 2 X.Y.Z.

... Respondents

...

Mrs. Sunita G. Sonawane, Advocate for applicant

Mr. V.K. Kotecha, APP for respondent No.1

Mr. S.R. Shirsat, Advocate for respondent No.2

...

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

DATE : 26th JUNE, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

- 1 Present application has been filed under Section 482 of the Code

of Criminal Procedure, 1973, for quashment of the proceedings in Sessions Case No.201/2022 pending before learned Additional Sessions Judge, Nanded, arising out of First Information Report vide Crime No.120/2022 dated 30.05.2022 registered with Police Station, Mudkhed, Tq. Mudkhed, Dist. Nanded, for the offence punishable under Sections 376(2)(n), 504, 506 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mrs. Sunita G. Sonawane for applicant, learned APP Mr. V.K. Kotecha for respondent No.1 and learned Advocate Mr. S.R. Shirsat for respondent No.2.

3 Learned Advocate appearing for applicant has submitted that applicant is the victim of dispute between him and father of informant. The applicant had extended hand loan of Rs.5,50,000/- and had given amount of Rs.30,000/- in the bank account of father of informant – prosecutrix and when the applicant demanded the said amount, he with the help of prosecutrix i.e. daughter tried to blackmail and, therefore, on 25.10.2021 a complaint application was given by applicant to Police Inspector, Police Station, Mudkhed. The said complaint application was also sent by RPAD and, therefore, it has reached in view of track consignment report. Even the applicant was not present when the alleged act of sexual intercourse is stated

to have been committed. He was on duty and in order to prove the same the applicant has filed the document on record.

4 Learned Advocate for applicant further submits that even if we take the contents of First Information Report as it is; yet, the offence under Section 376, 504, 506 of the Indian Penal Code cannot be said to have been made out. In that case, it would be a consent theory which shows that the prosecutrix had gone to Mudkhed in the residential quarter of applicant and she states that prior to that when she was travelling from the railway she met with applicant and during that journey itself the love developed between them. Even in First Information Report she states that she as well as applicant had travelled to Secunderabad where her father was serving and had taken residential quarter. She states that she as well as present applicant stayed there for two days and then all of a sudden she states that her mobile phone was damaged by applicant and sim card was destroyed. She has made allegations of becoming pregnant from the applicant, however, it appears that she had not even disclosed anything to her relatives. Therefore, it can be considered that First Information Report is nothing but the act of intentionally implicating the applicant. It would be then unjust to ask the applicant to face the trial.

5 Learned APP strongly opposes the application and submits that investigation is complete and there is sufficient evidence against the applicant. The applicant had given promise to marry which he knew that he won't be able to fulfil; yet, he obtained the consent under that pretext of marriage from the informant for the sexual intercourse and, therefore, such consent cannot be said to have been obtained legally. Therefore, this is not a fit case where the powers under Section 482 of the Code of Criminal Procedure should be exercised.

6 Here, in view of the scope of Section 482 of the Code of Criminal Procedure we are required to consider the material that has been collected by investigating agency. As regards plea of *alibi* is concerned, it would be required to be proved by the applicant and as to where the applicant was on 15.04.2021, which is the date alleged to be given of the first sexual intercourse between them. In her First Information Report, respondent No.2 – prosecutrix has stated that in March, 2021 her brother was to get marry and, therefore, she was proceeding from Intercity Express. She came to know the present applicant in said journey and then she says that while talking they developed love relation. This statement itself is unbelievable; yet, even if we take it as it is, it appears that thereafter they had exchanged the mobile numbers and used to be in contact. She states that she had invited the

applicant for marriage of her brother, which took place on 14.04.2021 and applicant returned on 15.04.2021. But on that day i.e. on 15.04.2021 she states that when they met in the marriage of her brother at Pangargaon Tanda, applicant told her that they would go to his residential quarter at Mudkhed and, therefore, she went along with him to Mudkhed around 12.30 p.m. She then states that in the said house of applicant by giving promise to marry the applicant had sexual intercourse with her. Here, the Investigating Officer has not collected the marriage invitation card of brother of prosecutrix, which would have given the time of marriage. In fact, when it was her brother's marriage how without attending the guests and the other rituals, which would have gone through by her brother, she could have left the marriage venue with applicant, is a question ? Therefore, this narration is unbelievable. Learned APP submits that the distance between Pangargaon Tanda to Mudkhed is 9 k.ms. Even if we accept that it was near from marriage venue; yet, it is hard to believe that by leaving the venue she would have left along with applicant.

7 In First Information Report prosecutrix further says that within 2-3 days her sister was ill due to Covid-19 and was admitted at Secunderabad. Prosecutrix was at Waghala Tanda, Umari and then she says that she along with applicant went to Secunderabad. Her father and relatives

were taking care of her sister and there was nobody in the residential quarter of her father where the applicant and prosecutrix resided for two days. She was insisting the applicant for marriage but by giving her promise he was taking excuse. She does not say that within the period of those two days there was sexual intercourse between herself and applicant. Thereafter, she says that she used to have talk with applicant on phone many times and each time the applicant used to give her promise to marry. They met each other at Mudkhed at several times and out of that many times there used to be sexual intercourse between them. At no point of time she has stated that she had at least passed on the information about the love affair between herself and applicant to her relatives. Then she says that a year prior to First Information Report on the first Monday in the Month of Shrawan she was called by applicant at Mudkhed and then he destroyed her phone as well as sim card. She is not stating why or by giving which reason the applicant had destroyed her mobile phone. Even this fact appears to have not been told by her to her relatives. Thereafter, she states that she was contacting applicant many times and again he used to give her promise to marry. She could sense that he was avoiding her and then when she became pregnant from him she says that he had given some tablet to her. However, in the First Information Report there is absolutely no clarification or statement that the said tablet had the effect of miscarriage. She then states that after some days when the applicant had

abused her father and another person, thereafter the First Information Report has been lodged. From these contents of First Information Report it can be seen that it is intentionally designed and this statement is in further consonance with the statement of prosecutrix under Section 164 of the Code of Criminal Procedure. In her statement under Section 164 of the Code of Criminal Procedure she states that she got to know the applicant in railway, however, at that time she was along with her father and they were coming from Secunderabad to Umari. The applicant took her mobile phone and thereafter they started talking with each other. The presence of father has not been told in First Information Report and in the statement of her father it is not the fact that he was with prosecutrix when prosecutrix got acquainted with applicant. In her statement under Section 161 of the Code of Criminal Procedure the details with dates are not given and only the statement is made that by giving promise to marry the applicant kept physical relations with her. In addition then she states that threat was given by applicant that he would make her photographs viral. She has also then stated in the said statement that she was made to get her aborted by applicant. Therefore, there is vast somersault in her story in the statement under Section 164 of the Code of Criminal Procedure.

statements of relatives i.e. father, mother, brother, sister of prosecutrix which is nothing but the copy paste. The important point as stated earlier that the prosecutrix either in her First Information Report or in her statement under Section 164 of the Code of Criminal Procedure has not stated that at any point of time she has disclosed about her relations with the applicant to her parents, sister, brother etc.

9 The Investigating Officer appears to have not interrogated/made inquiry with the applicant, who could have certainly stated about her complaint application dated 25.10.2021. In fact, that complaint application was given to Police Inspector, Police Station, Mudkhed itself. In the entire charge sheet there is no document which would show that as to what action was taken by Police Inspector, Police Station, Mudkhed on the said complaint application. Any investigation should be a fair investigation and not to be tainted with the statements or the documents those are produced by one party. Though certain statements or documents which may be produced during investigation by the side of accused would be inadmissible in evidence; yet, the investigation has to be done in respect of those statements as well as the documents. We reiterate that the investigation cannot be one sided. If a person is being falsely implicated, then the Investigating Officer if such pieces of evidence can be gathered by him may refuse to file the charge

sheet. Here, a specific date of alleged sexual intercourse was stated in the First Information Report i.e. 15.04.2021. It was for the Investigating Officer to visit the office of applicant and to see whether he was on duty or not. It appears that whatever was stated by prosecutrix in this case has been taken as gospel truth. At the cost of repetition, we would say that when a person is implicated, then possibility of statement being tailor made cannot be ruled out and, therefore, the close scrutiny of the entire material in the charge sheet is contemplated. For this purpose we would like to rely on the decision in **Pramod Suryabhan Pawar vs. The State of Maharashtra and another** [(2019) 9 SCC 608], wherein 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 alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. The complainant and the appellant 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 on multiple occasions.”

Then it was held that, it cannot be said that acts fulfil or the ingredients of offence under Section 375 of the Indian Penal Code punishable under Section 376 of the Indian Penal Code were attracted.

10 Thus, taking into consideration the above discussion, we are of the opinion that it would be an abuse of process of law if the applicant is asked to face the trial. This is a case made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Sessions Case No.201/2022 pending before learned Additional Sessions Judge, Nanded, arising out of First Information Report vide Crime No.120/2022 dated 30.05.2022 registered with Police Station, Mudkhed, Tq. Mudkhed, Dist. Nanded, for the offence punishable under Sections 376(2)(n), 504, 506 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Rajkumar Gopal Poddar**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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