



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2011 OF 2023

Gayas Ahmed Nizamuddin Shaikh
Age: 39 years, Occu.: Business,
R/o. Sohel Nagar, Latur,
Taluka and District Latur

.. Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
MIDC Police Station, Latur,
Taluka and District Latur.

2. XYZ

.. Respondents

...

Mr. Amol T. Jagtap, Advocate for the applicant.
Mrs. R. P. Gour, APP for respondent No.1/State.
Mr. V. M. Janrao, Advocate for respondent No.2 (Absent).

...

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

**RESERVED ON : 13 FEBRUARY 2025
PRONOUNCED ON : 04 APRIL 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed initially for quashing the FIR vide Crime No.256 of 2023 dated 05.04.2023 registered with MIDC Police Station, Latur, Taluka and District Latur and later on, by way of amendment, for quashing the proceedings in Sessions Case No.97 of 2023 pending before the learned Sessions Judge, Latur for the offences punishable under Sections 376(2)(n), 376(2)(f), 376(c)(a), 363, 506 of

Indian Penal Code.

2. Heard learned Advocate Mr. Amol T. Jagtap for the applicant and learned APP Mrs. R. P. Gour for respondent No.1/State. Learned Advocate for respondent No.2 is absent.

3. Learned Advocate for the applicant has taken us through the contents of the FIR and the charge-sheet. He submits that the informant/respondent No.2 was a married lady of 29 years. The present applicant is the cousin brother of her ex-husband. She states that she was married in 2010 and had two sons and two daughters from her husband. In May 2022, upon the invitation of the applicant, the informant, her husband and the family went to reside in the house of applicant on rent. The present applicant developed faith and then he started saying to the informant that he likes her. She had not given any response to him, but on one day when she was alone, he forcibly had sexual intercourse with her by saying that he loves her and she should marry him and then by giving threat to kill her husband and children, he left. She then states that the applicant used to visit her house whenever she used to be alone and used to have sexual intercourse. She then states that the applicant insisted her that she should get divorce from the husband and marry him and gave threats to kill children and the husband and, therefore, she had taken divorce from husband on

10.12.2022. She then states that after the husband left her due to constrained circumstances, she was staying with the applicant and her children. During the said period, the applicant used to have sexual intercourse with her, but was not marrying with her. Her mother had come to meet her on 29.03.2023 and, therefore, they both went to the house of the applicant to ask as to when he was going to marry her. At that time, the applicant flatly refused and gave threat to kill her. After considering this FIR, it can be certainly said that the relationship was consensual. At no point of time, she had ever raised any objection for the relationship and, therefore, the basic ingredients of the offences are not made out.

4. Learned Advocate for the applicant relies on the decision in ***Shambhu Kharwar Vs. State of Uttar Pradesh and Another, [AIR Online 2022 SC 1302]***, wherein the law clarified in ***Pramod Suryabhan Pawar Vs. State of Maharashtra, [AIR 2019 SC 4010]*** have been reiterated and, therefore, when the consent can be considered from the allegations itself, then it would be unjust to ask such accused to face the trial.

5. Learned APP strongly opposed the application. Respondent No.2 has filed the affidavit-in-reply, wherein the same facts are repeated. It is stated that the applicant used to threaten her and her entire family and,

therefore, she used to be under mental tension. The applicant has exploited her. She had never consented him. The police have investigated the matter and filed the charge-sheet. Therefore, let there be trial.

6. As aforesaid, the informant was a married lady having four children. The applicant is stated to be the cousin brother of the husband of the informant. It is hard to believe that she was not knowing the applicant since the time of her marriage. She has not stated when she came to know or got acquainted with the applicant. She states that she used to speak with the applicant on phone occasionally and then applicant told that she along with the husband should come to reside in his house on rent and then since May 2022, they went to reside in the house of the applicant. Thus, though she was married in 2010, she has tried to pose that the relationship developed only after May 2022. Her FIR would show that in the same month i.e. when they shifted to the house of applicant, it is stated that the applicant had forcible sexual intercourse with her. This is something unbelievable and then she says that since threat was given to kill her husband and children, she had not informed the said act committed by the applicant with her to her husband or anybody, but then she further states that the applicant used to visit her house frequently whenever she used to be alone and then used to have sexual intercourse with her forcibly. This also cannot be a coincidence

that he used to come only when she used to be alone. She then states that after some days, applicant told that she should give divorce to her husband and should marry him. She had refused and at that time the applicant told her that if she doesn't marry him by giving divorce to the husband, he would kill her husband and children. She then states that due to fear then she took divorce from her husband on 10.12.2022. The husband left her and went to Osmanabad, but she continued to stay in the same house belonging to the applicant. This is also the clear indication of the fact that the relationship was consensual. She then states that the applicant was residing with her and her children and applicant used to have sexual intercourse with her, but was not performing marriage with her. Here, the investigating officer has recorded statements of the parents and brothers of the informant. Statement of atleast two children, who might be sufficiently matured, could have been taken to support the fact that the applicant used to reside with them and as to how was the behaviour of the applicant with them. The informant then states that her mother had come to meet her on 29.03.2023 and at that time, she herself and her mother went to the house of applicant (which appears to be the another house) and asked him as to when he is going to marry the informant. At that time, applicant abused and flatly refused to marry her. The statements of the parents of respondent No.2 would show that when the husband of the informant

had given Talaq to the informant, they had asked him as to why he has given divorce to their daughter. The husband of the informant told them that applicant used to visit her house and the applicant and informant used to talk on phone. There used to be quarrels between informant and his mother (informant's mother-in-law) and, therefore, the applicant had asked him to shift to his house so that the quarrels would be reduced and, therefore, they went to stay in the house of applicant on rent. When the applicant used to come frequently to his house, then he had asked the applicant the reason for his frequent visit. Thereupon, the applicant told that he likes informant and then threatened the husband by saying that he should give divorce to the informant, otherwise he would be killed and, therefore, due to fear, he has given Talaq on 10.12.2022. This is in fact unbelievable that before taking the decision of divorce, the informant and her husband would not have consulted the near relatives. This appears to be due to the consensual relationship and now the things have been twisted. In ***Shambhu Kharwar (Supra)*** also there were similar allegations by the informant that the accused had forced her to break her marriage and thereupon the matrimonial relationship had come to an end. There also after the relationship had ended, accused and informant were living together. With the similar facts before us, we are of the opinion that it would be an abuse of process of law to ask the applicant to face the trial since the crucial ingredients of the offence

under Section 375 of the Indian Penal Code are absent. Of course, in the case of ***Rajkumar Vs. State of Karnataka, 2024 SCC OnLine SC 257***, wherein taking into consideration the facts of the case it was observed that they are accepting the view taken by the Co-ordinate Bench in ***Shambu Kharwar (Supra)***, but differentiating the same, taking into consideration the facts, it was observed that “a relationship may be consensual at the beginning but the same state may not remain so for all time to come. Whenever one of the partners 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.” This was the view taken, however, here even after the divorce was taken on 10.12.2022, the relationship continued till 29.03.2023 without agitation or narration to the near and dear ones and, therefore, we take this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure, as it would be then abuse of process of law to ask the applicant to face the trial. The case squarely fall within the parameters laid down in ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors, [AIR 1992 SC 604]***, ***R.P. Kapur Vs. The State of Punjab, [AIR 1960 SC 866]*** and ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors., (Three Judge Bench decision) [AIR 2021 SC 1918]***. Hence,

the following order :-

ORDER

- I) The Criminal Application stands allowed.
- II) The FIR vide Crime No.256 of 2023 dated 05.04.2023 registered with MIDC Police Station, Latur, Taluka and District Latur as well as the proceedings in Sessions Case No.97 of 2023 pending before the learned Sessions Judge, Latur for the offences punishable under Sections 376(2)(n), 376(2)(f), 376(c)(a), 363, 506 of Indian Penal Code, stand quashed and set aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm