



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2135 OF 2023

Niranjan Ashok Ladde

...Applicant

versus

1. The State of Maharashtra
2. XYZ (Victim)

...Respondents

.....
Mr. Yogesh A. Jadhav, advocate for the applicant
Mr. N.R. Dayama, A.P.P. for respondent No.1
Mr. S.V. Suryawanshi, advocate for respondent No.2
.....

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

DATED : 13th FEBRUARY, 2025

PER COURT (PER SANJAY A. DESHMUKH, J.):-

1. By this application, filed under Section 482 of the Code of Criminal Procedure, 1973, the applicant is seeking quashment of F.I.R. No. 136 of 2023, dated 06.04.2023, registered with Chalisgaon police Station, district Jalgaon, for the offences punishable under Sections 376(2)(n), 420, 506 of I.P.C. as well as the consequential charge sheet No. 98 of 2023 and further proceeding in pursuance to R.C.C. No. 167 of 2023, pending before the learned J.M.F.C. Chalisgaon, district Jalgaon.

2. Learned advocate for the applicant pointed out to us the report lodged by the informant, in which it is averred that the

applicant from time to time, forcibly committed sexual intercourse with her, against her will. When she was serving in a beauty parlour, the applicant also committed rape on her there. The applicant compelled her to terminate her pregnancy in Samarth Clinic of Dr. Yashwant Pawar. Sometimes, Rohan Patil and Rakesh Nandade used to carry her on their vehicles to the applicant. From time to time, she had paid total amount of Rs.3.00 to 4.00 lacs to the applicant. The applicant had assured her that after medical termination of pregnancy, he will marry with her. Therefore, the informant believed him. In the year 2000 the applicant took her gold chain and a ring, saying that he is having financial problem. Even when the informant came to know that the applicant is married, she avoided to lodge the report against the applicant.

3. The informant performed her marriage with another person. After some days, when the informant came to her parental house, the applicant met her. He stated that he is not satisfied with his wife. He does not like to her. He stated that they will perform the marriage and stay together. When the informant was staying at Nashik with her husband, the applicant used to visit her, he joined E-3 class at Nashik and he frequently committed rape on her and even continued to do the same. After some days, she came to her parents house. The informant at the insistence of the applicant started to reside at Chalisgaon. Whenever, the wife of the applicant used to go to her

parents house, the applicant was fetching the informant at his house and used to commit sexual intercourse with her at his residence. He also used to take her to his agricultural land for it. The applicant thereafter, refused to marry with the informant. He threatened that he will commit suicide by mentioning her name in the suicide note. He refused to pay back the amount of Rs.4,00,000/- to her. It is with these allegations, the report has been lodged.

4. Learned advocate for the applicant submitted that it is a case of consensual sexual intercourse. The informant is more than 43 years old. The applicant has been falsely implicated in this crime. There is no evidence that the informant has paid an amount of Rs.4,00,000/- to the applicant, cheated and threatened her. It is lastly prayed to quash and F.I.R. and the charge sheet.

5. Learned A.P.P. for respondent No.1 and learned advocate for respondent No.2 strongly opposed the application and submitted that the name of the applicant is mentioned in the report. The applicant is involved in serious crime. He took disadvantage of the informant and cheated her for Rs.4,00,000/-. There is strong evidence against the applicant. It is lastly prayed to reject the application.

6. Perused the report and the charge sheet. In the report, in

para 3, though the informant has stated that prior to 2000 the applicant took away the gold chain and gold ring from her but no report was lodged by the informant of the said incident. Even it is not specifically stated as to when the applicant took an amount of Rs.4,00,000/- from the informant. In support of the said allegation, no documentary evidence is produced on record by the informant. It is a case of threatening and rape. In respect of alleged incidents, there were various opportunities for the informant to lodge report against the applicant, but she did nothing till filing of the present report. When the informant used to go to Nashik, she used to go to the house of the applicant frequently, to stay there. This conduct of the informant shows that she continued her relationship with the applicant even after her marriage for years together. From bare reading of the report, it appears that it is a case of consensual physical relation between the informant and the applicant and same was started prior to 2000 and continued till 2023. The essential ingredients of section 376(2)(n) of I.P.C. constituting the offence of rape, cheating and threatening to the informant are lacking. In such a situation, if the applicant is compelled to face the trial, it would certainly be an abuse of process of the Court. Therefore, by invoking our inherent powers under Section 482 of Cr.P.C., we are inclined to allow the application. Hence, the following order:-

O R D E R

- I. The application is allowed.
- II. The F.I.R. No. 136 of 2023, dated 06.04.2023 registered with Chalisgaon police Station, district Jalgaon, for the offences punishable under Sections 376(2)(n), 420, 506 of I.P.C. as well as the consequential charge sheet No. 98 of 2023 and further proceeding in pursuance to R.C.C. No. 167 of 2023, pending before the learned J.M.F.C. Chalisgaon, district Jalgaon, are quashed.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

rlj/

[PER SMT. VIBHA KANKANWADI, J.] :

1. I have gone through the order authored by learned Justice Sanjay A. Deshmukh. I agree to the operative part of the order, however, I want to add elaborate reasoning and therefore, present part of the order is added.
2. Perusal of the FIR would show that even after marriage the informant, respondent No.2 was continuing with her relationship, including physical relationship, with the applicant. Her statement under Section 164 of the Code of Criminal Procedure also discloses the same thing. There are statements of other witnesses, who say that they were having knowledge about the love relationship between

the applicant and respondent No.2 and they were meeting with each other even after her marriage. Now, it appears that with some ulterior motive the informant is coming with the case that everything was against her wish, just to bring the case under Sections 420, 376(2)(n) of the Indian Penal Code. We cannot go only by contents on the face of its record but we will have to see whether there is any element of truth also prima facie, to attract the ingredients of those offences. Such long relationship, that too, even after the marriage and getting the daughter, continuation of the said relationship can only be with consent and not otherwise.

3. We would like to rely on the decision of ***Pramod Suryabhan Pawar vs. State of Maharashtra and another, 2019(9) SCC 608***, wherein it 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 fulfill or the ingredients of offence under Section 375 of the Indian Penal Code punishable under Section 376 of the Indian Penal Code were attracted. We are also taking note of the decisions in ***Shambhu 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 is that of ***Pramod Suryabhan Pawar vs. State of Maharashtra and another***, (supra).

4. It also appears from the FIR and the statement under Section 164 of the Code of Criminal Procedure that ultimately there is a demand of Rs.4,00,000/- from the informant, which she states that to be given by her to the applicant and then there is refusal on the part of the applicant, which has led to the registration of the FIR. This can be, thus taken to be with *mala fide* intention and therefore, the case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure and here I agree to the operative part of the order, above.

[SMT. VIBHA KANKANWADI]
JUDGE