



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2561 OF 2024

1. Madhukar s/o Babulal Chavan
Age: 45 years, Occu.: Labour.
2. Ashabai w/o Madhukar Chavan,
Age: 42 years, Occu.: Household work,
3. XYZ
4. Priyanka d/o Madhukar Chavan,
Age: 20 years, Occu.: Household work,
5. Tatya s/o Babulal Chavan,
Age: 50 years, Occu.: Agri.,
6. Nilesh s/o Tatya Chavan,
Age: 27 years, Occu.: Labour,
All R/o. Brahman Shewage,
Taluka Chalisgaon,
District Jalgaon.

.. Applicants

Versus

1. The State of Maharashtra
2. Ashwini d/o Prabhakar Pawar,
Age : 19 years, Occu.: Education,
R/o Brahman Shewage,
Taluka Chalisgaon,
District Jalgaon.

.. Respondents

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WITH

CRIMINAL APPLICATION NO.2185 OF 2024

Prabhakar s/o Laxman Pawar
Age: 42 years, Occu.: Agri.,
R/o. Brahman Shewage,
Taluka Chalisgaon,
District Jalgaon.

.. Applicant

Versus

1. The State of Maharashtra.
2. XYZ

.. Respondents

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Mr. R. M. Deshmukh, Advocate for applicants in Criminal Application No.2561 of 2024 and for respondent No.2 in Criminal Application No.2185 of 2024.

Mr. A. V. Deshmukh, Advocate for applicant in Criminal Application No.2185 of 2024 and for respondent No.2 in Criminal Application No.2561 of 2024.

Mr. A. M. Phule, APP for respondent No.1 in both the matters.

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

DATE : 07 MARCH 2025

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

. Both the matters are having connection with each other, hence, taken up together.

2. Criminal Application No.2561 of 2024 has been filed for quashing the FIR vide Crime No.302 of 2023 dated 20.11.2023 registered with Mehunbare Police Station, District Jalgaon for the offences punishable under Sections 324, 141, 143, 147, 149, 452, 323, 504, 506 of Indian Penal Code, whereas Criminal Application No.2185 of 2024 has been filed for quashing the proceedings in Sessions Case No.29 of 2024, pending before the learned Additional Sessions Judge, Jalgaon arising out of the FIR

vide Crime No.304 of 2023 dated 21.11.2023 registered with Mehunbare Police Station, District Jalgaon for the offences punishable under Sections 376, 354-A, 354-D, 509, 506 of Indian Penal Code.

3. Heard learned Advocate Mr. R. M. Deshmukh for the applicants in Criminal Application No.2561 of 2024 and for respondent No.2 in Criminal Application No.2185 of 2024, learned Advocate Mr. A. V. Deshmukh for the applicant in Criminal Application No.2185 of 2024 and for respondent No.2 in Criminal Application No.2561 of 2024 and learned APP Mr. A. M. Phule for respondent No.1/State in both the matters. In order to cut short, it can be said that all the Advocates have made submissions in support of their respective contentions.

4. The respondent No.2 in Criminal Application No.2561 of 2024 has lodged the FIR in respect of incident dated 19.11.2023 stating that all the applicants had formed unlawful assembly in front of her house and being member of such assembly assaulted the informant, her father and other members of her family by throwing chilly powder on their eyes. Her father was assaulted with sticks. The lady members from applicants had assaulted

informant on her face. It was on the count that because of the father of respondent No.2, there was divorce of applicant No.3.

5. The respondent No.2/informant in Criminal Application No.2185 of 2024 was aged 19 years on the date of FIR and submits that she used to go for agricultural labour work in the field of one Prabhakar Laxman Pawar i.e. father of respondent No.2 in Criminal Application No.2561 of 2024. The prosecutrix has stated that she was doing labour work for about two years. Then in the beginning of 2022, when she had gone for sowing onion in the field of accused Prabhakar, he had caught hold of her and asked her that she should meet him alone. She refused, but then he was insisting by giving phone call to her that she should meet him. On one occasion, when the prosecutrix was working in his field, at that time, wife of accused Prabhakar sent the prosecutrix to bring water bottle from the house. At that time, accused was present in the house. After latching the door, he had fondled with the body of the prosecutrix. When she tried to resist, he gave her threats to kill. He was intentionally giving calls and forcing her to speak to him. Thereafter, he used to call her in the house and used to have forcible sexual intercourse with her. Due to the poor financial condition, she had not told

anything to anybody and was hoping that it will stop after she gets married. Even in November 2022, when she had gone to college, at that time, she was forcibly taken on a lodge and he had taken photos and videos when they were indulged in sexual act. However, in February 2023, she got engaged and then she blocked the number of the accused. Thereafter, on a day when she was coming from her college, the accused had come in four wheeler, asked her to stop as he wants to speak to her, but then she told that she has now been engaged and he should not contact her. By giving threats to make photos and videos viral, he made her to sit in the car and thereupon she was taken to a lodge, where the accused had performed forcible sexual intercourse with her. The prosecutrix got married on 16.05.2023 and went to her matrimonial home. Even after one and half month, she received message from accused stating that he wants to meet her. Thereupon, she told that since she is married, she should be allowed to be happy in her married life. But then threat was given to send her videos to her husband. Therefore, she met him in the lodge. When accused was calling her frequently, her husband sent her to her parents home and thereafter, there was divorce in September 2023. Thereafter, accused had not

contacted her, but in November 2023, when she was trying for her second marriage and a proposed bridegroom had approved her, at that time, accused gave him phone call and told that he has illicit relations with the prosecutrix and he is having her photos and videos. Therefore, that marriage could not take place. Ultimately, the informant lodged the FIR.

6. It was tried to be submitted on behalf of applicant/accused Prabhakar that it can be seen from the FIR that the relationship between the applicant and respondent No.2 is consensual as it appears. Even after marriage, she was in contact with the accused. Statements of witness Abasaheb Pawar would also show that when he was trying to settle the second marriage of the prosecutrix, he states that accused Prabhakar had given him phone call and gave information that since the entire village knows about the illicit relations, why he is trying to settle her marriage. This is in fact in favour of the accused. Further, the matter between the informant and accused Prabhakar has been settled. Therefore, it would be abuse of process of law if the applicant is asked to face the trial.

7. Learned Advocate appearing for the applicants in Criminal Application No.2561 of 2024 submits that since the matter has

been settled, even respondent No.2 in this case has no objection for quashing the FIR.

8. Learned Advocate for respondent No.2 in the respective matters have tried to say that the matter has been settled and, therefore, the proceedings be quashed.

9. Reliance has been placed on the decision in ***Mohd. Julfukar Vs. State of Uttarakhand, [AIR 2024 SCC 781]***, wherein it is stated that when the accused and the complainant had resolved their disputes and decided to lead their lives peacefully, in that case, continuation of the proceedings would be prejudicial to interest of the complainant and she would be forced to continue with the case which she do not want.

10. Learned APP appearing in both the matters strongly opposed the application and submits that in Special Case, which is pending before the Additional Sessions Judge, Jalgaon, entire evidence has been collected and the evidence would show that the accused Prabhakar has taken disadvantage of the poverty of the prosecutrix. Her consent cannot be taken as a free consent as she has stated that even after her marriage, when she was under impression that now the activities of accused would stop, yet

thereafter also by giving threats to make those photos and videos viral, the prosecutrix was forced to indulge in the activities. Statement of witness Abasaheb Pawar would rather support the prosecution. Age of accused Prabhakar is 42 years and he is having a daughter i.e. respondent No.2 in Criminal Application No.2561 of 2024, then how it can be said that there was consensual relationship. Therefore, in both the matters the applicants should face the trial.

11. At the outset, we would like to say that the facts in ***Mohd. Julfukar (Supra)*** are different. From the FIR itself in that matter it could be spelt out that the relationship was consensual, however, in this case, perusal of the entire FIR would show that though the first act appears to have been done in 2022, which was of outraging of modesty, but thereafter there was forcible sexual intercourse and then she says that since she was under impression that all those acts of accused Prabhakar would stop after she gets married and, therefore, she might not have lodged the FIR. But even after the marriage, it appears that the accused was contacting her and because of his activities, her earlier marriage resulted into divorce. The statement of her husband is on record. Thereafter, when she has tried to marry on the second

occasion, even at that time, the present accused Prabhakar is stated to have given a call to the mediator, who was in the process of settling the marriage of the prosecutrix. His statement is to that effect, wherein he states that accused had disclosed him that he has illicit relations with the informant. Thus, the intention behind such act cannot be said to be proper and there appears to be then *prima facie* element of truth in the say of the informant/prosecutrix.

12. In another case i.e. Criminal Application No.2561 of 2024 it is stated that as the marriage of the prosecutrix could not get settled, her relatives got annoyed and assaulted accused Prabhakar and his family members. Specific role has been attributed to each one of the applicant.

13. Now, both the parties are relying on the compromise. There is no separate deed of compromise that is filed on record, however, copy of the affidavit-in-reply filed by the prosecutrix in bail application filed by accused Prabhakar on 11.03.2024 has been produced. If we consider that affidavit, she has that the FIR was lodged due to misunderstanding and thereafter, she has got married and now residing with her husband and, therefore, she is

not ready to continue with the prosecution. Here, it cannot be accepted that the offence under Section 376 of Indian Penal Code or FIR to that effect can be filed due to misunderstanding. She has filed another affidavit-in-reply on 19.03.2024 wherein she has disclosed that the amicable settlement was to the extent that the accused persons would give her amount of Rs.5,00,000/- as marriage expenses and for her future and thus, she has received the said amount of Rs.5,00,000/-. Photocopy of the Fixed Deposit of Rs.1,00,000/- dated 02.04.2024, which is in the name of father of the informant and the photocopy of another Fixed Deposit in the name of prosecutrix herself to the tune of Rs.2,00,000/- with Bank of Baroda have been produced. It appears that bail has been granted in Bail Application No.432 of 2024 dated 19.03.2024 by the learned Single Bench of this Court, who is party to the present Bench and then the note has been taken in the matter that the matter has been settled and the compensation of Rs.5,00,000/- is paid to the prosecutrix. It cannot be considered as compensation. By giving such amount, consent cannot be obtained for quashing the FIR or the proceedings. In fact, such acts should amount to tampering with the evidence and the bail granted to such accused should be then

cancelled. In any case, the consent is not a legal consent and therefore, the proceedings in both the matters cannot be quashed and set aside on the ground of compromise. Section 376 of Indian Penal Code is certainly a heinous crime and before allowing the quashment, this Court will have to be cautious enough and accordingly when the quashment has been sought on the basis of amount paid to the prosecutrix, such compromise cannot be approved by a Court of law. Both the applications stand rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm