



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2980 OF 2019

Dhirendra Dattatray Puri,
Age 27 yrs., Occ. Student,
R/o E-1-19/1, Mathura Nagar,
CIDCO, Aurangabad.

... Applicant

... Versus ...

- 1 The State of Maharashtra
- 2 X.Y.Z.

... Respondents

...

Mr. Abhishek Kulkarni, Advocate for applicant

Mr. N.R. Dayama, APP for respondent No.1

Mrs. Surekha G. Chincholkar, Advocate for respondent No.2

...

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

RESERVED ON : 06th FEBRUARY, 2025

PRONOUNCED ON : 06th MARCH, 2025.

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

- 1 Present application has been filed initially for quashing First

Information Report vide Crime No.254/2019 dated 19.07.2019 registered with City Chowk Police Station, Aurangabad and by way of amendment for quashing proceedings in Regular Criminal Case No.2442/2019 pending before learned Judicial Magistrate First Class, Aurangabad, for the offence punishable under Sections 376, 354-D, 323, 504, 506 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. Abhishek Kulkarni for applicant, learned APP Mr. N.R. Dayama for respondent No.1 and learned Advocate Mrs. Surekha G. Chincholkar for respondent No.2.

3 Learned Advocate for applicant after taking us through contents of First Information Report and charge sheet submits that First Information Report has been lodged with ulterior motive, as there appears to be enmity between present applicant and husband of informant. Informant has filed affidavit-in-reply and along with that she has filed various Non Cognizable complaints lodged by husband of informant against present applicant, even one Yogesh Ban is also involved and it is stated that he is friend of present applicant. Even informant had lodged Non Cognizable complaint against present applicant. Then the question arises, as to why for present set of facts she had approached Police Station belatedly ? Re-joinder has been filed by

present applicant, which would also show that present informant has lodged First Information Report vide Crime No.73/2020 with City Chowk Police Station, Aurangabad on 11.02.2020 against present applicant as well as said Yogesh Ban, for the offence punishable under Section 354-D read with Section 34 of the Indian Penal Code and under Section 67 of the Information Technology Act. Thus, after lodging of this First Information Report also she has not stopped for levelling baseless allegations against applicant. Taking into consideration contents as it is it would show that informant and applicant came into contact in 2015 and in fact, applicant is relative of her husband. She has stated that first incident had taken place on 22.07.2015, wherein it is stated that under the false pretext that informant's husband has taken his girlfriend in a house in N-6 and she should see that, applicant had taken her to his house situated in N-6 area and thereupon he had forcibly sexual intercourse with her. But then she says that due to the fact of defamation she had not informed the incident to anybody. But then she says that second incident had taken place in August, 2015 in her own house and it continued till 2018. Thereafter, it appears that she has changed her residence, but then still she says that in December, 2018 again applicant had raped her in her new house. Still the First Information Report has been lodged on 19.07.2019. The delay is picking for itself. The possibility of consensual relationship cannot be ruled out. Perusal of statement of her

husband would show that he was not aware about the incidence till 2018, but then he says that since January, 2019 the informant - his wife had stopped picking bus from applicant and also stopped talking to him. Thereafter, applicant was picking quarrels with husband on one or the other pretext. Informant had then lodged a complaint against applicant on 19.07.2019 stating that on 18.07.2019 present applicant had given her threat to kill from cell phone of another person. When husband of informant told the said fact to his mother, then his mother had told him that even earlier also applicant used to come to their house and at that time mother had seen hugging the informant and, therefore, she had asked informant, as to what is happening, at that time, applicant had given threat to kill mother, children and husband of informant. Interestingly, the police have recorded statement of Yogesh Ban, who has then stated that applicant had given him phone call on 18.07.2019 and told that husband of informant has defamed him and he has evidence to that effect. Thereafter, a meeting was arranged by Yogesh Ban, which was then attended by husband of applicant, one Babasaheb and applicant. There was quarrel and assault between applicant and husband of informant and even applicant had uttered that he had sexual intercourse with informant many times. Statement of witness Babasaheb is also on the same line. Thus, it can be seen that physical relationship between informant and applicant appears to be consensual and, therefore, ingredients of Section 375

of the Indian Penal Code are not at all attracted. Even the offence under Section 354-D of the Indian Penal Code cannot be said to have been attracted taking into consideration the allegations. The other offences are non cognizable in nature. Therefore, it would be unjust to ask the applicant to face the trial.

4 The learned Advocate appearing for applicant relies on the decision in **Vipul @ Ram Praful Mhaisane vs. State of Maharashtra and another** in Criminal Application (APL) No.387 of 2024 decided by this Court (Bench at Nagpur) on 31.07.2024, to which [SMT. JUSTICE VIBHA KANKANWADI, J.] was party, wherein reliance has been placed on **Pramod Suryabhan Pawar vs. State of Maharashtra and another** [2019(9) SCC 608], **Shambhu Kharwar vs. State of Uttar Pradesh** [2022 SCC OnLine SC 1032] and **XYZ vs. State of Gujarat and another** [2019 (10) SCC 337] and it was observed that the relationship though initially consensual may not remain consensual later, but taking into consideration the facts it can be certainly said that later on the said relationship became strained leading to First Information Report, then in that case the offence cannot be said to have made out. He also relies on the decision in **Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra and others** [AIR 2019 SC 327], which explains the clear definition between rape and consensual sex. He also relies on

Dayanand Bhanudas Kamble vs. The State of Maharashtra and another in Criminal Application No.805 of 2021 decided at the Principal Seat on 13.09.2023, wherein also on the facts it was held that the relationship was appeared to be consensual and then the First Information Report was quashed. Similar is the case in respect of **Mitesh Sanjay Rewatkar vs. The State of Maharashtra and another** in Criminal Application (APL) No.1391 of 2023 decided by this Court (Nagpur Bench) on 03.01.2024.

5 Per contra, learned APP and learned Advocate appearing for respondent No.2 have strongly opposed the application. Learned Advocate for respondent No.2 – original informant has taken us through affidavit-in-reply filed by her and documents annexed thereto. In affidavit-in-reply informant has reiterated those facts which she has already given in First Information Report and submits that relationship was never consensual. It is established by giving threats to kill her husband and children. Since the charge sheet is filed, let the trial be help.

6 At the outset, we would say that the decisions those have been relied by learned Advocate for applicant, the ratio therein cannot be denied, however, the law is basically explained in **Pramod Suryabhan Pawar** (supra), **Shambhu Kharwar** (supra) and **XYZ vs. State of Gujarat and another** (supra)

by Hon'ble Supreme Court and, therefore, that is binding on us. Though the law has been laid down, then the stage comes to the facts, whether the facts attract the law that has been laid down would be the second step. Even in **XYZ vs. State of Gujarat and another** (supra) it is observed that "Whether in a given case power under Section 482 of the Code has to be exercised or not depends upon the contents of complaint and material placed on record". Therefore, the facts in present case are required to be considered before applying the law that has been laid down in various decisions. Most of the facts are already narrated and, therefore, we do not want to repeat the same except where required.

7 The informant is a 30 years old married lady residing with her husband, two children, father-in-law and mother-in-law. She has stated that though applicant was relative of her husband, she came to know him in 2015 and then in specific words she says that "त्यानंतर आमच्या ओळखीचे रूपांतर मैत्रीत झाले" (thereafter acquaintance developed in friendship). It is not explained as to whether that friendship was restricted to herself or she is including her husband also. Again, at the cost of repetition, we would say that applicant is stated to be already related to husband. How was the relationship between husband and his family with applicant is not stated. But, then it appears from her subsequent narration that applicant used to give her phone calls

every now and then, and even on phone he used to ask her about physical relations, to which she states that she used to refuse. Thus, the level of friendship can be gathered from this narration. She then states about incident dated 22.07.2015 and according to her, she was taken to house of applicant under a false pretext. Whether anybody was present in said house or not is not got clarified, but then she says that sexual intercourse that had taken place on that day was against her wish. She says that she would be defamed, so also her husband would be defamed and, therefore, she had not narrated incident to anybody. If her statement under Section 164 of the Code of Criminal Procedure is considered in respect of said incident dated 22.07.2015, then though initial part is same; yet, in paragraph No.3 she states that she had gone voluntarily to house of accused and her conversation with him was recorded and, therefore, she could not get courage to narrate incident to anybody and then applicant was blackmailing her. Now, what was conversation between them has not been collected by Investigating Officer and it is not part of charge sheet. The transcript of same has not been collected. Thereafter, she has stated about second incident in August, 2015, which is stated to have taken place in her house. Then, the question arises, where her husband, parents-in-law and children were at that time ? If we read statement of husband of informant, then he states about disclosure of his mother to him and even in statement of mother-in-law of informant it is

there that she had seen applicant coming to their house frequently and on one occasion she had seen applicant hugging her daughter-in-law and, therefore, she had asked applicant as to what he is doing, then, applicant had given her threat to kill. Every time everyone is stating about threat to kill as an excuse from reporting the fact to police. It cannot be so believed, because whether that intention to kill was real and what was the intensity of threat, would be a question. Statement of mother-in-law of informant rather supports submissions on behalf of applicant. In the First Information Report thereafter she has stated “अशा प्रकारे त्याने पती घरी नसल्याचा फायदा घेवून माझ्यावर 2018 पर्यंत जबरदस्ती केली आहे” (accordingly, he has taken disadvantage of absence of husband in the house and raped her till 2018). That means, she intends to convey that since 2015 to 2018 on several occasions applicant had sexual intercourse with her in her house when her husband was not in the house. She had not stated where the other members in the family on the relevant dates. The Investigating Officer has not recorded the statements of children of informant. When such explanation is not coming forward, then the things are required to be read between the lines. She then states that in December, 2018 also applicant had raped her in the house where they were then residing. That means, informant and her family had changed the place of residence. If last incident is in December, 2018, then still why she preferred to lodge the report belatedly i.e. on 19.07.2019, is a question.

Certainly, First Information Report is at a very belated stage. It appears that after the relationship has been revealed to husband, First Information Report has been lodged. Therefore, certainly, the ratio in **Pramod Pawar** (supra) would be applicable, wherein the legal position has been summarized as follows -

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

Of course, it is in respect of false promise to marry but for explaining the concept of consent it can be considered.

7.1 Further, the clear distinction that had been stated in **Dr. Dhruvaram Sonar** (supra) is helpful, which reads as under -

“There is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether complainant had actually wanted to marry victim or had *mala fide*

motives and had made a false promise to this effect only to satisfy his lust, as later falls within ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If accused has not made promise with sole intention to seduce prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where prosecutrix agrees to have sexual intercourse on account of her love and passion for accused and not solely on account of misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If complainant had any *mala fide* intention and if he had clandestine motives, it is a clear case of rape. Acknowledged consensual physical relationship between parties would not constitute an offence under Section 376 of the IPC.”

With the said material with charge sheet it would be an abuse of process of law to ask applicant to stand the trial. In the grounds, the applicant in clear terms has stated that the relationship was consensual. That means, it is his defence which can be clearly seen from the above stated facts and, therefore, this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) The proceedings in Regular Criminal Case No.2442/2019 pending before learned Judicial Magistrate First Class, Aurangabad arising out of First Information Report vide Crime No.254/2019 dated 19.07.2019 registered with City Chowk Police Station, Aurangabad, for the offence punishable under Sections 376, 354-D, 323, 504, 506 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant Dhirendra Dattatray Puri.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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