



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

38 CRIMINAL APPLICATION NO.4574 OF 2023

1 Ashish Santosh Waghmare,
Age 30 yrs., Occ. Education,

2 Santosh Yogaji Waghmare,
Age 58 yrs., Occ. Agri.,

3 Sonali d/o Santosh Waghmare,
Age 28 yrs., Occ. Household,

All are r/o Shigarwadi, Tq. Kinwat,
Dist. Nanded.

... Applicants

... Versus ...

1 The State of Maharashtra
Through Rural Police Station,
Nanded, Tq. & Dist. Nanded.

2 X.Y.Z.

... Respondents

...

Mr. G.J. Karne, Advocate for applicants

Mr. G.A. Kulkarni, APP for respondent No.1

Ms. Sushma T. Jadhav, Advocate (appointed) for respondent No.2

...

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

DATE : 07th AUGUST, 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.105/2023 pending before learned Additional Sessions Judge, Nanded arising out of First Information Report vide Crime No.46/2023 dated 28.01.2023 registered with Rural Police Station, Nanded, for the offence punishable under Sections 376, 376(2)(n), 109, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. G.J. Karne for applicants, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned appointed Advocate Ms. Sushma T. Jadhav for respondent No.2.

3 Learned Advocate appearing for applicants has taken us through the entire charge sheet and submits that allegations by respondent No.2 are that she came in contact with applicant No.1 and they developed friendship. She states that applicant No.1 had given her promise to marry and told that after he fetches a service, they would perform marriage. He then started demanding sexual favours from her. But he had taken photographs of the girl and by giving threat to make her photographs viral, he started blackmailing. She has also stated that in April, 2018 applicant No.1 had gone to the college

campus of informant and taken her towards back side and started demanding sexual favours. She resisted, however, he had done several acts and then committed rape on her several times by giving threats. She also states that on 27.12.2022 applicant Nos.1 and 2 along with some 7-8 persons had gone to her house to see her and by giving promise that the marriage date would be fixed shortly, they left the home. After 4-5 days thereafter it was told on phone that applicant No.1 is refusing to perform marriage and if they insist that marriage should happen, then they would make obscene photographs of the girl viral. In all these acts applicant Nos.2 and 3, who are father and sister of applicant No.1, were instigating him.

4 Learned Advocate for applicants further states that statement of girl has been recorded under Section 164 of the Code of Criminal Procedure. However, the fact remains is that there appears to be the consensual relationship between respondent No.2 and applicant No.1. Even in the statement of parents of girl it has been stated that they had approved the girl, but ultimately applicant No.1 had refused to perform the marriage due to some reason, that is, the applicants were insisting that they should wait for some days for the service of applicant No.1. It is not that applicant No.1 had refused to perform the marriage. Statement to that effect is of brother-in-law of applicant No.1 Kailas. Applicant No.1 was preparing for competitive

examinations and had promised that the marriage would take place within 2-3 years. If these facts are considered, then the ingredients of offence under Section 375 punishable under Section 376, 376(2)(n) of the Indian Penal Code will not get attracted. He relies on the decision in **Mahesh Damu Khare vs. The State of Maharashtra and another** in Criminal Appeal No. of 2024 (@ Special Leave Petition (Cri.) No.4326 of 2018) decided by Hon'ble Supreme Court on 26.11.2024, wherein it was observed that -

“24. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.”

Similar is the ratio in **Amol Bhagwan Nehul vs. State of Maharashtra and another** [2025 SCC OnLine SC 1230], **Pramod Suryabhan Pawar vs. State of Maharashtra and another** [(2019) 9 SCC 608], **Lalu Yadav vs. The State of Uttar Pradesh and others** in Criminal Appeal No. of 2024 (arising out of SLP (Cri.) No.9371 of 2018) decided on 16.10.2024 and **Sunil Narayan Kalbande vs. The State of Maharashtra and another** in Criminal Application No.4292 of 2022 decided by Division Bench of this Court on 11.07.2023, to which one of us (SANJAY A. DESHMUKH, J.) was party.

5 Per contra, learned APP Mr. G.A. Kulkarni for respondent No.1 and learned Advocate Ms. Sushma T. Jadhav appointed to represent the cause of respondent No..2 strongly objected the application. It will not be out of place to mention here that initially though we appointed Ms. Sushma T. Jadhav on 10.10.2024, respondent No.2 appointed Advocate of her choice, but ultimately he remained absent on the day when we took up the matter.

6 It is stated that what has been done by applicant No.1 has already been stated and it is supported by chats, obscene photographs, call record between them and statement of informant under Section 164 of the Code of Criminal Procedure. Therefore, there is evidence against applicant No.1. Applicant Nos.2 and 3 have instigated applicant No.1 and had also given threats and this fact has been told by witnesses. Therefore, this is not a fit case where the Court should exercise its powers under Section 482 of the Code of Criminal Procedure.

7 After taking into consideration the statements of both sides when we expressed disinclination to grant any relief to applicant No.1, learned Advocate for applicants, upon instructions, sought withdrawal of application as against him. There is no hurdle in allowing the said withdrawal as against applicant No.1.

8 Now, it is required to be seen, as to what role has been attributed to applicant Nos.2 and 3, who are father and sister of applicant No.1. As per First Information Report, they came in picture only after the alleged refusal by applicant No.1 to perform marriage with prosecutrix. Informant has not stated that after 27.12.2022 there was any sexual act between applicant No.1 and herself. Therefore, there is no question of instigation. There cannot be instigation to commit rape, the way it has been tried to be projected. By way of supplementary statement then it is stated by informant that applicant No.2 had given a phone call to her father on 03.01.2023 and informed that applicant No.1 is not ready to perform marriage and it is stated that on phone applicant No.2 had given threats to defame the prosecutrix and family and restrained her from lodging First Information Report. Then it is also stated that applicant No.3 had also given phone calls on mobile and given threat to prosecutrix that she should not contact applicant No.1. In order to show that such phone call was made, there is CDR, however, from CDR it cannot be stated that threat was given. At the most it can be said that it was conveyed that applicant No.1 was refused to perform the marriage. As regards other witnesses are concerned, except father of informant all have stated that they heard it from either the prosecutrix or through her father. Father then states the same thing that threat was given by applicant No.2. Here, the question is that if that phone call was given on 03.01.2023, then why no action was

immediately taken. First Information Report has been lodged on 28.01.2023. If we consider the statements of father, mother, then it can be seen that they were informed about 1 to 1½ year prior to First Information Report that they were in love with each other and were going to perform marriage. The physical involvement of them with each other appears to have not been told by informant to parents prior to refusal by applicant No.1. Therefore, the alleged act on the part of applicant Nos.2 and 3 cannot be tagged along with the allegations against applicant No.1 and it cannot be stated that applicant Nos.2 and 3 had instigated applicant No.1. In favour of applicant Nos.2 and 3 case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) Criminal Application stands disposed of as withdrawn, after disinclination, as against applicant No.1 **Ashish Santosh Waghmare**.
- iii) The proceedings in Sessions Case No.105/2023 pending before learned Additional Sessions Judge, Nanded arising out of First Information Report vide Crime No.46/2023 dated 28.01.2023 registered with Rural Police

Station, Nanded, for the offence punishable under Sections 376, 376(2)(n), 109, 504, 506 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant Nos.2) **Santosh Yogaji Waghmare** and 3) **Sonali d/o Santosh Waghmare** only.

iv) Fees of appointed Advocate is quantified at Rs.8,000/- (Rupees Eight Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

agd