



L-1022-2019

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO. 1022 OF 2019

(Rupesh Anandrao Rajge Vs. State of Maharashtra & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R.J. Shinde, Counsel for the applicant.
Mr. N.H. Joshi, A.P.P. for non-applicant no.1/State.
Mr. N.B. Rathod, Counsel for non-applicant no.2.

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CORAM : ANIL L. PANSARE AND
M.M. NERLIKAR, JJ.
AUGUST 19, 2025

The application is filed to quash the First Information Report registered vide Crime No. 588/2019 for the offences punishable under Sections 363, 366 and 376(2)(n) of the Indian Penal Code, 1860, as also the chargesheet filed thereafter.

2] The argument is that the applicant and non-applicant no.2 were in relationship. They indulged into sexual intercourse, which was by consent of non-applicant no.2.

3] We have, with the assistance of both the sides, gone through the First Information Report to find that the issue is not as simple as projected by the applicant. As such, there appears no dispute that the applicant and non-applicant no.2 were in relationship, and further, that they indulged into sexual intercourse with consent of non-applicant no.2, the question, however, is whether the consent has been obtained by fraud or misrepresentation.

4] The First Information Report indicates that the applicant and non-applicant no.2 were in relationship since the year 2016. The relationship continued till 18/8/2019. The applicant promised to marry her. During this period, they indulged into sexual intercourse on multiple occasions. Non-applicant no.2, however, suspected about the truthfulness in the promise made by the applicant because the applicant did not give firm response on the time to marry. Non-applicant no.2, therefore, on 20/8/2019 recorded video of sexual activity in her mobile. The parties thereafter indulged into sexual activity on one more occasion, i.e., on 2/9/2019. Thereafter, non-applicant no.2 made repeated enquiry about marriage. The applicant gave evasive answers, and ultimately, refused to marry. Thereupon, non-applicant no.2 disclosed to him that she has video-graphed the sexual intercourse. The applicant instructed her to share the same by giving life threat. Accordingly, non-applicant no.2 shared the video. The applicant misused the same by showing it to the villagers, which defamed non-applicant no.2.

5] On 8/9/2019, non-applicant no.2 went to her village, where the Sarpanch and 4-5 other members of the village made efforts to convince the applicant to perform marriage, but he refused. Thereafter, non-applicant no.2 lodged report with the police.

6] This is how the complaint is worded.

7] The learned A.P.P for the State and the learned Counsel for non-applicant no.2 submit, and

rightly so, that if the contents of the First Information Report are taken on face value, it appears that the applicant never intended to marry non-applicant no.2. There is an element of deception right at the time of commencement of relationship.

8] This argument will have to be accepted because the Counsel for the applicant has not argued nor has he pointed out from the memo of application the reason why has he not married non-applicant no.2 or what efforts were made by him to marry non-applicant no.2. In other words, no justification is coming forth from the side of the applicant for not marrying or making attempt to marry non-applicant no.2. The entire focus is on consent, however, it will stand vitiated, if the applicant had obtained it by fraud or misrepresentation.

8] The learned Counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Deepak Gulati Vs. State of Haryana [(2013) 7 SCC 675]*, wherein, on the point of consent, the Court observed as under :

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not

fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the 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 so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

9] As could be seen, the Supreme Court held that there is a distinction between rape and consensual sex, and the Court must carefully examine whether the accused had actually wanted to marry the victim or had *mala fide* motives and had made false promise only to satisfy his lust. The Court clarified that the latter falls within the ambit of cheating or deception.

10] Thus, what is important is whether the applicant had intention to marry non-applicant no.2. We have noted from his conduct that he never had such intention, particularly because he has not assigned any reason for not fulfilling his promise to marry. The judgment, therefore, will be of no help to the applicant.

11] Another judgment that is relied upon is in the case of *Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra And Others [(2019) 18 SCC 191]*, where

identical observations were made by the Supreme Court in paragraph 23, which read as under :

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the 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 the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

12] Thus, the Supreme Court highlighted the distinction between mere breach of a promise and not fulfilling a false promise. The Court held that if the accused has not made promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. The Court clarified the position by giving illustration that in a given case, the prosecutrix may agree to have sexual intercourse on account of her love and passion for the accused and not solely on account of misconception created by accused or

where the accused on account of circumstances, which he could not have foreseen, was unable to marry her despite having every intention to do so.

13] In the present case, the statement of non-applicant no.2 does not disclose that she agreed to have sexual intercourse on account of her love and passion for the applicant. She appears to have submitted herself before the applicant believing that he will marry her. The applicant, however, did not fulfill his promise. Further, and as stated earlier, he has not assigned any reason for not making an attempt to fulfill his promise. He has not assigned any reason to show that despite his intention to marry non-applicant no.2, he could not, for the reasons, which were beyond his control or for the reasons, which he had not foreseen. The judgment, therefore, will be of no assistance to the applicant.

14] Put all together, it appears that the applicant has obtained consent by making false promise, and had no intention to fulfill the same.

15] In the circumstances, we are of the considered view that the proceedings cannot be quashed. The application is accordingly rejected.

(JUDGE)

(JUDGE)

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