



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

CRIMINAL APPLICATION [APL] NO. 1455/2024.

Rushikesh Prashant Asare.

-VERSUS-

State of Maharashtra and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.M. Sinha, Advocate for the Applicant.
Shri A. Badar, A.P.P. for Non-applicant No.1.
Shri A.B. Mirza, Advocate for Non-applicant No.2.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

DATE : JANUARY 30, 2025.

Heard.

2. This application is filed under Section 482 of the Criminal Procedure Code seeking quashing of the First Information Report bearing Crime No.78/2024 dated 23.02.2024 registered with Dhantoli Police Station, Nagpur for the offence punishable under Sections 376[2][n], 354-D, 294 and 506 of the Indian Penal Code, which after completion of the investigation has culminated into Special Sessions Case No.301/2024 pending in the Court of learned Additional

Sessions Judge, Nagpur.

3. Learned Counsel for the applicant has assailed the first information report stating that as per the narration in the first information report, relations between the applicant and non-applicant no.2 were consensual. The first information report is lodged after a delay of three years. By relying on judgment of Apex Court in case of **Prashant .vrs. State of NCT of Delhi – Criminal Appeal No.--/2024** (arising out of Special Leave Petition (Criminal) No.2793/2024) dated 20.11.2024, wherein according to him in similar facts the Apex Court has quashed the first information report, he seeks quashing of prosecution.

4. Learned A.P.P. for non-applicant no.1 and learned Counsel appearing for non-applicant no.2 on the other hand has opposed the application stating that there is sufficient material on record to prosecute the applicant and no case is made out to quash and the proceeding.

5. In the first information report a specific allegation is made by non-applicant no.2 that she got acquainted with the applicant in the year 2021 on Instagram. Thereafter, they started meeting and applicant took her photos in his mobile.

Thereafter when ever they met, he took her photos. He asked her about the marriage, but, she told him that she will not marry in different caste.

6. On 11.02.2024 her engagement ceremony took place. Applicant called her and she disclosed about her engagement. She also requested the applicant to delete all photographs. He assured to do so and that there would not be any problem from his end. Thereafter applicant called her on 15.02.2024 and told her that he wanted to meet her and on meeting everything will be cleared. She refused to meet. On 16.02.2024, applicant followed her while she was returning from college. He tried to get close to her against her wish. He then started threatening her that he will see that her marriage is broken and he will send all the photographs to her fiancée. The accused abused her by using obscene language mentioned in the first information report.

7. On 01.04.2024, supplementary statement of non-applicant no.2 was recorded, wherein she has stated that when she lodged the first information report, she has inadvertently mentioned cell-phone number as 7558700248 instead of 7558730248. So also she did not want to disclose the things

happened with her to her family, as she was feeling ashamed and she might be defamed, therefore she did not disclose it at the time of lodging of first information report. She has stated that in the last week of March, 2021, the applicant came to Nagpur and called her. She went to meet him at Sonegaon Talao. Thereafter after one month, he called her and told that he had come to Nagpur and asked her to come to main railway station, Nagpur. Accordingly she went to railway station. He took her at Itwari on the pretext of meeting to her friends. He took her to Hotel Orient Palace. While she was sitting in the reception, he asked for her I.D. card, when she refused he told that his friends are also giving and therefore she is also required to give her ID card. Then she gave her I.D. card to him. He then booked a room in the hotel and took her to the said room. They sat chatting there, thereafter, he brought cold drinks and then both had it. Thereafter he was asked her to smile and he removed her clothes, made her naked and he clicked her photos by asking her to smile. She was feeling uncomfortable, that time he established physical relations with her. She slept in the hotel for some time. Thereafter they both came out of the hotel and she went to her home. Thereafter every day he

used to call her and message her. When she asked him, he threatened her to make her nude photographs viral, therefore, she was frightened. After 3-4 months, he came to Nagpur and again took her to Orient Palace Hotel, there again by showing her nude photographs, he asked for physical contact against her wish. He on 4 occasions had forcible intercourse with her. He threatened her that if she tells anything about it at her home, then he will make her photographs viral, therefore, she did not disclose it to any body. After recording of her supplementary statement, Section 3786[2][n] of the Indian Penal Code was added to the present crime.

8. With the assistance of learned Counsel for the applicant, learned A.P.P. for non-applicant no.1/State and learned Counsel for non-applicant no.2, we have perused the first information report, charge sheet and citation relied upon by the learned Counsel for the applicant.

9. The material collected during the course of investigation shows that Cell-phone of the applicant was seized and photos of applicant and non-applicant no.2 in undergarments and their videos were found in his cell-phone.

10. First information report and material collected

during the investigation prima facie shows that there is sufficient material against the applicant to prosecute him in the present crime. Merely because the allegations of rape are made after a delay of three years, this by itself cannot be a ground to quash the proceeding.

11. At this stage, defence of the applicant that relations between him and non-applicant no.2 were consensual, also cannot be considered in the light of the fact that above referred photographs and videos are found in his cell-phone, and it is specific allegation of non-applicant no.2 that he has threatened to make them viral.

12. The judgment relied upon by the applicant is rendered in different facts, wherein the Apex Court has held that the relations between the applicant and informant therein consensual, and hence the first information report was quashed. In view of the specific allegation made by the non-applicant no.2 in the first information report and supplementary statement, this judgment is of no help to the applicant's case.

13. Since the first information report and material collected during investigation prima facie makes out a case against the applicant, we find no merit in the application, the

Order

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same is therefore, dismissed.

JUDGE

JUDGE

Rgd.