



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

Criminal Application (APL) No. 1535 of 2024

(1) Kamlesh s/o Tulsiram Wagadre,
Aged 56 years, occupation lawyer,
R/o Plot no. 81, "Shivshakti Layout"
Near C.G.H.S. Colony, Sonegaon,
Nagpur, 440 025.

(2) Aditya s/o Vijay Chaudhary,
aged 30 years, occupation private,
resident of Bhagwannagar, Nagpur.

... Applicants

- Versus -

(1) State of Maharashtra, through
Police Station Officer,
Gittikhadan, Nagpur.

(2) XYZ, in Crime No. 529/2022,
(Non-applicant no. 2/Victim)

... Non-applicants/
Respondents

Mr. U. P. Dable, Advocate for the applicants
Ms. S. N. Thakur, APP for the State/non-applicant no. 1
Mr. M. N. Ali, Advocate for non-applicant no. 2

**CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.**

Date of reserving judgment : 31-07-2025
Date of pronouncing judgment : 07-08-2025

JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Ms. S. N. Thakur, learned Additional Public Prosecutor waives service of notice for non-applicant no. 1 and Mr. M. N. Ali, learned Advocate waives service of notice for non-applicant no. 2. With consent of learned counsels for the parties, the application is taken up for final hearing.

3. By present application, the applicants are seeking to quash charge-sheet in Crime No. 529/2022 for the offences punishable under Sections 376(2)(n), 377, 506, 509 and 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r), 3(1)(r)(s), 3(1)(s), 3(2)(5), 3(2)(5)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act').

4. We have heard Mr. U. P. Dable, learned counsel for the applicants, Ms. S. N. Thakur, learned Additional Public Prosecutor for non-applicant no. 1 and Mr. M. N. Ali, learned counsel for non-applicant no. 2.

5. Mr. Dable submits that the applicant no. 1 and non-applicant no. 2 are both Advocates by profession. He has then invited our attention to First Information Report (FIR) lodged on 1-9-2022 by non-applicant no. 2. The offence allegedly occurred during the period

from 24-3-2014 to 27-8-2022. This span of time, according to Mr. Dable, will have to be kept in mind to understand the real intent of the non-applicant no. 2 to lodge FIR, which culminated into filing charge-sheet.

6. He has taken us through the FIR. According to non-applicant no. 2, she was preparing for the examination for appointment as Public Prosecutor and/or a Judge. The applicant no. 1 assured her help to prepare for the examination. Accordingly, both came in contact with each other. On 24-3-2014, applicant no. 1 came to the house of non-applicant no. 2. Her husband had gone out of station for work. Her daughters had gone to school. The applicant no. 1 made an attempt to catch hold of her and to establish physical relations. She slapped him and asked him to leave the house. Accordingly, applicant no. 1 left the house but while doing so, he said to her that he has taken photographs and video of what happened between the two, and threatened her of making it viral.

7. The applicant no. 1 insisted her to be with him on the pretext of making the photos and video viral. The applicant no. 1 accordingly in his office established repetitive physical relations with her. In October, 2018, applicant no. 1 quarreled with her on the ground that she did not come to meet him. At that time, applicant no. 1 made a

phone call to her husband and said that he will make photographs and video viral. Husband took up quarrel with non-applicant no. 2 on the said issue. The applicant no. 1, however, continued to establish physical relations with non-applicant no. 2.

8. In August, 2021, the non-applicant no. 2 left the house of her husband and began residing separately. The applicant no. 1 used to come to her house and force her into unnatural sexual act. He used to beat her if she refused to continue physical relations. The non-applicant no. 2 was so frightened by the threatening behaviour of applicant no. 1 that she did not disclose her suffering to anybody.

9. The FIR further indicates that applicant no. 2 was a close associate of applicant no. 1. They used to abuse non-applicant no. 2 over the phone after consuming liquor. The applicant no. 1 used to call her from the bar itself saying that her existence is for his sexual satisfaction, she is a prostitute and should remain within limits, she belong to Scheduled Caste and her place is in his foot steps. He further stated that he can maintain ten such prostitutes and accordingly, abused her. The non-applicant no. 2 did not disclose the abuse and sufferance out of fear of social stigma and defamation.

10. The non-applicant no. 2, in November, 2021, rejoined her husband. The applicant no. 1 quarreled with her on that count also. On 3-1-2022, in the intervening night at about 1.30 Hours, both the applicants came to the flat where non-applicant no. 2 was residing with her husband. Applicant no. 1 verbally abused both the non-applicant no. 2 and her husband and called them downstairs. Upon their arrival, the applicant no. 2 physically assaulted her husband and asked non-applicant no. 2 to sit down on knees and apologize to applicant no. 1, asserting that until she does so, he will continue to assault her husband. At that time, applicant no. 1 displayed iron rod kept in the vehicle and indicated that he should not be compelled to use it. The non-applicant no. 2 accordingly sat down on knees and apologized applicant no. 1. At that time, applicant no. 2 said that this is where is her and her husband's place and should always remain within limits. Thereafter both left the place.

11. The applicants, after some days again threatened non-applicant no. 2 by saying that they will kidnap her family members and will make her sit in the nude in the market and will also kidnap her daughter and will circulate her number in entire Maharashtra, if she does not continue relations with applicant no. 1. The non-applicant no. 2 then informed the said fact to her husband on phone, who had

been to Raipur for work to which he said that once he comes back, they will lodge complaint.

12. Thereafter on 18-6-2022, applicant no. 1 again called non-applicant no. 2 and abused her. The non-applicant no. 2 then lodged report with police. In response, applicant no. 1 apologized and requested to withdraw the complaint. However, thereafter applicants continued to harass her and on 27-8-2022, they again came to the house of non-applicant no. 2 at about 11.30 p.m. Both were under the influence of liquor. They abused both i.e. non-applicant no. 2 and her husband, gave threat of downloading photographs. Finally, on 1-9-2022, a detailed report was lodged.

13. The argument is that the span of relationship as mentioned in FIR itself reveals consensual relationship and, therefore, the ingredients of Section 376 of IPC will not be attracted.

14. We are not at all impressed with the argument. Learned Additional Public Prosecutor has rightly submitted that the contents of the FIR, if taken together, the forcible physical relationship at the hands of applicant no. 1 is writ large. The applicant no. 1 not only threatened non-applicant no. 2 but also to her husband saying that he will circulate photos and videos. Thus, in a way, applicant no. 1 disclosed to non-

applicant no. 2's husband of his (applicant no. 1's) desire to continue relations. He not only forced himself on non-applicant no. 2 for physical relations but made her to kneel down and apologize employing assault to her husband. The manner in which the couple has been subjected to abuse, particularly, on the count of their caste constitutes a grave violation of fundamental rights and represents an heinous act of atrocity.

15. Mr. Dable submits that neither photographs nor videos were found in the mobile of applicant no. 1, seized by the police. Accordingly, he submits that the story put forth by non-applicant no. 2 is unbelievable. In our view, one cannot jump to such conclusion merely because photographs and videos were not found in the mobile of applicant no. 1. Firstly, it is nobody's case that applicant no. 1 continued to possess same mobile in which he had on 24-3-2014 took photographs and videos. There could be multiple reasons why these details are not available. Secondly, applicant no. 1 made non-applicant no. 2 to believe that such photographs and videos were available in his mobile. She continued to hold this belief. Most importantly, the first applicant also threatened non-applicant no.2's husband with the circulation of said photographs and videos, thereby maintaining the impression that he possessed such material. Thus, from non-applicant

no. 2's perspective, the first applicant possessed said material. The question here is of belief of non-applicant no. 2 of applicant no. 1's possessing photographs and videos, which applicant no. 1 successfully made her to believe. In the circumstances, non recovery of photographs and videos after a span of about eight years is of no significance.

16. At this stage, learned counsel for the applicants has invited our attention to the report lodged by the non-applicant no. 2 of the incident that occurred on 27-8-2022. It is registered as non cognizable report (page no. 338) describing the abuse at the hands of the applicants. Mr. Dable contends that, if the non-applicant no. 2 had lodged this report on 27-8-2022, she could have well lodged detailed report on that day itself. According to him, the report that was lodged on 1-9-2022 is an after thought.

17. We do not find substance in the argument. It will be too early to jump to such conclusion. Whether the report lodged on 1-9-2022 is an after thought or is an outcome of unbearable sufferings is a matter that will be revealed in trial. We are not oblivious to delayed report in sexual harassment matters. In the circumstances, though delay is a ground that could be relevant, is not decisive for all purposes. Here is a case where not only sexual harassment is reported, the repetitive verbal and caste based abuse is also relevant. We therefore,

do not find this case to be a case where on accepting the charge-sheet on face value, the offence is not made out. Rather, we find that offence is well spelt out in the report which is supported by the statement of husband of non-applicant no. 2 at least on the incident that allegedly occurred on 27-8-2022.

18. Mr. Dable has then invited our attention to the judgment of Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra [(2019) 9 SCC 608]*** where the Hon'ble Supreme Court clarified that the relationship that is consensual over a prolonged period, with no evidence of deception at the time of sexual act, does not automatically amount to an offence of rape or related offences, even if, promises of marriage were made but not fulfilled later. The Court further clarified that the legal principle is that a false promise of marriage made with intent to deceive, and which significantly influences consent, can vitiate consent and support charges of rape, whereas consensual relationship over time, without evidence of initial deception, does not necessarily constitute an offence.

19. Thus, the above case is based on sexual relationship on false promise of marriage. Such is not the case here. Nonetheless, the judgment has been cited to contend that the prolonged period, for which,

the parties indulged into sexual relationship, an offence of rape is not made out.

20. In our view, the judgment will be of no help to the applicants in as much as the manner in which the non-applicant no. 2 has put forth her apathy which to certain extent is supported by her husband on incident of abuse, show that the applicant no. 1 continued sexual assault by putting non-applicant no. 2 under threat. This case appears to be one where non-applicant no. 2 when failed to continue physical relationship, the applicants abused and assaulted the couple to obtain consent. Further, the repeated abuse to the couple based on their caste, amounts to separate limb of offence.

21. Another judgment, which Mr. Dable took help of is judgment of Coordinate Bench of this Court in the case of ***Siddhodhan alias Sudhodan s/o Namdeorao Kurule Vs. State of Maharashtra [2023(2) Mh.L.J. (Cri.) 686]*** where the Court while quashing the charge-sheet and FIR under Section 376 of IPC noted that the informant therein herself has in supplementary statement disclosed that the accused was her neighbour and was regularly visiting her house and helped her many times. The relations were such that she had even entrusted her ATM card to the accused. The Court also noted that

theory put forth by informant was doubtful in as much as the allegations of informant that accused has forcibly taken ornaments were found to be apparently false because the jeweler to whom the ornaments were mortgaged stated that both the informant and accused had been to his shop for mortgaging ornaments and that it is informant herself, who has handed over the ornaments. Thus, the version of informant was found to be doubtful. Further, the relations were such that showed confidence of informant in the accused and in such circumstances, the long standing association was considered to be nothing else but consensual relationship.

22. In the present case, there is nothing on record to indicate such willful association between the applicant no. 1 and non-applicant no. 2. The association appears to be one sided relationship, particularly on the point of physical relations. Further, the caste based abuse by both the applicants that required non-applicant no. 2 to kneel down to apologize the applicant no. 1 will add to the theory of forcible relationship between the parties.

23. That being so, we are not inclined to grant any relief, much less, quashing the charge-sheet and FIR. The application is accordingly rejected.

24. The trial Court shall, however, continue with the proceedings without getting influenced by the observations made in the body of the order, which are made only in context with the prayers made by the applicants to quash the proceedings.

25. The application is disposed of in above terms.

(M. M. NERLIKAR, J.)

(Anil L. Pansare, J.)

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