



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.1573/2024

Sushant Subhash Bhatghare,
Aged about – 31 years, Labourer
R/o Netaji Subhash Chandra Bose Chowk
Ward No.- 13, Near Jatra Road Wani
District Yavatmal

... APPLICANT

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Yavatmal
2. XYZ
Aged about – 26 years, Resident of
Ward No. 2, wagdara, Wani, Yavatmal

...NON-APPLICANTS

Mrs. Sonal Tripathi, Advocate for applicant
Mrs. H.N. Prabhu, APP for non-applicant No.1/State
Mrs. Digvijay Mankar, Advocate for non-applicant No.2

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 18.09.2025
PRONOUNCED ON : 29.09.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. Admit. Heard finally with the consent of learned Counsel for the parties.

2. By this application under Section 482 of the Criminal Procedure Code, the applicant is seeking to quash the criminal proceedings i.e. Sessions Trial/Special Case No. 100/2023, arising out of the First Information Report vide Crime No.1080/2023, registered with the non applicant No.1 – Police Station Wani, Yavatmal, for the offences punishable under Sections 376(2)(n), 417, 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2) (Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short ‘the SC & ST Act’).

3. The non-applicant No.2 lodged a report with the non-applicant No.1 that in the year 2022, she and the applicant got acquainted with each other, friendship developed between both of them, which further culminated into a love relationship. It is further stated in the said First Information Report, in February 2023, the applicant called non-applicant No.2, at the house of his friend and

established physical relationship there. Thereafter, they met repeatedly and the physical relationship continued thereafter also. On 09.09.2023, the applicant had sexual intercourse with the non-applicant No.2 on false pretext of marriage but on 13.10.2023, the applicant refused to perform marriage and threatened the non-applicant No.2 with dire consequences.

4. On 14.10.2023, the non-applicant No.2 lodged the First Information Report in question alleging offences punishable under Sections mentioned supra. It is this First Information Report and the consequent charge-sheet which is challenged in the present application.

5. We have heard Mrs. Sonal Tripathi, learned Counsel for the applicant, learned Additional Public Prosecutor Mrs. H.N. Prabhu for the non-applicant No.1/State and Shri Digvijay Mankar, learned Counsel for the non-applicant No.2 i.e. the original informant.

6. Learned Counsel for the applicant submits that as can be seen from the bare averments of the First Information Report, it reveals that applicant as also the non-applicant No.2 are major and were

engaged in a consensual relationship. It is further submitted by the learned Counsel for the applicant that composite and meaningful reading of the First Information Report in question would reveal that there was no coercion/force/misrepresentation by the applicant and the non-applicant No.2 out of her own free will and consent engaged in physical relationship with the applicant. He further states that the first incident is of February, 2023 and the First Information Report came to be registered on 14.10.2023, after an inordinate and inexplicable delay of eight months. It is also the contention of the learned Counsel for the applicant that there is no mention of any words in the First Information Report nor in the charge-sheet indicative of the fact that the non-applicant No.2 was abused or sexually assaulted as she belongs to the particular caste. It is therefore a submission of the learned Counsel for the applicant that no offences as stated in the First Information Report are made out.

7. Per contra, the learned Additional Public Prosecutor vehemently opposed the quashing of the First Information Report and states that the applicant had promised the informant that he

will marry her and at that count she was sexually exploited. When the informant repeatedly requested the applicant to perform marriage and the applicant has refused to perform the marriage on one reason or the other the informant had no other alternate to lodged the First Information Report. It is further stated by the Additional Public Prosecutor that during investigation, spot panchanama is conducted and the victim was referred for medical examination. The statement of the victim was also recorded, in which, she has specifically narrated that on the pretext of marriage, the applicant had established physical relations with her. As far as offences under the SC & ST Act are concerned, the learned Additional Public Prosecutor submits that the victim belongs to 'Gond' community, and therefore, the applicant refused to marry her.

8. Learned Counsel for the non-applicant No.2 also supports the Additional Public Prosecutor and states that the averments in the First Information Report are enough to show at least *prima facie* involvements of the applicant. She, therefore, prays for dismissal of the present application.

9. In the conspectus of these facts, we have perused the First Information Report in question and the charge-sheet which is filed consequent to completion of investigation. As can be seen from the said First Information Report, non-applicant No.2, is a matured lady of 28 years of age while the applicant is also 30 years of age. In the First Information Report, there is no allegation that the physical relationship at the first instance was established without the consent of the non-applicant No.2. In fact, the said physical relationship, continued for about ten months thereafter. It is therefore hard to believe that the adult and matured lady like non-applicant No.2 had not consented to the said initiation and continuation of physical relationship.

10. As far as offences under the SC & ST Act are concerned, there is no semblance of any averment that the non-applicant No.2 was exploited and sexually assaulted only because she belongs to a particular caste. Thus, the ingredients of offences under the Indian Penal Code as also the SC & ST Act are not attracted after going through the First Information Report.

11. In the case of *Uday Vs State of Karnataka, (2003) 4 SCC 46*, the Hon'ble Supreme Court after reproducing Section 375 has held that "Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side." It is further held that "there does not necessarily have to be complete willingness to constitute consent. A woman's consent to intercourse may be hesitant, reluctant or grudging, but if she consciously permits it there is consent" In paragraph No. 11, it is held as under :

"11. Some of the decisions referred to in Words and Phrases, Permanent Edition, Vol. 8A at p. 205 have held:

"that adult female's understanding of nature and consequences of sexual act must be intelligent understanding to constitute 'consent'. Consent within penal law, defining rape, requires exercise of intelligence based on knowledge of its significance and moral quality and there must be a choice between resistance and assent. Legal consent, which will be held sufficient in a prosecution for rape, assumes a capacity to the person consenting to understand and appreciate the nature of the act committed, its immoral character, and the probable or natural consequences which may attend it".

"12. The courts in India have by and large adopted these tests to discover whether the consent was voluntary or whether it was vitiated so as not to be legal consent.

"7. A mere act of helpless resignation in the face of inevitable compulsion, quiescence, non-resistance, or passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be 'consent' as understood in law. Consent, on the part of a woman as a defence to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent.

Submission of her body under the influence of fear or terror is no consent. There is a difference between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent. Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure."

12. Furthermore, in the celebrated judgment of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another, (2019) 9 SCC 608***, after exhaustively dealing with the case laws related to the subject this Court held as under :

"16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a

promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed: (SCC pp. 682-84, paras 21 & 24)

"21. ... 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.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC

cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

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.”

13. In the backdrop of these facts, if we analyze the materials collected by the prosecution the inevitable conclusion is that the non-applicant No.2 and the applicant were engaged in consensual physical relationship voluntarily out of their own free will. It would be therefore a fit case to exercise powers under Section 482 of the Criminal Procedure Code, since continuance of the proceedings in our view would amount to nothing but an abuse of the process of Court. When we take this view we are guided by the parameters laid down in paragraph No. 102 of judgment reported in ***State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335***, and more particularly Clause 1, 3 and 7 thereof :

“102.....

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) ...

(3) Where the uncontroverted allegations made in the FIR or com- plaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)

(5) ...

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. We are therefore inclined to quash and set aside the First Information Report No.1080 of 2023 dated 14.10.2023, along with the Charge Sheet No. 160 of 2023 dated 09.12.2023, registered through Police Station Wani, Yavatmal for the offences punishable under Sections 376(2)(N), 417, 506 of the Indian Penal Code and Section 3(1)(w)(i), 3(1) (w)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and consequent Sessions Case No. 100/2023. Hence, we proceed to pass the following order :

ORDER

- i) Application is allowed.
- ii) The First Information Report No.1080 of 2023 dated 14.10.2023, along with the Charge Sheet No. 160 of 2023 dated 09.12.2023, registered through Police Station Wani, Yavatmal, for offences punishable under Sections 376(2)(N), 417, 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and consequent Sessions Case/Special Case No. 100/2023, are quashed and set aside.

The application is disposed of accordingly.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..