



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4399 OF 2022

Pramod Dhanji Purabiya
Age: 32 years, Occ. Service,
R/o. Sewri, Bhoiwada nearby
Police Colonies, Annabau Sathaye
Nagar, Room No.2211, 2nd Floor

.....Petitioner

Vs.

1. The State of Maharashtra
Through Bhoiwada Police Station

2. XYZ
Age-30, Occ.-Artist
Room No.404, 4th Floor,
Deep Apartments, Sainath,
Virar (E), Tal. Vasai,
Dist- Palghar

.....Respondents

Ms. Sana Raees Khan, with Mr. Aditya Parmar, for the Petitioner.
Mr. Vinod Chate APP, for Respondent No.1-State.
Mr. M.A.Khan, with Mr. Tajammul Khan & Mr. Mizan Khan, for Respondent
No.2.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON: 25th JULY 2024.

PRONOUNCED ON : 2nd AUGUST 2024

JUDGMENT :- (Per Dr. Neela Gokhale, J.)

1) Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken up for final hearing.

2) Petitioner seeks quashing and setting aside criminal proceedings bearing Sessions Case No. 692 of 2023 pending before the Additional Sessions Judge, Mumbai arising out of FIR No. 789 of 2022

dated 5th August 2022 registered with the Bhoiwada Police Station, Mumbai for the offences punishable under Sections 376, 376(2)(n), 376(2)(h), 313, 323, 504, 506 of the Indian Penal Code, 1860 ('IPC').

3) Upon the statement made on behalf of the Petitioner that the relationship between the parties was of consensual nature and that the FIR was registered after a period of 6 and half years, this Court by its Order dated 12th April 2024 restrained the trial Court from framing charges.

4) Ms. Sana Raees Khan learned counsel represents the Petitioner and Mr. Vinod Chate, learned APP appears for the State. Mr. M. A Khan represents the victim/ Respondent No. 2.

5) On a perusal of the FIR, at the outset, we indicated to Ms. Khan our reluctance to exercise our jurisdiction under Article 226 of the Constitution of India. Similarly, as the Final Report in the case is already filed in the trial Court, we also indicated to the learned counsel the alternate remedy available to the Petitioner under the Criminal Procedure Code, 1973. ('the Code'). However, Ms. Khan persisted that, the matter be decided on merits only. Hence we proceeded to hear her and the petition finally.

6) Facts of the Case: –

6.1) As discerned from the FIR, it is the Respondent No.2's case that she is a divorcee residing with her minor son at a house at Palghar. She became acquainted with the Petitioner as they were residing nearby. The

Petitioner secured some employment for her as a junior artist to work in a TV serial. Their friendship grew and the Petitioner made a promise to marry her and even offered to look after her minor son, begotten of her previous marriage. Believing in his promise, the victim started going out with the Petitioner. In March 2016, he took her to Kailash Lassiwala Hotel in Dadar and established sexual relations with her. He also took her to various other hotels in Malad, Vajreshwari, Mira Road, etc where they had sexual relations. In 2018, the Petitioner rented premises at Kandivali and told the victim that she should reside in the rented premises. She shifted there and the Petitioner used to reside with her about 2-3 days in a week. He continued to extend the assurance regarding marrying her. They continued the relationship and the victim time and again asked him as to when they would be married. He started avoiding the topic, leading to arguments between them. The Petitioner assaulted her with fists and kicked her. Thereafter, she refused to reside with him and shifted to her aunt's house with her son.

6.2) The Petitioner came to Bhayander and apologised to her and once again promised that they would be married soon. Once again on this assurance, the victim shifted to another room rented by him and once again resumed their intimate relationship. It is the contention of the victim that she became pregnant from the Petitioner and hence insisted that they should get marry at the earliest. At this stage, the Petitioner refused to

marry her and told her to abort the child. It is stated that even during the pregnancy, despite her refusal to have sexual relations with him, the Petitioner forcibly raped her. The Petitioner then told her that he will give her money and she should undergo an operation to terminate the pregnancy. He abused her in filthy language and beat her. The victim has given birth to the child but yet the Petitioner has refused to marry her. In fact he is also denying the paternity of the child. The victim realised that, she has been duped and hence she filed the present FIR.

7) Ms. Sana Khan urged the Court to quash the FIR on the following contentions: –

7.1) The relationship between the parties was purely consensual and hence, no offence as alleged is made out.

7.2) The fact that the Petitioner hired accommodation for her clearly indicated that he intended to marry her. However he refused to marry her only when he learnt that she had a son born out of her previous marriage with her husband. Ms. Sana Khan further contended that the victim concealed this material fact from the Petitioner and hence, he refused to marry her.

7.3) It is contended that despite samples taken for DNA testing, the Investigating agency has not filed the DNA report. Thus, it is contended that the lapse in investigation should benefit the Petitioner.

7.4) It is contended that the Petitioner was forced by the victim to hire

accommodation for her, which he did and this proves that the sole intention of the victim was to extort money from the Petitioner. Since he was unable to fulfill her demands to buy a house in her name, she filed the false FIR.

7.5) The victim is 30 years of age and mature enough to understand the consequences of her action.

7.6) Ms. Khan drew our attention to the statements of witnesses annexed to the Final report. While we indicated to Ms. Khan that we were not expected to conduct a mini trial at the stage of hearing a quashing petition, she persisted in reading the statements of witnesses and placed reliance on the same. She read the statement of the landlord who rented the room at Virar to the Petitioner and another neighbour. According to Ms. Khan thus the parties resided together at the said tenanted house together which indicates a consensual relationship.

7.7) Ms. Khan also placed reliance on the following decisions of the Supreme Court to canvass her submission that, despite availability of alternate remedy, this Court is mandated in law to quash the FIR at this stage:

- i) *A.M.Mohan v. The State represented by SHO and Anr.*¹
- ii) *Mahmood Ali & Ors. v. State of U.P. & Ors.*²
- iii) *Haji Iqbal alias Bala Through S.P.O.A. v. State of U.P. & Ors.*³

¹ 2024 INSC 233.

² 2023 INSC 684

³ 2023 SCC Online SC 946

iv) *Joseph Salvaraj A. v. State of Gujarat & Ors.*⁴

v) *Mamta Shailesh Chandra v. State of Uttarakhand & Ors.*⁵

vi) *Anand Kumar Mohatta & Anr. v. State (NCT of Delhi) Department of Home and Anr.*⁶

7.8) Thus, Ms. Khan contends that based on the above contentions, it is clear that neither the FIR nor the charge sheet disclose any cognizable offence. Hence, the proceedings deserve to be quashed.

7.9) We have gone through the decisions of the Apex Court cited by Ms. Khan to demonstrate that there is nothing in the words of Section 482 of the Code, which restricts the exercise of power of the Court to prevent abuse of process of court or miscarriage of justice only to the stage of FIR and the Court can exercise jurisdiction under 482 of the Code even when a discharge application is pending in the trial court. Hence, we proceeded to hear the petition on its merits.

8) Mr. M.A.Khan for the Respondent No.2 drew our attention to the extract of the Hotel Register. The entry showed that the parties had checked in the hotel in Room No. 103. Further, he also reads the statement of the Hotel manager, who narrates that, the Petitioner and the victim had checked into his lodge. He relied on the supplementary statement of the victim wherein she clearly states that the sexual relationship was entirely

⁴ (2011) 7 Supreme Court Cases 59

⁵ 2024 SCC Online SC 136

⁶ (2019) 11 Supreme Court Cases 706

based on his promise to marry her. He also relies on the witness statement but states that the same clearly shows that they were also aware of the quarrels between the parties. Mr. Khan argued that, there was no consensual relationship between the parties and it is only on the assurance of the Petitioner to marry her that, the victim continued their relationship. He states that, hence the Petitioner has committed the offence of rape and other offences as alleged in the FIR. He thus urges the Court to dismiss the petition.

9) Mr. Vinod Chate, learned APP strongly opposes the Petition. He states on instructions that the Investigating Officer has already taken the samples from the child for DNA testing and the results would be available at the earliest. He supported the arguments of Mr. M.A.Khan.

10) The thrust of the arguments advanced by Ms. Khan appears to be that, the Petitioner fully intended to marry the victim and it is only when he learnt about the existence of her minor son from a previous marriage, which fact according to him, she had concealed from him, that he refused to marry her. Thus Ms. Khan attempts to establish that this is a case of a mere breach of promise and not that of giving a false promise to marry. We have carefully read the FIR and *prima facie* appreciated the purport of the statements of witnesses. It is evident from the statement of the neighbour that, there were arguments between the parties. She further corroborates the story of the victim which the victim had confided in her even earlier.

This evinces confidence in the version of the victim.

11) It is evident from the contents of the FIR that, the sexual relationship was purely on the assurance of the Petitioner to marry the victim. She clearly states that, the Petitioner even assured her that he would look after her son of an earlier marriage. Despite this, Ms. Khan urges to us that we must appreciate the Petitioner's defence that, he fully intended to marry her but only the fact about her son made him change his mind. We cannot at this stage analyze the defence of the Petitioner but are required to look into only the averments in the FIR and ascertain *prima facie* whether the alleged offence is disclosed from its bare reading. We cannot proceed to appreciate the evidence of the parties to establish intent or *mala fide* and conduct a mini trial at this stage. Admittedly, there existed a physical intimate relationship between the parties. As per the statement of the victim, she consented to the relationship upon a promise to marry her. However, right from the beginning, the Petitioner had no intention to marry her. The mere fact of renting various premises for the victim to reside is not an indication of an intent to marry. In fact, it is otherwise. It displays the intent of the Petitioner to keep the victim in a place where she would be easily available for his pleasure at any time of his convenience. Mere facilitating a rented house for the victim does not establish an intent to marry. It demonstrates an intention of the Petitioner to keep the victim readily available for his pleasure. In any case there was no obstruction at all

to their marriage even earlier, but he continued to make mere promises. According to us, the version of the victim/victim is fully reliable and is of sterling quality.

12) In *Dhruvaram Murlidhar Sonar vs. State of Maharashtra*⁷, the Apex Court held that :

“13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers. (emphasis supplied)”

13) In the case of *Shambhu Kharwar vs. State of Uttar Pradesh & Anr.*⁸, the Supreme Court has further explained the concept of the word ‘consent’ relating to the commission of the said offence as under :

“10. An offence is punishable under Section 376 of the IPC if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 along with Section 90 of the IPC is relevant which is set out below.

“375. Rape – A man is said to commit “rape” if he –

[...]

under the circumstances falling under any of the following

⁷2019 (18) SCC 191

⁸ (2022) SCC Online SC 1032

seven descriptions

Firstly ...

Secondly. – Without her consent.

[...]

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Xxx

90. Consent known to be given under fear or misconception

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A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or...”

14) In *Pramod Suryabhan Pawar vs. State of Maharashtra*⁹ a two Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in *Sonu @ Subhash Kumar vs. State of Uttar Pradesh*¹⁰ observed that:

“12. This Court has repeatedly held that consent with

⁹ 2019 (9) SCC 608

¹⁰ 2021 SCC OnLine SC 181

respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...

[...]

14. [...] Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled...

[...]

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...

[...]

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.

(emphasis supplied)”

15) The present case is not one of those cases where there is a *bona fide* intent of the Petitioner to marry the victim and on that assurance, the parties enjoyed intimate relationship but unfortunately the same did not fructify in a marital tie. It is in such type of cases that, the Apex Court has distinguished between giving a false promise to marry and committing a breach of promise to marry. The former invites prosecution while the latter may result in acquittal or quashing. We are of the considered opinion that, the facts in the present case are quite distinct from the case of a mere breach of promise to marry. Even the act of the Petitioner in abusing and assaulting the victim when he learnt that, she conceived from him indicate lack of intent right from the beginning. The consent of the victim to the sexual relationship, even if presumed to be given, is vitiated by the ‘misconception of the fact’ which was that the victim believed that the Petitioner would marry her. It was on this assurance and promise that she

decided to engage in the sexual act.

16) In the case of *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat*¹¹, the Apex Court has observed as under :

“In an Indian setting refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Viewing the evidence of the girl or the women, who complains of rape or sexual molestation with the aid of spectacles fitted with the lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.”

17) Ms. Khan sought to argue that, the Court cannot rely upon only on the statement of victim and ‘must’ also consider the defence of the Petitioner. This contention of the Petitioner is stated here only to be rejected. It is settled law that in its extra ordinary jurisdiction under Article 226 of the Constitution of India, the High Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that inherent powers of this Court do not confer an arbitrary jurisdiction on the Court. In its decision in the matter of *CBI vs. Aryan Singh*¹², the Supreme Court has held that, the High Court cannot conduct a mini-trial while exercising jurisdiction under Section 482 of the Code and/or under Article 226 of the

¹¹ AIR 1983 SC 753

¹². 2023 SCC OnLine (SC) 379.

Constitution of India. The observations of the Supreme Court are as under :

“3.1 Both the learned counsel appearing on behalf of the respective accused have made submissions on merits of the allegations made against each accused. However, all those submissions are the defenses, which are required to be considered during the trial. Therefore, we are not elaborately dealing with and/or considering the submissions made on behalf of the CBI as well as the accused on merits on the allegations against the accused as any observation of this Court may affect either of the parties during the trial.

4. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr.P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.

4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is

not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.PC., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

18) In the case of *V. Ravikumar vs. State represented by the Inspector of Police, Crime Branch, Salen, Tamil Nadu*¹³, the Supreme Court affirmed that, where an accused seeks quashing of the FIR invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter the factual arena to adjust the correctness of the allegations in the complaint.

19) The Supreme Court in the case of *Priyanka Jaiswal vs. The State of Jharkhand and Ors.*¹⁴ while dealing with the similar issue has also held as follows :

¹³ (2019)14 SCC 568

¹⁴ 2024 INSC 357

13.....This Court in catena of judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the Court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial, nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside.....”

20) Considering the circumstances in the case, the allegations in the FIR and the statement of victim, we find no justification to quash the FIR impugned herein. In view of the same, the Petition is dismissed.

21) Rule is accordingly discharged

21.1) All interim orders are vacated. The Trial Court to proceed with the case expeditiously.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

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