

(2024) 06 BOM CK 0055

In the Bombay High Court

Case No : Criminal Writ Petition No. 3181 Of 2023

Amol Bhagwan Nehul

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 28-06-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 376, 376(2)(n), 377, 504, 506

Citation : (2024) 06 BOM CK 0055

Hon'ble Judges : A. S. Gadkari, J; Dr Neela Gokhale, J

Bench : Division Bench

Advocate : Abhang Suryawanshi, Narayan Rokade, Anamika Malhotra, Mahindra Deshmukh

Final Decision : Dismissed

Judgement

Dr. Neela Gokhale, J

1) Rule. Rule made returnable forthwith. With the consent of all parties, the Petition is heard finally.

2) The Petitioner seeks quashing and setting aside of C. R. No.490 of 2023 dated 31st July 2023 registered at Karad Taluka Police Station, Satara, for the offense punishable under Sections 376, 376(2)(n), 377, 504 & 506 of the Indian Penal Code, 1860 ("I.P.C."). During pendency of the Petition, charge-sheet was filed by the Police officials on 26th September 2023 in the proceedings in R.C.C. No. 378 of 2023 pending before the Additional Sessions Judge at Karad. The Petitioner was given liberty to amend the Petition to challenge the proceedings which accordingly are also now assailed.

3) Mr. Abhang Suryawanshi, learned counsel appears for the Petitioner. Mr. Mahindra Deshmukh, learned counsel appears for the Respondent No. 2 and Smt. Anamika Malhotra, learned Addl. P.P. represents the State. Perused entire record produced before us.

4) It is the case of Respondent No. 2 ("Complainant") that, she has obtained Khulanama from her husband as per the practices of Muslim Religion. Her parents expired in 2021 during the Corona Pandemic. She resides with her four-year-old son viz. Abraham at Kale, Taluka-Karad, District-Satara. Since 25th May 2022, the Petitioner came to live on rent next door to the Complainant along with three friends. The Complainant became acquainted with him as her neighbor. They started chatting with each other on mobile phone and gradually their relationship became intimate. The Petitioner declared his love for her and promised to marry her. He demanded that, they should indulge in sexual relationship however, the Complainant consistently refused for the same.

4.1) It is the case of Complainant that, in July 2022, the Petitioner came to her house and threatened her that, if she refused to marry him, he would commit suicide. Ignoring her resistance and consistent refusal, he forced her for sexual relationship and raped her. Thereafter on 21 st September 2022 during celebration of the Petitioner's birthday, in Rajyog Lounge, Varunji Phata, Airport Karad, he again forcibly raped her.

4.2) It is also stated in the First Information Report ("F.I.R.") that, the Petitioner borrowed money from the Complainant from time to time and has not repaid the same. Even in January 2023, he called her to meet him at Pushkar Lounge, Ogalewadi, Karad. The Complainant then demanded that, he marry her and reveal their relationship to his family members. The Petitioner told her that, he will marry her after he gets a job and once again raped her despite her resistance.

4.3) The Complainant has also made a specific allegation that the Petitioner forced her to indulge in unnatural sex with him. Thereafter the Petitioner distanced himself from the Complainant and started avoiding her. When she asked his parents and relatives regarding their marriage, they abused her and told her that, she belonged to a different caste and hence, there was no question of marriage between the parties. The family members of Petitioner then abused and beat her. The Petitioner also joined his relatives in abusing the Complainant and threatened to kill her and her son Abraham. She was frightened and thereafter went to the Police Station and lodged the impugned F.I.R.

5) At the outset, we expressed our view to the learned counsel of Petitioner that, the F.I.R. clearly revealed commission of the offense and hence enquired with Mr. Suryawanshi as to whether he would like to consider availing the alternate remedy of filing a discharge Application before the trial Court. He refused and was determined to proceed with the hearing of present Petition. Hence, we heard the Petition on merits.

5.1) Mr. Suryawanshi attempted to portray the relationship between the parties to be consensual. He submitted that the sexual relationship is a result of love-affair between the parties. He also harped on the fact that the Complainant was already married, which according to him negates the story of Complainant

regarding the false promise of Petitioner to marry her. He further contends that since the Petitioner is Hindu and the Complainant belongs to Muslim religion, it is unlikely that the marriage of Petitioner and Complainant can be performed between the parties. There is also an unexplained delay of 13 months in filing the F.I.R. and hence, it is urged that this unexplained delay itself creates a doubt regarding the credibility of the allegations of Complainant. It is also asserted that a sexual relationship between willing adult partners is not a rape unless the consent was obtained by a fraudulent act or misrepresentation by one of them, even if the sexual relationship between the willing partners does not culminate into marriage. Mr. Suryawanshi advanced a further incredulous argument that, rape laws should not be used to regulate intimate relationship especially when a woman has agency and is entering relationship by choice. Mr. Suryawanshi thus prays that, the F.I.R. and the criminal proceedings against the Petitioner be quashed and set aside.

6) Mr. Deshmukh learned counsel representing the Complainant reiterates the contents of F.I.R. He draws our attention to the Medico-legal Examination Report of sexual violence annexed to the charge-sheet, to demonstrate that the findings in the Report clearly mention that forcible sexual intercourse cannot be ruled out. He vehemently urges us to dismiss the Petition. Smt. Malhotra relies upon the case made out by the Police in the Investigation Report and supports the Complainant.

7) A plain reading of the F.I.R. does indicate that there may have been an intimate relationship between the parties. However, the Complainant has clearly alleged that, the Petitioner had established sexual intercourse forcibly with her and without her consent, despite a relationship. A relationship between two adult individuals does not justify sexual assault by one on his partner. The F.I.R. also narrates various offending acts alleged to have been committed by the Petitioner vis-a-vis the Complainant. Insofar as the defense in the Petition that, there was a consensual relationship between the parties is concerned, it is trite that a relationship may be consensual at the beginning but the same state may not remain so for all time to come. Whenever one of the partners show their unwillingness to indulge in a sexual relationship, the character of the relationship as 'consensual' ceases to exist. The allegations in the present F.I.R. do not demonstrate a continuous consent on the part of the complainant. The allegations demonstrate that even though the Complainant was desirous of being married with the Petitioner, she definitely was not inclined to indulge in sexual relationship with him. The present case is not one of those cases where there is a bonafide intent on the part of Petitioner to marry the Complainant on the assurance of which the parties enjoyed intimate relationship but unfortunately the same did not fructify in a marital tie. It is in such cases that the Apex Court has distinguished between giving a false promise and committing breach of promise by the Accused. The Apex Court has further observed that in case of false promise, the Accused right from the beginning would not have any intention to marry with the prosecutrix and would have cheated and deceived her by

giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the Accused might have given a promise with all seriousness to marry her and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise.

8) The facts in the present case are quite distinct from the position of law as Mr. Suryavanshi has tried to depict. The Complainant alleges specific instances where the Petitioner has forcibly and without her consent established sexual relationship with her. She contends specific instances of her rejection of advances by the Petitioner. We are of the view that, the allegations in the F.I.R. prima-facie constitute the commission of the alleged offense. The defense of the Petitioner cannot be tested at this stage.

9) In a series of precedents of the Apex Court, it has been clearly held that the High Court cannot hold a mini-trial in its extra-ordinary writ jurisdiction. The Hon'ble Supreme Court in the case of Priyanka Jaiswal v. The State of Jharkhand and Others Criminal Appeal No. 2344 of 2024 dated 30th April 2024 (neutral citation 2024 INSC 357), while dealing with the similar issue, has also held as follows :

"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....."

10) In the case of V. Ravikumar v. State represented by the Inspector of Police, Crime Branch, Salen, Tamil Nadu (2019)14 SCC 568., the Hon'ble Supreme Court affirmed that, where an accused seeks quashing of the F.I.R. 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.

11) In Neeharika Infrastructure (P) Ltd. v. State of Maharashtra (2021) SCC OnLine (SC) 315., a 3-Judge Bench of the Hon'ble Supreme Court elaborately considered the scope and extent of the power under Section 482 of the Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of death penalty. It was further reiterated that while examining the F.I.R./Complaint, quashing of which is sought, the Court cannot embark on an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restrain imposed

by law, the Court would have jurisdiction to quash the F.I.R.

12) Consider to add a few judgments on Section 376 of the I.P.C. i.e. statement of prosecutrix – to be believed at this stage.

12.1) The Hon'ble Supreme Court in the case of Priyanka Jaiswal v. The State of Jharkhand and Others Criminal Appeal No. 2344 of 2024 dated 30th April 2024 (neutral citation 2024 INSC 357)., while dealing with the similar issue, has also held as follows :

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12.2) In the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 1983 Vol.-III SCC 217., the Hon'ble Supreme Court has observed that "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 lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society."

13) In the instant case, we do not think that the relationship between the Petitioner and the Complainant in respect of indulging in sexual activities was consensual to justify quashing of the criminal Complaint at the threshold. It is the probable defence of the Petitioner that their relations were consensual in nature. We also do not think that the Complaint in pursuance of which the F.I.R. has been registered, lacks the ingredients of the offense as alleged.

14) In view of the above, the Petition is dismissed. Rule is accordingly discharged.