



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4912 OF 2019

Vishwas Bajirao Patil .. Petitioner
Versus
The State of Maharashtra .. Respondent
...

Mr. Ashok Mundargi, Sr. Advocate i/b Satyam Nimbalkar and
Ashish R. Kachole for the petitioner
Mr. S.R.Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 4th MAY, 2023

P.C:-

1 The present petition is filed by the petitioner invoking Section 482 of Code of Criminal Procedure for quashing and setting aside the order dated 14/9/2018 passed by the Addl. Sessions Judge, Pune, thereby rejecting the discharge application filed by him in Special Case No.198/2018, where he faces a charge of Section 376, 354, 354A, 323, 324, 504, 506 of the IPC.

The impugned order has refused the discharge on the ground that there is sufficient material which would justify the prosecution against the petitioner by subjecting him to trial.

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2 Heard learned Senior counsel Mr.Mundargi i/b Satyam Nimbalkar for the petitioner and learned APP Mr.S.R. Agarkar, for the State.

The background facts in which the relief is sought, would reveal that the complainant, a lady aged 60 years, filed a private complaint before the JMFC, Pune, in the year 2015 and she sought invocation of offences punishable u/s.354, 509, 420, 504, 506 IPC. Pursuant to an order passed u/s.156(3) by the JMFC, the police recorded an additional statement of the complainant and thereafter, Section 376 and 354A was invoked in a C.R. registered with Kothrud Police Station vide C.R. No.290/2016 and on completion of investigation, in the subject C.R, charge-sheet came to be filed before the Magistrate on 6/2/2018.

The statement of the complainant recorded on 20/6/2016 contain a narration that she was residing in Pune and she was married in the year 1986, but obtained divorce in the year 1993. For her survival, she joined the post of Head Master in a School, and since the petitioner was working as a Chairman of the said School, she was introduced to him. As per the complainant, he was aware about she being a divorcee and he offered his sympathies to her and on one pretext or the other, made every attempt to meet her personally. At times, without any justiceable

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reason, he used to call her to his house and indulge in personal talks.

Taking advantage of the fact that she is a divorcee, he made every attempt to come closer to her and expressed his dissatisfaction with his own married life and also expressed his desire to solemnize the marriage with her, so that he can lead a happy and peaceful life. Disapproving the said behaviour, she resigned from the job in the year 1994 and started residing with her parents. In the year 1995, she married another person but within short span of four years, her husband succumbed to an accidental death. Thereafter, she was in search of a new job and hence was in need of an experience certificate from her erstwhile school and when she contacted the petitioner, he asked her to collect the certificate.

For this reason, she again came in contact with the petitioner who continued with his behaviour of imposing himself upon her and requesting for solemnization of the marriage. She refused to indulge him and expressed that she is ready to continue the friendly relationship, but was not in favour of marriage.

3 As per the complaint, on 23/1/2005, being her birth date, the petitioner visited her and presented a gold ring and brought a cake for celebrating the occasion. He induced her by expressing his liking for her and his desire to solemnize the marriage. It is for the first time on this day, physical relationship

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was established between them and thereafter, as per the version of the prosecutrix, he brought various gift articles like jewellery, sarees etc, and even assured her that a flat belonging to him would be transferred in her name. Thereafter, they continued to meet in different cities in different locations, hotels, resorts, the details of which are narrated in the complaint. He accompanied her on distinct destinations by projecting her as his wife for the purpose of booking the air tickets, booking of lodges, as etc, where he gave her name as Mrs. Patil. His credit card was also given to her for withdrawal of money, as and when needed by her and he even arranged for a car for her conveyance. As per her own version, he had also borne the expenditure for her foreign travels and even the keys of his flat in Dadar, Mumbai, were entrusted to her.

The above version reflect that the complainant and the petitioner continued to project to the Society as husband and wife and they shared a mutual relationship for considerable long period of time.

4 The complainant, however, filed a private complaint somewhere in the year 2015, by stating that the intention of the petitioner was to cheat her and when she insisted performance of the marriage, he avoided the same and subsequently, she realized that he wanted the physical pleasures to be enjoyed, but he was not ready for the marriage and when she insisted for the same, he used to assault her, under the influence of liquor and committed sexual intercourse with her against her wishes. He also expressed

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his desire to have unnatural sex and when she opposed, she used to be confined to a room, and she started avoiding him. She suffered physical and mental trauma and lodged a complaint to the Magistrate, pursuant to which the report was called from the Kothrud police station and the offence came to be registered.

5 When the allegations in the complaint are carefully perused, which has invoked the offence of rape as well as the offence of outraging modesty, it is evident that a consensual the relationship was shared by the couple from 2005, till she lodged the complaint somewhere in the year 2015 i.e. almost for a decade. The complainant, at the relevant time, was aged 54 years and the petitioner, aged almost 60 years. The narration in the complaint would clearly lead to an inference that the relationship was mutual.

It was a relationship between the two adults, capable of understanding the consequence of their actions, and by no stretch of imagination, it could be inferred that the physical indulgence was without the consent of the prosecutrix or against her will. She continued to enjoy the privileges which a wife is entitled to, including the luxurious travels, receipt of jewellery, clothing, etc. Even she had access to his flats and as per her own version, a house was constructed for her in form of a farm house. The relationship spread over for a decade, however, turned sour, and the allegation of the prosecutrix is, there was avoidance to solemnize the marriage. The prosecutrix was well aware that the

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petitioner is a married man and despite this, she continued with the relationship. As far as her status is concerned, she is a widow, married on two occasions.

6 Section 375 which punish an act of 'rape' would extend to sexual intercourse by a man with a woman, against her will and without her consent.

Under Section 375, Consent is referred to as unequivocal voluntary agreement, when a woman by her communication, verbal or non-verbal, shows her willingness to commit a specific act. 'Consent' necessarily implies communication of her willingness for a particular act. The core concept under consent is choice and not will. Will is a desire, longing, ability to do something that is intended. Consent follows once will is generated.

An offence of rape is attracted when an act is done against a will, and without consent of a woman. Every act done against the will is an act without consent, but every act without consent is not necessarily against her Will. The consent is expected to be free and when it is vitiated by act of coercion, undue influence, mistake of fact, mistake of law, misrepresentation, then the consent cannot be said to be a free consent.

7 In the present case, the relationship between the prosecutrix and the petitioner continued for a decade and even as

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per her own narration, she was treated as his wife for all purposes, and it can be easily inferred from their conduct that the relationship was consensual. There is no reason to infer that the relationship shared, was a forced one. Though it is alleged by the prosecutrix that the petitioner had no intention to marry her, it is not her case that the sexual relationship was established with her on the pretext of marriage, as at the relevant time, she was aware that the petitioner is already married. It is also not a case where a young woman is lured into physical relationship by a man under the pretext of marriage. There is nothing to show that for a long period of 10 years, every physical act was preceded by a promise to marry. The consent of a woman with respect to Section 375 of IPC, involve an active and reasoned deliberation towards the proposed act, and unless and until it is established that the promise of marriage was a false promise given in bad faith and with no intention of being adhered to, at the time it was given, it cannot be concluded that it was a promise not intended to be complied.

In any case, by reading a complaint lodged by the prosecutrix, it do not lead to a case of false promise, which induced her to establish the physical relationship. Hence, no offence is made out u/s.375, in the peculiar circumstances narrated by the prosecutrix herself. Similarly, the complaint also do not justify invoking Section 354, 354A of IPC, considering the nature of relationship shared by them for a decade.

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8 The learned senior counsel Mr.Mundargi has also invited my attention to an affidavit filed by the petitioner on 22/4/2023, where he has placed on record the agreement between the petitioner and prosecutrix, with respect to the land situated in Kolhapur dated 24/6/2010 and the affidavit filed by the complainant before the Sessions Court, Pune, where she had stated as under :

“3 That she has received the charge-sheet and has gone through the statement of witnesses, FIR and other relevant documents.

4 That she does want to proceed with the trial and does not want to lead any oral or documentary evidence before this Hon’ble Court.

5 That she has lodged the complaint due to frustration and misunderstanding against the accused. She has no any grievance against the accused.

6 That she has amicably settled for grievances against the accused out of court and has no grudge against the accused.

7 That alleged offences she has filed against accused in this case are not pressed by this application.

8 That today she is in good terms with the accused and to maintain good relations between them. She has decided to withdraw the contention made by her in the complaint.

9 That she does not want to lead any evidence against the accused and has filed this application suo moto without any inducement, threat, promise and on her own will and accord”.

The above affidavit is filed on 26/3/2018, clearly speak the mind of the prosecutrix.

The said affidavit is filed after the Magistrate had directed investigation of the allegations made in the complaint

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u/s.156(3) of Cr.P.C. In the wake of the above, since there is no material in the charge-sheet to proceed against the petitioner u/s.376, 354, 354A, 504, 506 IPC, the learned Judge has failed to exercise the power available to him in discharging the accused in absence of sufficient material to take the trial ahead and specifically, when the prosecutrix in her affidavit filed before the Sessions Judge, had expressed her intention not to proceed ahead.

Hence, Criminal Writ Petition deserve to be allowed by quashing and setting aside the impugned order

The petitioner shall stand discharged from Sessions Case No.198/2018 since the material in the charge-sheet do not justify, he being tried for the offences invoked in the charge-sheet.

Writ Petition is made absolute in the aforesaid terms.

(SMT. BHARATI DANGRE, J.)