

MHRG010036322016



Sessions Case No. 113/2016

Vivek Rambhaji Dahiphale

V/s.

State of Maharashtra

:: ORDER BELOW EXH. 8 ::
[Passed on 04.12.2023]

1. Accused has filed this application for his discharge u/s 227 of Cr.PC. The prosecution has opposed the application vide reply Exh.14. Heard ld. Adv. Shri. Amol Patil for the accused and ld. A.PP. Smt. Smita Dhumal for the state. Perused the record and documents produced by the parties.

2. It is the contention of the accused that even if case put up by prosecution is taken as it is, it will only shows that there was consensual sex between the complainant and accused and therefore the offence u/s 376 of IPC is not attracted. The allegations in FIR clearly shows that the complainant by reading the post of the accused on social media attracted towards him, made a friendship and thereafter expressed her desire to have a child and accordingly physical relations established between them for a long period and then she filed a complaint as the relationship could not be converted into marriage and in such circumstances there is no sufficient material on record to frame charges against the accused and therefore he may be discharged.

3. The counsel for accused relied on the several decisions

of Hon'ble Supreme Court. He relied on the decision of Hon'ble Supreme Court in case of **Yogesh Vs. State of Maharashtra** reported in MANU/SC/7528/2008, in case of **P. Vijayan Vs. State of Kerala and ors** reported in MANU/SC/0058/2010, in case of **Century Spinning and Manufacturing Co.ltd. And ors Vs. State of Maharashtra** reported in MANU/SC/0080/1971, in case of **Sajjan Kumar Vs. Central Bureau of Investigation** reported in MANU/SC/0741/2010. The sum and substance of principle laid down in above cited authorities is that, from material produced by the prosecution on record the circumstances even if accepted in its entirety only creates suspicion of motive and if such material is not sufficient to prima facie made out any offence against the accused then accused can be discharged.

4. The counsel for accused also relied on the decision of Hon'ble Supreme Court in case of **Rajiv Thapar and ors Vs. Madan Lal Kapoor** reported in MANU/SC/0053/2013, in case of **Rajesh Patel Vs. State of Jharkhand** reported in MANU/SC/0241/2013, in case of **Rajoo and ors. Vs. State of M.P.** reported in MANU/SC/8353/2008, in case of **Tomaso Bruno Vs. State of U.P.** reported in MANU/SC/0057/2015, in case of **Radhu Vs. State of Madhya Pradesh** reported in MANU/SC/3623/2007 wherein the Hon'ble Supreme Court acquitted the accused considering the contradictions and omissions in the evidence of prosecution destroying its case. The Hon'ble Supreme Court has also held that evidence of prosecutrix in rape case cannot be universally and mechanically accepted in every case. When it suffered from discrepancies and the conduct of the prosecutrix is unnatural then her evidence can be rejected and accused can be acquitted.

5. In the cases cited by the counsel for accused the accused was acquitted after full trial, whereas in other cases the accused was discharged as no prima facie material was found against him for framing charge. In the present case as discussed above there is sufficient material on record for framing charge against the accused and therefore he cannot be discharged.

6. In the present matter in the complaint the complainant has specifically mentioned that in 2012 she read the comment of the accused on facebook account of her friend and found that accused is matured and therefore she sent a friend request which was accepted by the accused and thereafter chatting and personal meetings held between them, they involved into deep friendship and on one occasion she expressed that she is very much frustrated as not having a baby at that time accused assured her that he will give her a baby then the accused from time to time promised her to marry and established physical relations with her at different places. Later on she came to know that there are other girls in the life of the accused and accused is married. When she asked the accused about the same he assured her that he will marry with her only and she should keep confidence in him. But thereafter again she found some objectionable messages on his facebook account and after making detailed inquiry she found that accused had physical relations with other ladies also and he is already married and accordingly cheated her, therefore she lodged complaint against the accused.

7. In the investigation the statements of the other ladies with whom accused had friendship and physical relations are recorded by the investigating officer. The chatting between the

accused and complainant on the social media obtained from the mobile phone and facebook account are also collected by the investigating officer. The statement of the complainant and the above said material prima facie shows that the accused though married concealed this fact from the complainant and by falsely promising her to marry kept physical relations with her and when she knew the truth he avoided her. Thus there is prima facie material to frame charge against the accused. Whether the complainant is telling the truth and whether the other witnesses are telling the truth about the accused as well as his acts, can only be decided after evidence on merits. At this stage the material on record including the entries in the hotel registers where the complainant and accused resided and had physical relations, also prima facie supports the allegations in FIR by the complainant. In such circumstances there is no case for discharge of the accused. Hence application is rejected.

sd/-

Alibag
Dt. 04.12.2023

(A. S. Rajandekar)
Sessions Judge, Raigad-Alibag.