

MHRG170020112019



IN THE COURT OF DISTRICT JUDGE-1 PANVEL RAIGAD,
AT : PANVEL
ORDER BELOW EXHIBIT 20 IN SPL ATROCITY CASE NO.339/2019
(OLD NO.18/2018)
(DECIDED ON 23/03/2023)

State of Maharashtra Vs. Sandip Pandharinath Dalvi and another

1] This is an application moved by the accused persons Nos.1 and 2, under section 227 of Cr.P.C., for discharge.

2] The accused/applicants submit that, applicant No.1 is innocent and applicant Nos.2 is old aged lady. It is submitted that, victim on 12/02/2017 had submitted an application before Chandannagar police station, Pune. She submitted that she had love relationship with accused No.1 and they had physical relationship. She submits that, from last 2 months accused No.1 had denied to marry her. It is further submitted that, on 06/02/2019 the applicant had filed application to the Police Commissioner, Pune about blackmailing by the parents of the victim. It is submitted that victim herself stated in her application before Chandannagar police that she is under stress. It is submitted that applicant was called by Kharadi police station, on 24/04/2017, discussion was held. It is submitted that parents of the victim threatened that if the applicant No.1 does not marry, they will file false case. It is further submitted that in June 2017 victim had filed

application at Khandeshwar police station. Till 13/04/2018 offence was not registered. Subsequently it was registered on false and fabricated story. According to the applicants, they have no direct or indirect involvement and there is no prima facie case against them. Applicants are not habitual offenders. They are ready to obey all conditions and pray for discharge.

3] Heard Ld.Adv.Santosh Gundage for the accused Nos.1 and 2. Heard Ld.APP Thalkar and also Ld.Adv.for the victim. The application is heard in presence of the victim and proceeding is video recorded.

4] Following point is formulated for determination, the points alongwith findings and the reasons thereto is as under.

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the accused person Nos.1 and 2 are entitled to be discharged in C.R.No.95/2018 registered at Khandeshwar police station for the offence p/u/sec.376, 417 r.w. 34 of IPC, u/sec.3 (1)(R), (S), (W), (I), (ii), 3 (2) (V) of SC & ST (Prevention of Atrocities) Act and under section 7(1)(d) of the Protection of Civil Rights 1955 ?	... In the Negative.
2.	What order ?	... As per final order

REASONS

As to Point No.1 :-

5] On behalf of the accused, it is submitted that as per FIR the offence alleged under Atrocities Act was not within public view. It is submitted that, in the charge-sheet there are What's App communications, which shows love affair. It is submitted that from the year 2016 to 2018 there was no physical relationship. Ld.Adv. for the accused No.1 and 2 relied on following decisions.

1. ***Uday Vs. State of Karnataka Criminal Appeal No.336/1996 dated 19/02/2003 SC***
In this decision it is held that, "*when there is no evidence about accused had intention to marry, the prosecutrix, then the offence of committed on promise of marriage is not made out*".
2. ***Dr.Dharuvaram Murlidhar Sdonar Vs. State of Maharashtra and others Criminal Appeal No.1443/2018 dated 22/11/2018.***
In this case "*there was consensual sex in leave in relationship and there was breach of promise of marriage. The case was quashed under section 482 of Cr.P.C*".
3. ***Pramod Suryabhan Pawar Vs. State of Maharashtra and others Criminal Appeal No.1165/2019 decided on 21/08/2019 SC***
In this case "*the distinction between mere breach of promise and not fulfilling a false promise is discussed*".
4. ***Hitesh Verma Vs. State of Uttarakhand and another Criminal Appeal No.707/020 dcided on 04/11/2020***

In this decision “*when the insult and intimidation was not within public view, the charge-sheet was quashed.*”

5. **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and another Criminal Appeal No.233/2021 decided on 01/03/2021 SC**

In this case “*charge-sheet was quashed as there was no allegation of promise to marry*”.

6. **Emmanuel Peter Vs. State of Kerala and another Cri.MC.No,4875/2020 decided on 17/01/2023 Kerala High Court.**

In this case the “*relationship between the petitioner and second respondent were strained. The relationship was something out of love and passion and not on account of misrepresentation. In such circumstances the criminal proceedings were quashed*”.

6] In all the aforesaid decisions, either the FIR or the charge-sheet were quashed in exercise of inherent powers u/sec.482 of Cr.P.C. I am dealing with a discharge application. I have to only look into the contents of the charge-sheet.

7] Before dealing with the contents of the charge-sheet, I would like to mention decision of the Hon’ble Supreme Court case of **State of Karnataka Lokayukta police station Bangalore Vs.M.R. Hiremath Criminal appeal 819/2018 decided on 01/05/2019.**

8] Hon’ble Supreme Court has laid down parameters which govern the exercise of jurisdiction to discharge the accused. It is laid down,

“It is settled principle of law that at the stage of considering the application for discharge the court must proceed on the assumption that the material which is brought on record by prosecution is true and evaluate the material, in order to determine whether there are facts emerging on the face value”.

9] Thus law regarding discharge of an accused is laid down by Hon'ble Supreme Court and material for discharge is to be evaluated on its face value, only to ascertain whether ingredients of intention, insult and intimidation of member of SC & ST had occurred and there was forceful physical relationship. The submissions that the victim filed the application at police station in Pune or the accused filed application to Commissioner of Pune or proceedings therein, are out of consideration.

10] If the report alleged by victim is considered, then in clear terms she has alleged that accused No.1 kept physical relation with her under pretext to marry her. When she visited the house of the accused, the accused No.2 insulted her, mentioning her caste. The specific words are appearing in the report. Not only this, the IO recorded statement of witness, who have stated that there was insult, humiliation and intimidation of the member of Scheduled Caste Community.

11] In the charge-sheet there is transcript of a on-line chatting of the accused No.1, informant and also father of the victim. The evidentiary value of this transcript, is to be ascertained at the time of trial. Based on these transcription, when more particularly the

victim in her report speaks about physical assault, on pretext of marriage and intentional, insult and humiliation with regard to her caste, is appearing. Chats will not lead to inference that false case was lodged.

12] It is submitted that incidence had occurred in four walls and was not in public view. This submission cannot be accepted at this stage. Reason for the same is that prima facie there is material in the charge-sheet about insult, intimidation and humiliation. Whether it was within public view or otherwise, is the matter to be ascertained at the time of trial. Hence, discharge on this ground cannot be granted. The material in the charge-sheet, on its face value if evaluated, prima facie same is sufficient to frame charges. I answer point No.1 in the negative and pass following order.

ORDER

1. Application Exh.20 is rejected .
2. The accused Nos.1 and 2 are directed to remain present on 06/04/2023 as a matter is already more than 5 years old.

Panvel
Date :- 23/03/2023

Additional Sessions Judge-1,
Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer : S.J.Sheth
Name of the Court : Additional Sessions Judge,
Panvel Raigad
Date of dictation : 23/03/2023
Dictation transcribed on : 24/03/2023 & 27/03/2023
Order signed by the P.O.on : 28/03/2023
Order uploaded on : 28/03/2023