

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. _____ OF 2024
(@ SPECIAL LEAVE PETITION(CRL.) NO.904/2021)**

YOGENDRA DIGAMBAR SAINDANE

... APPELLANT

VERSUS

THE STATE OF MAHARASHTRA & ANR.

... RESPONDENT(S)

ORDER

Leave granted.

2. This appeal is directed against the judgment and order dated 27.02.2020 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Application No. 207 of 2020.

3. FIR No. 964 of 2019 was registered against the appellant at police station, Shirdi, Maharashtra, alleging commission of offences under Sections 376 and 417 of the Indian Penal Code, 1860 (for short 'IPC'). The prayer of the appellant for quashing the said FIR, invoking the power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.PC') was declined by the High Court and hence, this appeal.

4. Heard learned counsel for the appellant and the learned counsel appearing for the State of Maharashtra. Despite being served, the second respondent, who is the prosecutrix, has chosen not to appear and contest the matter.

5. The learned counsel for the appellant prayed for appreciating the

case and contentions bearing in mind the factual position as also the law laid down by this Court in the decision in **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & Ors**, [(2019) 18 SCC 191]. This Court in the said decision brought a clear distinction between rape and consensual sex. It was held that the Court must carefully, examine all relevant circumstances to come to conclusions as to which category the case belongs. While drawing such distinction it was held that consent is an act of reason coupled with deliberation and it would signify active will in mind of a person to permit doing of act complained of and that it could be inferred only based on evidence or probabilities of case. In paragraph 17 thereof, it was held thus:-

“17. Thus, Section 90 though does not define “consent”, but describes what is not “consent”. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances.”

6. Paragraphs 20 and 21 of the decision in **Dr. Dhruvaram Muralidhar Sonar’s** case (supra) are also relevant in the context of the case on hand. Paragraph 20 read thus:-

“20. With this factual background, the Court held that the girl had taken a conscious decision, after application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus: (Deelip Singh, SCC p.106, para 53)

35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that “later on”, the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialize on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case at para 24 come to the aid of the appellant.”

7. In paragraph 21 thereof, this Court referred to and analysed an

earlier decision in **Deepak Gulati v. State of Haryana** [(2013) 7 SCC 675] and held thus:-

“21. In Deepak Gulati v. State of Haryana, the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several

days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused."

8. Thus, knowing the nicely drawn distinction between rape and consensual sex we will carefully scan the allegations in the subject FIR to see whether the High Court had erred in rejecting the prayer for its quashment. For doing so, it is only proper and profitable to look into the scope and ambit of the power to quash FIR in exercise of power under Section 482, Cr.PC. Going by the decision in State of Haryana v. Bhajan Lal (AIR 1992 SC 604) in respect of category of cases where the allegations made in the FIR or the complaint, even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused and in respect of category of cases where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the power under Section 482, Cr.PC should be exercised. In the decision in T. Vengama Naidu v. T. Dora Swamy Naidu & Ors. [(2007) 12 SCC 93], this court held that FIR is liable to be quashed when no offence is spelt therein.

9. Now, taking note of the position of law emerging from the decisions (supra) that an acknowledged consensual physical relationship between the parties would not and could not constitute an offence under Section 376 IPC, and the scope of power under Section 482, Cr.PC, we will proceed to consider the instant case. The very allegations in the FIR would reveal that the second respondent/the prosecutrix is a matured, married lady, having a daughter aged about 2 years and was living separately from her husband during the year 2017. According to the allegations, she had previous acquaintance with the appellant-accused and on being apprised of her trouble and difficulties he provided her mental support and thereafter, they had frequent conversations during which he asked her to marry him. It is the further allegation that on 21.04.2018 the appellant accused called her to Shirdi to seek blessings of God necessary to start a relationship. They stayed in Sai Suraj Hotel near the temple for two days and during those days, according to her, they had physical relations. Thereafter 3 or 4 times they were in Mumbai and on another occasion, they were in Indore, and on all such occasions also they had physical relations. In view of the nature of the accusation it is only befitting to refer to the allegations qua representation for marriage, contained in the FIR. At various places it was mentioned as under :

“...While providing this kind of mental support, things moved further ahead, and he asked me to marry..... He used to tell me about marrying him..... And when I asked to Yogendra Saindane to marry me; he said that he will

not speak with me anymore, and he has no business with me. Do whatever you want. Therefore, I am filing this complaint today on 19.10.2019 and I have come here with my husband."

10. It is thus evident from the very allegations in the FIR that while the prosecutrix was living separately from her husband, she developed relationship with the accused with whom she has previous acquaintance and accompanied him at least to three places and during stay in such places they had physical relations. It is to be noted that she got registered the FIR after re-joining her husband contending that when asked to marry the appellant told her that he would not speak to her anymore and got no business with her and therefore, she came with her husband to file complaint. The allegations in the FIR would thus reveal that initially the appellant was providing mental support to the prosecutrix and thereafter things moved further ahead and then, he asked her to marry him. Being a matured, married women aged 28 years and with a two-year-old daughter how can it be believed that she was made to believe that the accused would marry her especially when her marriage with Arjinder Singh Bansal, was subsisting. Even at the time of registration of the FIR her marriage was subsisting. Her actions in accompanying the appellant-accused to several places and indulging in sexual relationship on all such occasions coupled with the aforesaid circumstances, would reveal that the physical relationship was not based on any misconception of fact whereas it was consensual. It is to

be noted that the prosecutrix did not complain of any forceful sexual act from the part of the appellant. In the circumstances revealed from the very allegations in the complaint that the consent was not based on cheating or deception and it was an acknowledged, consensual physical relationship, not only occurred on any single instance, but on several occasions, we have no hesitation to hold that the High Court was not justified in rejecting the petition filed by the appellant herein seeking quashment of FIR under Section 482 Cr.PC. In the circumstances of the case there can also be no doubt that the ingredients to constitute an offence of cheating under Section 417, IPC, are also not satisfied. It cannot be said that there was fraudulent or dishonest inducement of the complainant by the accused. In the light of the decisions in **Dr. Dhruvaram Muralidhar Sonar's** case and **Deepak Gulati's** case (supra) as also in the light of the decision in **Bajan Lal's** case and **T. Vengama Naidu's** case, the subject FIR invites interference and according to us, the High Court has erred in not exercising the power under Section 482, Cr.PC. The FIR nowhere spells out anything which constitutes an offence committed by the appellant under Section 417, IPC, and at the same time, it spells out an acknowledged, consensual physical relationship. When that be the position, the subject FIR and all further proceedings based on the same are liable to be terminated.

11. In the result, the appeal succeeds and it is accordingly allowed. The impugned judgement dated 27.02.2020 passed by the High Court in Criminal Application No.207 of 2020 is hereby set aside. The First

Information Report No. 964 of 2019 dated 27.10.2019 filed by the second respondent at police station Shirdi, Maharashtra, under Section 376 and 417, IPC, and all further proceedings pursuant thereto, against the appellant are hereby quashed.

.....,J.
(C.T. RAVIKUMAR)

.....,J.
(RAJESH BINDAL)

**NEW DELHI;
MARCH 19, 2024**

ITEM NO.15

COURT NO.13

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 904/2021

(Arising out of impugned final judgment and order dated 27-02-2020 in CRLA No. 207/2020 passed by the High Court Of Judicature At Bombay At Aurangabad)

YOGENDRA DIGAMBAR SAINDANE

PETITIONER(S)

VERSUS

THE STATE OF MAHARASHTRA & ANR.

RESPONDENT(S)

(IA No. 13379/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No. 13378/2021 - EXEMPTION FROM FILING O.T.)

Date : 19-03-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Mr. Satyajit A Desai, Adv.
Mr. Siddharth Gautam, Adv.
Mr. Abhinav K. Mutyalwar, Adv.
Mr. Gajanan N Tirthkar, Adv.
Mr. Vijay Raj Singh Chouhan, Adv.
Mr. Ananya Thapliyal, Adv.
Ms. Anagha S. Desai, AOR

For Respondent(s) Mr. Omkar Deshpande, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.
Ms. Preet S. Phanse, Adv.
Mr. Adarsh Dubey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal stands allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(VARSHA MENDIRATTA)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed order is placed on the file)