

2022 LiveLaw (SC) 649

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; J., M.M. SUNDRESH; J.
Criminal Appeal No(s). 442/2022; 27th JULY, 2022

MANDAR DEEPAK PAWAR *versus* THE STATE OF MAHARASHTRA & ANR.

Indian Penal Code, 1860; Section 375 and 90 - The parties chose to have physical relationship without marriage for a considerable period of time - For some reason, the parties fell apart. It can happen both before or after marriage - FIR lodged three years thereafter - Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself Distinction between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. Referred to *Pramod Suryabhan Pawar Vs. State of Maharashtra* (2019) 9 SCC 608

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For Respondent(s) Mr. Shirish K. Deshpande, Adv. Mr. Rahul Chitnis, Adv. Mr. Sachin Patil, AOR Mr. Aaditya A. Pande, Adv. Mr. Geo Joseph, Adv. Mr. Shwetal Shepal, Adv. Mr. Purvish Jitendra Malkan, AOR Mr. Alok Kumar, Adv. Mrs. Dharita Purvish Malkan, Adv. Ms. Nandini Chhabra, Adv. Ms. Bhavna Sarkar, Adv.

ORDER

The appellant and respondent No.2 were undisputedly in a consensual relationship from 2009 to 2011 (or 2013 as stated by the respondent No.2). It is the say of the respondent No.2 that the consensual physical relationship was on an assurance of marriage by the appellant. The complaint has been filed only in 2016 after three years, pursuant where to FIR dated 16.12.2016 was registered under Section 376 and 420, IPC.

On hearing learned counsel for parties, we find *ex facie* the registration of FIR in the present case is abuse of the criminal process.

The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage. Thereafter also three years passed when respondent No.2 decided to register a FIR.

The facts are so glaring as set out aforesaid by us that we have no hesitation in quashing the FIR dated 16.12.2016 and bringing the proceedings to a close. Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself.

We are fortified to adopt this course of action by the judicial view in **(2019) 9 SCC 608** titled **"Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr."** where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860.

The Criminal appeal is accordingly allowed.

Impugned judgment is set aside and the proceedings in pursuance to FIR dated 16.12.2016 stand quashed, leaving parties to bear their own costs.