



NON REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1368 OF 2023**

SHEIKH ARIF

...APPELLANT

VERSUS

**THE STATE OF MAHARASHTRA
& ANR**

...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

1) A First Information Report (the impugned FIR) was registered against the appellant at the instance of the second respondent for the offences punishable under Sections 376(2), 377, 504, 506 of the Indian Penal Code (for short, 'IPC') and various clauses of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

FACTUAL ASPECTS

2) The impugned FIR was registered based on the second respondent's complaint dated 23rd February 2018 filed with Sadar Police Station, Nagpur. The said complaint disclosed

that the appellant and second respondent got acquainted with each other in the year 2011. The second respondent was, at the relevant time, employed in a beauty parlour. The appellant used to visit the same parlour to undergo a hair-cutting course. The second respondent's case is that in June 2011, the appellant proposed her. She agreed, and after that, they started meeting. The allegation made by the second respondent is that an effort was made in the year 2011 by the appellant to maintain a physical relationship with her, but she prevented him from doing so. However, she stated that in the year 2012, by giving a false promise of marriage, the appellant had sexual intercourse with her on a number of occasions. In February 2013, the second respondent realised that she was pregnant. Therefore, in March 2013, the appellant took the second respondent to a hospital where abortion was done. Even thereafter, the appellant continued his physical relationship with the second respondent. It is stated by the second respondent that in July 2017, there was an engagement between her and the appellant. Even after the engagement, the appellant continued to maintain a physical relationship with the second respondent.

3) In December 2017, when the second respondent realised that she was pregnant, the appellant told her that they would get married very soon. In view of the said assurance, the second respondent did not undergo an abortion. She was treated for pregnancy in a hospital at the instance of the appellant. The allegation of the second respondent is that on 18th January 2018, she saw photographs of the engagement ceremony of the

appellant with another woman in his cell phone. The second respondent stated that a day before the date on which the complaint was filed, she was informed that the appellant had married another girl on 22nd February 2018.

4) The case of the appellant is that there was a Nikah between him and the second respondent on 20th January 2017 at Junglee Peer Baba Dargah. The case of the appellant is that he could not produce the original Nikahnama, but a copy thereof was seized by the police. The case of the appellant is that in the passport issued to the appellant on 17th August 2017, the name of the second respondent appears as the wife of the appellant.

SUBMISSIONS

5) The learned counsel for the appellant urged that the long relationship between the appellant and the second respondent was always consensual. He submitted that the appellant had married the second respondent on 20th January 2017. He urged that the prosecution of the appellant is an abuse of process of law. The contention of the learned counsel appearing for the State of Maharashtra is that whether the appellant maintained a relationship on the basis of the false promise of marriage or not is a question to be decided at the time of trial as it is a matter of evidence. He invited our attention to the counter filed by the State in which it was stated that the report of a handwriting expert has been called for as regards the genuineness of the signatures on the Nikahnama. The learned counsel appearing for the State as well as the second

respondent relied upon a decision of this Court in the case of **Anurag Soni v. State of Chhattisgarh**¹. The learned counsel for the second respondent submitted that even if it is assumed that the second respondent gave consent for maintaining a physical relationship, the same was vitiated by fraud and misconception. She submitted that though the Investigating Officer repeatedly called upon the appellant to produce the original Nikahnama, he did not submit the same, and therefore, an adverse inference will have to be drawn against the appellant. She urged that, in any case, the issues raised can be gone into only in the trial.

CONSIDERATION OF SUBMISSIONS

6) We may note here that the appellant had volunteered to deposit a sum of Rs. 10 lakhs with the High Court during the pendency of the petition before the High Court. This Court tried to explore the possibility of a settlement between the appellant and the second respondent. However, the settlement could not materialise.

7) Now, the question is whether a case for quashing the criminal proceeding is made out. For that purpose, we are referring to the material which forms a part of the charge sheet. In view of the provisions of Section 375 of the IPC, if the victim of the alleged offence of rape is not under 18 years of age, maintaining a sexual relationship with her consent, is not an offence. As held by this Court in the case of **Anurag Soni**¹, if

¹(2019) 13 SCC 1

the consent of the victim is based on misconception, such consent is immaterial as it is not a voluntary consent. If it is established that from the inception, the consent by the victim is a result of a false promise to marry, there will be no consent, and in such a case, the offence of rape will be made out.

8) The second respondent was admittedly more than 18 years old when the relationship commenced. We have carefully gone through the complaint dated 23rd February 2018 made by the second respondent based on which the impugned FIR was registered. Acquaintance between the appellant and the second respondent started in the year 2011. In June 2011, the appellant proposed her, and she accepted the said proposal. In fact, according to the version of the second respondent, their physical relationship commenced in 2012 and continued till 2017. In February 2013, the second respondent underwent an abortion. In July 2017, according to the case of the second respondent, there was an engagement ceremony. In December 2017, the second respondent was pregnant. According to her, as the appellant had assured to marry, she did not agree for abortion. The complaint was filed by the second respondent on 23rd February 2018 as she allegedly learned that on 22nd February 2018, the appellant was married to another woman.

9) When the complaint was filed, the age of the second respondent was 24 years. Her year of birth is recorded as 1994. The averments made in her complaint go to show that their physical relationship started in 2012. Though she claimed that it was a forced relationship, she did not make any grievance

about it till February 2018. In February 2013 and in December 2017, the second respondent was pregnant. It is not the case of the second respondent that from February 2013 to December 2017, the appellant forced the second respondent to maintain the physical relationship. In 2013, the relationship resulted in pregnancy. Still, it continued till 2017. In fact, according to the second respondent, in July 2017, there was an engagement ceremony between the appellant and the second respondent. Therefore, in the facts of the case, it is impossible to accept that the second respondent allowed the physical relationship to be maintained with her from 2013 to 2017 on the basis of a false promise to marry.

10) Now, coming to the Nikahnama dated 20th January 2017, it is true that the original Nikahnama could not be produced. However, the seizure panchnama dated 21st September 2018 (Annexure: P-14) records that a carbon copy of the Nikahnama was seized. The statement of one Burhanuddin was recorded by the police who was present at the time of Nikah. He confirmed the fact of performance of Nikah between the appellant and the second respondent.

11) On 8th May 2018, the police recorded a statement of Dr. Sarita Rai Vidyarthi, who stated that the appellant and second respondent used to come to her from November 2017 for advice and treatment as the second respondent was pregnant. She stated that the appellant did not tell her that they were married or that they were living as husband and wife. However, the second respondent told her that the appellant was her

husband. She stated that apart from the fact that the appellant used to accompany the second respondent to her clinic, even relatives of the second respondent used to visit her clinic.

12) If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the appellant and the second respondent was consensual, at least from 2013 to 2017. The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the appellant proposed her and in 2017, there was engagement is accepted by the second respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage.

13) Thus, in our view, the continuation of the prosecution in the present case will be a gross abuse of the process of law. Therefore, no purpose will be served by continuing the prosecution.

14) The appellant has accepted that the second respondent is his legally wedded wife and the child born to the second respondent is his child. We, therefore, propose to direct the appellant to pay a sum of Rs. 5 lakhs to the second respondent. This will be without prejudice to the right of the second respondent to claim maintenance for herself and for her daughter from the appellant in accordance with law. We

propose to direct that the amount of Rs.10,00,000/- already deposited by the appellant with the High Court shall be invested appropriately till the child attains majority.

15) Hence, the impugned judgment and order dated 26th February 2021 is hereby quashed and set aside. Crime No. 78 of 2018 registered with Sadar Police Station at Nagpur, as well as the charge sheet filed on the basis of the same, and further proceedings of the case stand quashed.

16) The appellant shall deposit a further sum of Rs. 5 lakhs with the Sessions Court at Nagpur within a period of six weeks from today. The appellant shall file a compliance affidavit alongwith documents in this Court within a period of 7 weeks from today.

17) The amount of Rs. 10 lakhs already deposited by the appellant with the High Court, together with interest, if any, accrued thereon, shall be immediately transferred to the Sessions Court at Nagpur. The said Court shall invest the said amount in a fixed deposit with any nationalized bank by incorporating the name of the minor child of the appellant as the depositor and the second respondent as the guardian of the minor. The fixed deposit shall be renewed from time to time till the child attains majority. The fixed deposit receipt shall remain deposited with the Sessions Court till the child attains majority. However, the Sessions Court shall direct the bank in which the fixed deposit is made to pay quarterly interest on the fixed deposit to the second respondent. The principal amount shall be paid to the child after attaining majority.

18) On the failure of the appellant to comply with the direction to deposit a sum of Rs. 5 lakhs, the Registry shall list the appeal before the Court. As and when the appellant deposits a sum of Rs. 5 lakhs, the Sessions Court will permit the second respondent to withdraw the same. We clarify that notwithstanding the above directions, it will always be open for the second respondent to file appropriate proceedings against the appellant for enforcing her as well as the child's rights in accordance with law.

19) The appeal is allowed on above terms.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
January 30, 2024**