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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4988 OF 2015

Shri. Balasaheb Madhukar Patil

..Petitioner.

V/s.

The State of Maharashtra and Ors.

..Respondents

Mr. A.D. Sale for the petitioner.

Mr. R.A. Zade for respondent no. 2.

Mrs.U.V. Kejriwal, APP for the State.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 22nd DECEMBER, 2015

P.C. :-

Heard the learned counsel for the petitioner and learned A.P.P. for the State. Mr. Sale, learned counsel for the petitioner at the outset seeks leave to amend the prayer clause (a) so as to give the number of the Special Sessions Case. Leave to amend is granted. The necessary amendment shall be carried out forthwith.

2. This petition is filed under Article 226 of the Constitution of India and provisions of section 482 of the Code of Criminal Procedure to quash and set aside Special Sessions Case No. 12 of 2010 pending on the file of learned Sessions Judge, Sangli. The said case arises out of registration of FIR bearing CR No. 19 of 2009 registered with Vishrambaug Police Station against the petitioner at the instance of the respondent no. 2

for the offences punishable under section 376, 504, 506 of the Indian Penal Code and section 3(1)(xiii), (x), (xv) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1988.

3. During the trial, the parties have settled their dispute amicably and have approached this Court for quashing the said proceedings on the subject Sessions Case by consent. The respondent no. 2 has filed an affidavit dated 16.12.2015. In the said affidavit she has stated that the dispute between herself and petitioner has already been resolved and that she has no objection to quash the proceedings in the said Sessions Case. Respondent no.2 is personally present in the Court. She is identified by her Advocate. On being questioned, respondent no. 2 specifically stated that she has gone through her affidavit and has fully understood the contents thereof and has no objection if the subject F.I.R. is quashed. She also stated that she is giving no objection for quashing the said proceedings out of free will and without there being any pressure or coercion.

4. We are of the opinion that the offence punishable under section 376 of the Indian Penal Code would fall in the category of heinous and serious offence and therefore it is to be generally treated as crime against the society and not against the individual alone. The Apex Court in the case of **Narinder Singh V/s. State of Punjab [2014 AIR SCW 2065]**, while considering the quashing of the offence under section 307 of IPC observed that though the offence punishable under section 307 is considered to be

heinous and serious offence, the High Court would not rest its decision only because there is mention of section 307 of Indian Penal Code in the FIR or charge is framed under the said provisions. The Apex Court further held that it would be open to the High Court to examine as to whether incorporation of section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under section 307 IPC. In our opinion, this principle is applicable to the offence punishable under section 376 IPC also.

5. We have gone through the chargesheet as well as other papers annexed with the petition. Respondent no. 2 initially filed a report under section 154 of Cr.PC on 16.11.2009 to the District Superintendent of Police, Sangli. The report reveals that respondent no. 2 and petitioner were having relationship and they were staying together for the period of twelve years. The petitioner refused to marry and also there is dispute on account of transfer of flat and therefore, respondent no. 2 filed the said report. On the basis of the said report, Vishrambag Police station registered FIR under section 504, 506 read with 34 of Indian Penal Code being NC No. 579 of 2009. The respondent no.2 thereafter filed a complaint under section 156 with improved version before the Chief Judicial Magistrate, Sangli being Regular Criminal Case No. 15 of 2009. The Magistrate by the order dated 30.12.2009 passed an order under section 156(3) and in pursuance of this order, the said FIR came to be registered. We find that the petitioner and respondent no.2 were in live-in relationship. We also found that the

petitioner is 45 years old and respondent no. 2 is 58 years old now. They were in live-in relationship for the period of twelve years. The physical relationship between them seems to be voluntary. The proceedings under section 156 came to be filed as there was dispute regarding the transfer of flat in the name of respondent no. 2. In these circumstances, we are of the considered opinion that the offence under section 376 is not made out.

6. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the offence. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Narinder Singh V/s. State of Punjab**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the parties for using the police and judicial mechanism for settling their personal disputes.

7. Accordingly, the Writ Petition is made absolute in terms of prayer clause (b) subject to payment of cost of Rs.10000/- to be paid by the Petitioner to the Kirtikar Law Library, High Court, Mumbai and thereafter produce the receipt thereof on the file of this petition within a

period of four weeks from the date of receipt of this order, failing which, the writ petition shall stand dismissed automatically without further reference to the Court.

Subject to the above, the writ petition stands disposed of.

(V.L.ACHLIYA,J.)

(RANJIT MORE,J.)