

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 47 OF 2015

Pankaj Rajesh Bansode & Anr. ..Petitioners

v/s.

The State of Maharashtra ..Respondent

Mr. Rajesh Khobragade for the Petitioner.
Mr.J.P.Yagnik, APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : MARCH 18, 2015.**

P.C.

1. The petitioners have invoked the jurisdiction of this court under Article 226 and 227 of the Constitution of India, 1950 r/w. provisions of Section 482 of Cr.P.C. for quashing Sessions Case No.22 of 2013 pending before the Sessions Court, Vasai, against the petitioner no.1 herein for committing offence under Sections 363, 376 of Indian Penal Code.

2. The petitioners have claimed that they were in love with each other and had entered into physical relationship. Subsequently, they

eloped and got married. It is stated that they have a child who is presently about 2 years of age. The petitioners have stated that their family members have approved their relationship and that their married life would be totally ruined by the prosecution of the said case. They have therefore prayed that the said Sessions Case No.22 of 2013 pending before the Sessions Court at Vasai, be quashed.

3. The petitioner no.2 is the daughter of Varsha Ravan, who had lodged FIR dated 18.2.2013 bearing No.108 of 2013 alleging that her daughter was studying in 10th standard and that on 15.2.2013 she had received a call from the school that her daughter, petitioner no.2 herein had not appeared for the oral and practical examination. She informed her other family members and searched for her daughter, but was unable to know her whereabouts. She therefore lodged a missing report No.26 of 2013 dated 16.2.2013. On the same date she received a message from her daughter that she would return on 17.2.2013. Upon enquiry she learnt that her daughter had sent the sms from the mobile phone of the petitioner no.1. She tried to contact her daughter, but her mobile phone was switched off. Hence, on 18.2.2013 she lodged a complaint against the petitioner

no.1 for kidnapping her daughter.

4. Pursuant to the said complaint FIR No.108 of 2013 under Section 363 of IPC was registered at Nalasopara Police Station. In the course of investigation, the victim girl was traced. It was revealed that the victim was pregnant. Subsequently, section 376 came to be added. The crime was investigated and upon completion of the investigation, chargesheet was filed before the learned Magistrate Jt.C.J.J.D. & J.M.F.C. Vasai, which was subsequently committed to the Court of Sessions, Vasai.

5. The records reveal that the petitioner nos.1 and 2 were in love with each other. The petitioners without knowing the consequences of their act had entered into physical relationship and upon learning that the petitioner no.2 was pregnant, they had eloped from the house and got married as per Hindu rites. At the relevant time petitioner no.1 was 20 years old, whereas petitioner no.2 was 16 years old, and hence both being below the marriage age, the marriage does not have legal sanctity. The petitioners being minor, the consent would not be consent in the eyes of law and consequently the though the physical relationship was consensual,

the same would amount to 'rape' within the meaning of Section 375 IPC.

6. In the normal circumstances, rape being a serious offence affecting societal interest could not have been quashed with consent. We are however faced with a peculiar situation where two young children had eloped, married and indulged in sexual activity which has resulted in birth of a child, who is presently two years old. The girl, petitioner no.2 is still a minor while the boy, the petitioner no.1, is now 21 years old. The petitioner no.1 is employed and is looking after and maintaining the petitioner no.2 and the child and is further helping the petitioner no.2 in pursuing further studies.

7. Under such circumstances, prosecution of the petitioner no.1 and his ultimate conviction will not only turn the petitioner no.1, who is himself a young boy, into a criminal, but such eventuality would stigmatize the child leading to negative impact on physical, social and psychological development of the child. Furthermore, the conviction of the petitioner no.1 would deprive the petitioner no.2 as well as the child and their source of livelihood and would turn them into destitutes. Thus, the prosecution and conviction of the

petitioner no.1 will have long range of adverse consequences with enormous implications.

8. The complainant/ mother of the petitioner no.2 has filed an affidavit, wherein she has given her no objection for quashing the petition. The complainant is present before us and has reiterated that she has no objection to quash the said criminal proceedings. The parents of the petitioner no.1 are also present before us and have stated that they are accepting the petitioner no.2 as their daughter-in-law and the child born of relationship between the petitioner nos.1 and 2 as their grand child. The petitioner no.1 has also undertaken to register the marriage in August 2015 i.e. after the petitioner no.2 attains age of majority. He has further given undertaking to maintain the petitioner no.2 as well as the child.

9. Considering the peculiar facts and circumstances of the case, and considering the no objection given by the complainant as well as the undertaking given by the petitioner no.1. in our considered view it would be in the interest of the petitioner no.2 and the child to quash the proceedings.

10. In the circumstances, the proceedings pending before the

Sessions Court, bearing No.22 of 2013 along with FIR bearing No.1-108/13 dated 18.2.2013 are quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)