

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 411 OF 2015

Mubin Najir Husaini.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Ansari Hasanuddin Mohd. Sahajeed for the Petitioner.

Mr. F. R. Shaikh, learned APP for the State.

Mr. U. V. Ugle for Respondent No. 2.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **February 12, 2015.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. This writ petition is filed invoking the jurisdiction of this Court under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings of the FIR No. 171 of 2014 which is registered against the Petitioner at Malad Police Station at the instance of Respondent No.1 for the offence punishable under sections 376 and 417 of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that during the investigation parties settled their disputes amicably and in pursuance of the understanding arrived at between them, the Petitioner has filed present petition for quashing the FIR by consent.

3. In this petition, Respondent No.2 has filed an affidavit dated 20th January 2015. In paragraph 2 of the said affidavit, she has stated that she was in love with the Petitioner since last 5 years and the offence came to be registered due to some misunderstanding. In paragraph 4, she has given no objection for quashing the proceedings of said FIR as the Petitioner is getting married with her.

4. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the FIR in question lodged by her against the Petitioner for the offence punishable under sections 376 and 417 of the Indian Penal Code, 1860.

5. 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. We have perused the FIR. Perusal of the same reveals that the Petitioner and Respondent No.2 are major and they were in love with each other. It further shows that physical relations between the the Petitioner and Respondent No.2 were consensual. Under these circumstances, we are of the considered opinion that the FIR does not make out an offence under section 376 of the Indian Penal Code, 1860. Even otherwise, 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 Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

6. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings.

7. Accordingly, petition is made absolute in terms of prayer clause (a). As the police machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the Petitioner with the cost of Rs.10,000/-, which shall be paid to the “**Shanti Avedna Sadan**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioner shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today.

8. Petition stands disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]