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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.160 OF 2016

Mayuresh Shamkant PatilPetitioner
versus
1. The State of Maharashtra & Anr.Respondents

Mr. A.P. Kulkarni, advocate for the petitioner.
Mr. K. V. Saste, APP for the State.
Mr. Manoj Badgujar, advocate for Respondent No.2.

**CORAM : RANJIT MORE &
A. K. MENON, JJ.**

DATED : 20TH JANUARY, 2016

P.C.:

Heard learned counsel and learned APP appearing for the respective parties.

2. The writ petition is filed invoking the provisions of Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 for quashing and setting-aside the FIR bearing No. I-302 of 2015 registered by Wada Police Station at Palghar initially under section 376 and 420 of the Indian Penal Code, 1860. At later stage the offences under The Protection of Children from Sexual Offences Act (POCSO Act) 2012 were added.

3. Pending investigation, the parties with intervention of the elders

settled their dispute amicably and have approached this Court for quashing the subject FIR by consent. Respondent No.2 is personally present before the Court. Respondent No.2 has filed an affidavit dated 18th January, 2016. In paragraph 7, she has given no objection for quashing and setting-aside the subject FIR. On being questioned, she specifically stated that whatever has been stated in the affidavit is true and correct, and he has no objection if the subject FIR is quashed and set-aside.

4. The offence under section 376 of the Indian Penal Code and POSCO Act would fall in the category of heinous and serious offence and therefore is to be treated as crime against the society. The Supreme Court had an occasion to consider scope of the provisions of Section 482 vis-a-vis section 320 of Code of Criminal Procedure in the case of **Narinder Singh and ors. versus State of Punjab and anr.** **2014 AIR (SCW) 2065.** In paragraph 31 (vi) the Supreme Court made the following observations :

“31 (vi) Offences under [Section 307](#) IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge

is framed under this provision. 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. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

5. In our opinion the analogy applied by the Apex Court to the offence under section 307 of the Indian Penal Code can be applied to the offence under section 376 of the Indian Penal Code. We therefore in order to satisfy ourselves whether the offence under section 376 of POSCO Act is made out. Examined the FIR. The FIR reveals that the

mother of Petitioner and the father of Respondent No.2 are real brother and sister. The FIR further reveals that Petitioner No.1 and Respondent No.2 were in live-in relationship and they used to roam together on motor-cycle. The FIR shows that they are known to themselves since childhood and that from 2012 they had consensual sexual relationship. The entire FIR does not reveal ingredients of section 375 of the Indian Penal Code. The FIR however is filed since the Petitioner has refused to marry Respondent No.2. In our considered view the provisions of POSCO Act could not have been added to the said FIR inasmuch as initially the incident of having sexual relationship between the parties have taken either in the month of August-September 2012 and POSCO Act came into force on 14th November, 2012.

6. Taking into consideration the close relationship of parties coupled with the fact that Respondent No.2 has no objection to quash the FIR and otherwise also we have found that no offence is made out under section 376 of the Indian Penal Code as well as POSCO Act. We are of the opinion that subject FIR deserves to be quashed. 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 subject FIR is required to be quashed and set-aside. 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 FIR bearing No.I-302 of 2015 registered by Wada Police Station at Palghar is quashed and set-aside qua the petitioner subject to payment of costs of Rs.10,000/- by the petitioner. The costs be paid in the form of books to Kirtikar Law Library and thereafter produce the receipt thereof on the file of this petition within a period of two weeks from today, failing which, the criminal writ petition shall stand dismissed automatically without further reference to the Court.

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

(A. K. MENON, J.)

(RANJIT MORE, J.)