

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.226 OF 2016

Gyanraj Potiraj Nadar

Applicant

versus

1. State of Maharashtra
2. Kuttiswami Kuppayandi Swami
3. Miss Manjula Kutti Swami

Respondents

Mr.Manoj R. Gowd for Applicant.

Mr.S.R.Gaud for Respondent nos.2 and 3.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

Date of Reserving the judgment : 1st April 2016

Date of Pronouncing the Judgment : 7th April 2016

JUDGMENT - (Per : P.D.Naik, J.) :-

1. This is an application preferred by the Applicant under Section 482 of Code of Criminal Procedure, 1973 ('Code') seeking quashing of, by consent, first information report ('FIR') dated 4th September 2015. The said FIR was registered with Dharavi Police Station vide CR No.421 of 2015 under Section 363 of Indian Penal Code ('IPC') at the instance of Respondent no.2. The Respondent no.3 is the alleged victim of the alleged

offence. She was minor at the time of alleged incident and the FIR was lodged at the instance of Respondent no.2 who is her father.

2. Respondent no.2 as well as Respondent no.3 (who has presently attained the age of majority), have filed affidavits dated 3rd March 2016 and 1st April 2016 respectively before this Court stating that they have no objection for allowing the present application preferred by the Applicant for quashing the FIR bearing CR No.421 of 2015 registered with Dharavi Police Station.

3. Brief facts, as alleged in the FIR, are as follows :

(a) The complainant is residing at the given address along with his family consisting of his wife, son and daughter namely Manjula (the victim). It is further stated that the complainant's daughter Manjula was studying in 12th standard in S.I.W.S. College at Wadala. She was in love with the Applicant-accused who was residing in their area since last about one year. The complainant had repeatedly convinced the victim not to continue with the said relationship. However, the victim was repeatedly in contact with the Applicant-accused.

(b) It is alleged that on 3rd September 2015 at about 5.30 p.m., the victim Manjula informed her mother that she is

visiting her friend and left the house. She was found talking with the Applicant-accused near Dr.Ambedkar College by the wife and son of the complainant. It is further stated that on seeing them, the victim and the Applicant ran away from the spot. The complainant and his family members then tried to search the victim, however, they did not succeed in tracing them in spite of enquiries with the persons from the area as well as their relatives. Hence, the complainant lodged the impugned FIR alleging that the victim girl is being kidnapped by the Applicant-accused.

(c) On the basis of the information provided by Respondent no.2, the FIR was registered with Dharavi Police Station as stated above on 4th September 2015.

4. The Applicant was arrested pursuant to the impugned FIR on 22nd February 2016 and he was produced before the concerned Court for remand. Thereafter, he was directed to be released on bail by the concerned Court vide order dated 23rd February 2016. In the present application it has been stated that the Applicant and Respondent no.2 are known to each other since many years being neighbours and due to intervention of the respectable members of the society, they have arrived at an amicable settlement and Respondent no.2 does not wish to proceed against the Applicant by pursuing impugned criminal proceedings.

5. The Respondent no.2-original complainant, has filed an affidavit dated 3rd March 2016 in the present proceedings. In the said affidavit it has been stated that he has settled his grievance amicably with the Applicant-accused and he is willing to withdraw the allegations made in the FIR. It is further stated that he is not willing to lead any evidence, whether oral or documentary, either before the Police or before the Court and in view of the amicable settlement, he is consenting to allow the prayers made in the application for quashing. He has further stated that he has no objection for allowing the application and for quashing the impugned FIR being CR No.421 of 2015 registered with Dharavi Police Station. It is further stated that the Applicant is known to him and hails from his native place. As the Applicant-accused has tendered unconditional apology and on account of intervention of respectable persons of his community and for the sake of bright future of the Applicant; as well as considering his tender age, he is willing to forgive him and does not wish to proceed in the said complaint and, therefore, the FIR may be quashed. The said affidavit is taken on record and marked "X-1" for identification.

6. The Respondent no.3, who is the victim in the impugned FIR, has also filed an affidavit dated 1st April 2016 before this Court. From the said affidavit it can be seen that at the time of filing the affidavit, the victim has attained the age of majority

and she is aged about 18 years. In the said affidavit it is stated that her father had initiated the criminal proceedings by registering the subject FIR. It is also stated by her that during the course of investigation, the Applicant-accused was arrested from Tamilnadu and she was taken into safe custody and was brought to Mumbai. She has further stated that the Applicant-accused is known to her and by intervention of respectable persons, the dispute has been settled between both the parties. It is also stated that the victim (Respondent no.3) and the Applicant (accused) have performed marriage on 11th March 2016 and they are living as husband and wife. An invitation card of the wedding as well as memorandum of marriage issued by The Bombay Arya Vysya Sangham has been annexed to the affidavit indicating that the marriage has been solemnized on 11th March 2016. The affidavit further states that she has no grievance against the Applicant-accused and that she has performed marriage with him and has no objection for quashing the impugned FIR. It is also stated that on the date of execution of present affidavit, she is married and has completed 18 years of age and is voluntarily consenting for quashing the FIR. She has also annexed copy of the photograph taken during the performance of marriage, which appears to be attended by the members of both the families. The affidavit also contains the certificate of birth of Respondent no.3 as well as Aadhar Card fortifying that her date of birth is 1st March 1998. The said affidavit is taken on record and marked "X-2" for identification.

7. We have gone through the contents of the application as well as affidavits filed by the respective parties as stated hereinabove. It is apparent that both the parties have amicably settled the dispute. The complainant, who is the father of the victim, has given his consent for quashing the FIR. He has stated that he has no grievance against the Applicant-accused. It is also pertinent to note that although the victim was minor at the time of incident, she has attained the age of majority at the time of filing of the affidavit dated 1st April 2016, wherein it is stated that she has no complaint against the Applicant-accused. The affidavit also makes it clear that she has performed the marriage with the Applicant on attaining majority and that she is living with the Applicant-accused as wife.

8. The Applicant, Respondent no.2 (father of the victim who has lodged the FIR) and Respondent no.3 (victim) are present in the Court. With a view to ascertain the truthfulness of the contents of the application as well as affidavits filed by Respondent nos.2 and 3, the parties were heard in the chamber. On hearing them, it was noticed that the Applicant and Respondent no.3 victim had performed marriage and they are living together as husband and wife. It was also ascertained that the dispute between the parties has been amicably settled. The Applicant has also undertaken that the marriage will be registered with the concerned office and he will not ill-treat the victim in future course of life.

9. On perusal of the FIR it is apparent that the dispute is of a private nature. From the contents of FIR, it is apparent that the victim girl had left the house on her own and had voluntarily joined the Applicant-accused and proceeded to Tamilnadu. Prima facie it appears that the offence under Section 363 of IPC is not made out. The requisite ingredients to constitute the said offence are lacking in the impugned FIR. Apart from that, on considering the fact that the dispute has been amicably settled between the parties, which is fortified by the complainant as well as the victim and also considering the fact that the Applicant and the victim have performed the marriage, we are inclined to quash the FIR which is under challenge in the present application.

10. In **Gian Singh Vs. State of Punjab and another**¹, it has been observed by the Apex Court that exercise of inherent powers by High Court would entirely depend on facts and circumstances of each case. It is further observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace

¹ (2012)10-SCC-303

is restored; securing the ends of justice being the ultimate guiding factor. Considering the observations made by the Apex Court in *Gian Singh (supra)*, we are of the opinion that the FIR in question can be quashed on account of amicable settlement. From the facts of this case, it is apparent that there are no chances of conviction. It is also required to be noted that the Applicant-accused and the victim are of young age and they have performed marriage now and residing together as husband and wife. As observed in the decision of *Gian Singh (supra)* by the Apex Court, this is a dispute which is basically of private and personal nature and parties have resolved their entire dispute amicably.

11. In view of the aforesaid circumstances, the application is allowed and the impugned FIR being CR No.421 of 2015 registered with Dharavi Police Station, Mumbai on 4th September 2015 under Section 363 of Indian Penal Code is hereby quashed and set aside. No order as to costs.

(PD.NAIK, J.)

(A.S.OKA, J.)