

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1668 OF 2016

Saniya Jamil Shaikh and ors.	...	...Petitioners
v/s.		
The State of Maharashtra & ors.		...Respondents
	...	

Mr.A.A.Siddiquie i/b A.A.Siddiquie & Associates for the Petitioner.
 Mr.K.V.Saste, APP for the State.
 Mr.Makarand Madan Kale for the Respondents Nos.3 & 4.

...

CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 21 SEPTEMBER 2016

P.C.:

Rule. Learned APP waives service for the first Respondent.
 Learned Counsel for the third Respondent waives service. Forthwith taken up for final disposal.

2. The prayer in this Writ Petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") is for quashing the First Information Report registered at the instance of the third Respondent alleging commission of offences

punishable under section 328, 326, 324, 323 and 504 read with section 34 of the Indian Penal Code.

3. Even going by the case of the Petitioners, they are transgenders. The third Respondent is the mother of the fourth Respondent who is the victim of the offence. In the statement of the third Respondent, on the basis of which the First Information Report was registered, she has stated that at the relevant time the age of the fourth Respondent was around 16 years. As he had failed in 9th standard examination in 2015, he was not attending the school. The third Respondent stated that the fourth Respondent came in contact with the Petitioners and became close to them. After a period of one year, as the third Respondent raised an objection, for a period of two months thereafter the fourth Respondent stopped meeting the Petitioners. However, the Petitioners use to regularly visit his house to meet the fourth Respondent.

4. The alleged incident took place in the night of 10 April 2016 or early in the morning of 11 April 2016. It is alleged that another transgender came to the house of the third Respondent and informed the third Respondent that the Petitioners were assaulting the fourth Respondent in the parking place of one Nafisa (who is the Petitioner in Criminal Writ Petition

No.1667/2016, which is decided separately today). The case of the third Respondent is that she proceeded to the said place and she found that the fourth Respondent was injured.

5. On the last date, an injury certificate was produced for perusal of the Court which shows that the injuries are simple injuries. There is an affidavit filed by the third Respondent recording that there is settlement brought about between the fourth Respondent and the Petitioners. The third Respondent herself has stated in her statement that for a period of one year, the fourth Respondent was in close contact with the Petitioners. It is the third Respondent, who raised an objection to the fourth Respondent meeting the Petitioners. Therefore, it appears to us that the incident arose purely out of a private dispute and the offence cannot be said to be the one against the society at large. It is not the case where the Petitioners have a criminal background. Therefore, in view the law laid down by the Apex Court in the case of **Gian Singh v/s. State of Punjab and anr.**¹ this is a fit case to exercise the power under section 482 of the Code of Criminal Procedure, 1973. The contesting parties have paid a sum of Rs.5000/- to the Mumbai Police Welfare Fund.

1 (2012) 10 SCC 303

6. Hence, we pass the following order:

Rule is made absolute in terms of prayer clause (a), which reads thus:

(a) That this Hon'ble Court be pleased to issue appropriate writ order and direction calling for the record, papers in connection with FIR No. 90 of 2016 dated 11/04/2016 registered with the Respondent No.2 at the instance of the Respondent No.3 herein charging the Petitioners for the offences punishable under sections 328, 326, 324, 323 and 504 read with section 34 of Indian Penal Code, 1973 and after examining legalities and proprieties of the same be pleased to quash and set aside the same;

(A.A. SAYED, J.)

(A.S.OKA, J.)