

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

CRIMINAL WRIT PETITION NO.1721 OF 2016

Mohammad Faizan Amir Khan Petitioner
R/o.Room no.106,. Bldg.No.12-B,
Natwar Parikh Compound, Shivaji Nagar,
Govandi, Mumbai-400 043
permanent resident of
Mohalla Bahbal Tola, Nagar Panchayat
Distpur, Sultanpur, U.P

versus

1. The State of Maharashtra.

2. The Senior Inspector of Police,
Shivaji Nagar Police Station, Mumbai.

3. Mehjabeen Abbas Khan,
R.o.Room No.9, T Line, Plot No.43,
Shivaji Nagar, Govandi (W), Mumbai-43 Respondents

Mr.A.A.Siddiquie i/by A.A.Siddiquie & Associates for Petitioner.
Mrs.S.D.Shinde, APP, for Respondent nos.1 and 2 State.
Mr.Makarand M. Kale for Respondent no.3.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment : 29 June 2016
Date of Pronouncing the Judgment : 05 July 2016

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

1. Rule. Rule is made returnable forthwith. Learned APP waives service for Respondent nos.1 and 2 and Mr.M.M.Kale waives service for third Respondent.

2. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and seeks to challenge the first information report ('FIR') registered with Shivaji Nagar Police Station, Mumbai vide CR No.58 of 2016.

3. The impugned FIR was registered on 2 February 2016 at the instance of the third Respondent for offences punishable under Sections 376, 420 of Indian Penal Code against the Petitioner. The quashing of the said FIR is being sought on the ground that the parties have amicably settled the dispute.

4. Brief facts as alleged in the FIR are as follows :

(i) In the month of May-2011, the complainant had visited district Sultanpur in Uttar Pradesh for attending the marriage of her friend. At that time, she got acquainted with the accused who is distantly related to her. Thereafter both of them were in touch with each other by way of telephonic conversations and subsequently fell in love with each other;

(ii) On 15 May 2014, the accused had come to Mumbai in search of employment. He was employed with a company as a medical representative. He requested the complainant to stay with him. The complainant informed the accused that they can stay together after solemnisation of their marriage. However, the accused kept on giving evasive answers on question of marriage;

(iii) The complainant and the accused thereafter started residing together in a rented premises. The accused demanded physical relationship with the complainant which was refused by her on the ground that they are yet to get married. On 27 May 2014, the accused promised the complainant that he will marry her and induced her to have physical relationship. Thereafter the accused repeatedly had physical relationship with the complainant against her wishes;

(iv) In August-2015, the complainant was pregnant and subsequently she aborted. In December-2015, she was again pregnant. At that time, the accused took her to a private hospital and both of them represented to the doctors that they are married to each other having one child and undergone the abortion;

(v) On 30 December 2015, the younger brother of the accused came to Mumbai from Uttar Pradesh. Hence, the

complainant was asked to stay with her mother. On 10 January 2016, the accused intimated the complainant that his brother is leaving for Uttar Pradesh and she should join him at the aforesaid premises. He also promised that he will marry the complainant and induced her to have sexual intercourse;

(vi) On 12 January 2016, when the complainant/third Respondent visited the rental premises referred to hereinabove, it was noticed that the room was locked and the key was being handed over to the neighbour. The complainant was informed by the neighbours that on 11 January 2016, the accused and his brother had left for Uttar Pradesh. The complainant tried to call the accused on his phone but the same was switched off. Subsequently when the complainant could contact the accused on the phone, he informed her that he do not want to stay in Mumbai and that he is not interested in getting married with the complainant. Thereafter the complainant repeatedly tried to contact the accused on his mobile phone but the same was found switched off. In view of the above, the third Respondent lodged the impugned FIR with the aforesaid Police Station on 2 February 2016.

5. Learned counsel for the Petitioner and the third Respondent submitted that the parties have resolved their differences and the third Respondent has consented for quashing the FIR under challenge. It is further submitted that

the parties have solemnised their marriage on 29 April 2016. The marriage certificate has been annexed to the petition. The parties have also executed a declaration regarding solemnisation of their marriage. The third Respondent has submitted an affidavit dated 30 April 2016 before this Court. In the said affidavit, it is stated that the third Respondent had registered the impugned FIR against the Petitioner. However, with the indulgence of the well wishers and elderly persons, a compromise is arrived at between the Petitioner and the deponent and the misunderstanding arrived between them is resolved. It is also stated that the parties have married to each other and complainant has no objection for dropping the criminal proceedings against the Petitioner. She has further stated that she is consenting for quashing the FIR which is subject matter of this petition.

6. Learned APP vehemently opposed the prayers made in this petition. It is submitted that the accused have committed a serious offence under Section 376 of Indian Penal Code and, therefore, this Court may not exercise the discretionary powers of quashing the FIR. Learned Prosecutor further submitted that the accused had induced the complainant to have physical relationship with a false promise of marriage. From the facts it is apparent that the accused had no intention to get married to the complainant and, therefore, after having physical relationship with her, he left Mumbai on 11 January 2016. He further

submitted that the accused refused to solemnise the marriage and avoided the complainant. It is further submitted that the complainant had repeatedly tried to contact the accused with a request for marriage, however, the accused refused to fulfill the promise made by him. Hence, the complainant lodged the FIR on 2 February 2016. It is further submitted that the investigation had commenced after the registration of FIR, but the accused was not available. The Police machinery made several attempts to apprehend him. The investigating authority was required to issue a look out notice against the accused since he was not available for investigation and was absconding. He further submitted that after realising that the FIR has been registered against him, the accused had purportedly solemnised the marriage with the complainant on 29 April 2016. Learned Prosecutor further submitted that such type of offences are not of private nature, but they are against the society at large. Hence, although the parties may try to resolve the dispute on the ground of settlement, such FIR should not be quashed.

7. We have gone through the contents of FIR. It is gathered that the accused had no intention to marry the complainant. The accused repeatedly had physical relationship with the complainant with false assurances that he will marry her. It is necessary to note that the accused had visited the house of the complainant on 10 January 2016 and on account of false promise of marriage, had sexual intercourse with the

complainant. He intimated her that his brother is leaving for Uttar Pradesh on 12 January 2016 and she should join him in the said premises. However, it was noticed that the accused left for Uttar Pradesh on 11 January 2016 without informing the complainant. His phone was found switched off. Although the complainant could establish her contact on mobile phone with the accused, he refused to fulfill his promise. We have noticed from the record produced by learned Prosecutor that the accused was at large and several attempts were made to trace him. The conduct of the accused is required to be deprecated. It can be noted that after realising that FIR has been registered and the investigating machinery is looking out for him, he had come to Mumbai and purportedly solemnised the marriage on 29 April 2016. It is pertinent to note that the declaration that both the parties have married to each other was executed on 29 April 2016. The present petition was filed on 30 April 2016 and the affidavit tendered by the complainant giving consent for quashing the impugned FIR was affirmed on 30 April 2016. The approach of the accused is apparently under clouds of suspicion. In view of the circumstances, although the Petitioner and the third Respondent have solemnised the marriage as stated by them, we are not inclined to quash the FIR under challenge.

8. In the case of **Gian Singh Vs. State of Punjab and another**¹, the Apex Court has observed that the power of

¹ (2012)10-SCC-303

quashing should be exercised very sparingly. Paragraph 58 of the said decision reads as follows :

"58. 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 is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made

compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

9. In the aforesaid paragraph, the Apex Court has observed that in respect of serious offences like murder, rape, dacoity etc or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes like Prevention of Corruption Act, the settlement between the offender and the victim can have no legal sanction at all. Taking into consideration the law laid down by the Apex Court as above and the factual aspects of the present case, we are not impressed with the submissions made by learned counsel for the Petitioner and the third Respondent. It is not possible at this stage to give finding that offence under Section 376 of IPC is not made out in the FIR. The factual aspects of the FIR fortified by the conduct of the accused and subsequent events, are sufficient to decline the prayers made in this petition. The observations made herein are only for the purpose of deciding the present petition.

10. In view of the above, we pass following order :

(a) Rule is discharged;

(b) The petition is dismissed with no order as to costs.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

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