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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.611 OF 2016**

Mohammed Mustafa Zakirali Khan

... Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

Mr. Shyamkumar V. Marwadi for the Applicant.

Dr. F.R. Shaikh, APP for Respondent No.1.

Mr. Amin Solkar i/by Mrs. Prabha U. Badadare and Omkar G. Nagwekar
for the Respondent No.2.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.**

DATE : 12th AUGUST, 2016

PC.

1. Rule. The learned APP waives service for the State of Maharashtra. The learned counsel appearing for the second Respondent waives service. Forthwith taken up for final disposal. The prayer in this application is for quashing the First Information Report registered for the offences punishable under Section 376 (2), 506(2) read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. The prayer made in this application for quashing under Section 482 of the Code of Criminal Procedure, 1973 is based on the basis of consent and also on merits.

2 We have perused the statement of the second Respondent on the basis of which the FIR was registered. The FIR is registered on 17th February, 2016. The date of birth of the second Respondent as disclosed therein is 9th July, 1997. Thus, the second Respondent attained majority on 9th July, 2015. It is stated in the statement that the second Respondent had a love affair with the Applicant and in fact they were always in contact with each other on cell phone. It is alleged that the Applicant forced her to maintain physical relationship on four to five occasions. On her insistence, without disclosing to the family members of both of them, on 19th May, 2014 there was a Nikah. It is alleged that since then they are maintaining physical relationship. She has stated that subsequently there were disputes between them. On 8th February, 2016 it was revealed that she was pregnant.

3 This application was heard from time to time. On 23rd June, 2016 this Court passed a detailed order. Paragraph 1 of the said order reads thus :-

“1 Heard the learned counsel for the applicant, the learned APP for State and the learned counsel for the second respondent. The issue whether power of this Court under section 482 of the Code of Criminal Procedure, 1973 can be exercised in the facts of the case will have to be gone into. Today, quashing is sought on the ground of settlement. The age of the applicant and the second respondent is stated to

be only 19 years. The documents on record show that the second respondent is pregnant. Prima facie, it appears to us that the date of the alleged marriage is 31st March 2016 and the conception has taken place earlier. The age of the applicant is 19 years. The learned counsel for the applicant on instructions states that the applicant belongs to a family which is having its own business. The business is of steel trade. Before we consider the issue whether offence can be quashed on the basis of the settlement, the family of the applicant will have to secure the future of the second respondent. Substantial amount will have to be deposited in the Court which will lie deposited at least for 5 to 6 years. The amount can be invested in a fixed deposit and the interest can be ordered to be paid to the second respondent. After the end of 5 to 6 years, if the Court finds that the matrimonial life of the applicant and the second respondent is smooth, the entire amount can be paid over to the applicant. The learned counsel for the applicant seeks time to take instructions as regards quantum of amount which can be deposited. On his request, we adjourn the application till 11th July 2016, high upon board.”

4 There is an affidavit filed by the second Respondent stating that she is now residing with the Applicant. Reliance was placed on medical report dated 16th June, 2016 showing that she is in the 20th week of pregnancy. Therefore, she consented to quashing the FIR.

5 On 8th August, 2016 consent terms signed by the Applicant and the second Respondent have been filed. Consent terms record that the family members of both of them agreed for their marriage and accordingly on 31st March, 2016 Nikah ceremony was performed in presence of family members of both of them. It is stated that family of the Applicant has given gold jewellery worth Rs.7,19,113/- as mentioned in receipt dated 29th March, 2016. In the consent terms, it is recorded that the Applicant has agreed that the gold jewellery will be in sole possession of the second Respondent. The consent terms provide for a deposit of Rs.5 Lakhs in this Court. It is provided that the said amount will lie deposited in this Court for benefit of the unborn child. The consent terms have been signed by both the Applicant and the second Respondent and their respective Advocates. The learned counsel appearing for the Applicant stated that the parents of the Applicant are present and they assure the Court that every possible care of the second Respondent will be taken especially in the light of the fact that she is pregnant.

6 In normal course, in view of the settled law, the power under Section 482 of the quashing cannot be exercised on the ground of settlement when the offence alleged is under Section 376 (2) as the offence alleged is against the society at large and is of heinous nature.

The statement of the second Respondent shows that from the age of 15 or 16, she was in contact with the Applicant. It records that there was a love affair when both of them were in college and they were always in touch with each other on cell phone. There are two parts of the allegation regarding forcing physical relationship. The second part is after the Nikah was made on 19th May, 2014. Not only that Nikah was made on 19th May, 2014, with the consent of family members of both of them again a fresh Nikah ceremony was performed on 31st March, 2016. Therefore, if the statement of the second Respondent is read as a whole, it is obvious that the Applicant and the second Respondent were maintaining a consensual relationship.

7 The learned APP on the earlier occasion, on instructions of the Investigating Officer stated that correctness of the claim relating to Nikah performed on 31st March, 2016 has been verified and found to be correct. He stated that the Applicant and the second Respondent were found to be residing together.

8 The Applicant has partially secured future of the unborn child by depositing a sum of Rs.5 Lakhs in this Court.

9 Therefore, in our view, this is a fit case to exercise power under Section 482 of the Cr.P.C.

10 Hence, we pass the following order :-

ORDER

- (i) The statement of the Applicant recorded in clause 2 of the consent terms as regards golden jewellery is accepted as his undertaking;
- (ii) Rule is made absolute in terms of prayer clause (b) which reads thus :-

“(b) by issuing an appropriate order and/or direction under Section 482 Cr.P.C., the proceedings against the Applicants in C.R.No.96 of 2016 registered by the Sakinaka Police Station may kindly be quashed.”
- (iii) The sum of Rs.5 Lakhs deposited by the Applicant in this Court shall be invested by the Registry in a Fixed Deposit with any Nationalised Bank initially for a period of five years. The amount shall be invested in such a manner that it will fetch quarterly interest. It will be open for the second Respondent to withdraw the interest accrued on the Fixed Deposit;

- (iv) It will be also open for the second Respondent to apply to this Court after expiry of a period of five years from today for withdrawal of the sum of Rs.5 Lakhs with interest accrued, if any, thereon. If the Court is satisfied at that time that considering the situation of the second Applicant and the interests of the minor child, the amount should be permitted to be withdrawn, the Court can permit withdrawal;
- (v) All concerned to act upon an authenticated copy of this order.

(A.A. SA YED, J)

(A.S. OKA, J)