

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2306 OF 2014

Jayesh Janardan Bhoir and Others. .. Applicants.
Vs
State of Maharashtra and Others. .. Respondents
—
Shri Nitin Sejpal for the Petitioner.
Dr. F.R. Shaikh, APP for the Respondent Nos.1 and 2.
Shri Bhavesh Thakur for the Respondent No.3.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 24TH OCTOBER 2016

P.C.

1. Heard learned counsel appearing for the Petitioner, the learned counsel appearing for the third Respondent and the learned APP for the first and second Respondents.

2. Rule. The learned counsel appearing for the third Respondent waives service. The learned APP waives service for the first and second Respondents. Taken up forthwith for final disposal.

3. The prayer in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is for quashing the chargesheet filed

for the offences punishable under Sections 363, 366(A), 376 read with 34 of the Indian Penal Code and Sections 4, 7 and 17 of the Protection of Children From Sexual Offences Act, 2012. The first informant is the third Respondent and the fourth Respondent is the victim of the offence. The date of birth of the fourth Respondent as reflected from the School Leaving Certificate forming part of the chargesheet is 1st June 1996. The prayer for quashing the FIR is made on the basis of the marriage solemnized between the first Petitioner (Accused No.1) and the fourth Respondent. It is claimed that the marriage was solemnized between them on 6th June 2014 as per the Hindu Vedic Rites at Vashi Village, Navi Mumbai. A certificate of marriage issued by the agency where the marriage was performed and copies of the photographs of the marriage solemnized were annexed. There is a reply filed by the third Respondent/first informant who is the father of the fourth Respondent who has also confirmed the correctness of the stand taken in the Petition that there is a marriage solemnized between the first Petitioner and the fourth Respondent on 6th June 2014. Therefore, he has recorded no objection for quashing the FIR. There is also an affidavit-in-reply filed by the fourth Respondent reiterating that she has married to the first Petitioner on 6th June 2014. She has supported the Petition.

4. The learned APP has tendered across the bar a report dated 24th October 2016 submitted by the Assistant Police Inspector of Vashi Police Station, which is confirmed by the Senior Inspector of Police, Vashi Police Station. The report is taken on record and marked "X1" for identification. The report records that the first Petitioner and the fourth Respondent are living together as husband and wife and they have a two months old son.

5. Considering the confirmation of the marriage as pleaded by the Petitioners, now continuation of the criminal proceedings will cause undue hardship to both the first Petitioner and the fourth Respondent. The learned counsel appearing for the Petitioners states that after filing of the chargesheet, the case has been committed to the Special Court under Sessions Case No.52 of 2015. In our view, this is a fit case to exercise powers under Section 482 of the CrPC for quashing the criminal proceedings.

6. Accordingly, we pass the following order:

ORDER :

- (a) The criminal proceedings bearing Sessions Case No.52 of 2015 pending before the Special Court (Protection of Children From Sexual Offences Act) at Thane arising out of the chargesheet filed in the First

Information Report bearing No.I-130 of 2015 with Vashi Police Station, New Bombay, is hereby quashed and set aside;

- (b) Rule is accordingly made absolute.
- (c) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)