

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.815 OF 2016

Askar Ali Haji Shaikh

..... Applicant

V/s

Ms. Tarannum Salim Shaikh & Anr.

..... Respondents

Mr. Rahul Arote for the Applicant.

Dr. F.R. Shaikh, APP for the Respondent No.2/State.

Mr. Mohsin Pathan for the Respondent No.1/Informant.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 28 JULY 2016

ORDER:

1 Rule. The learned APP waives service for the second Respondent. The learned Counsel appearing for the first Respondent waives service. Forthwith taken up for final disposal. Time granted earlier to carry out amendment is extended by a period of three weeks from today.

2 The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") is for quashing First Information Report alleging commission of offences punishable under sections 376 and 420 of the Indian Penal Code. One of the grounds on

which the prayer for quashing is made is mutual settlement between the prosecutrix and the Applicant.

3 We have perused the statement of the first Respondent on the basis of which First Information Report was registered. Our attention is invited to order dated 4 May 2016 passed by the Sessions Court on Application for anticipatory bail filed by the Applicant. While confirming the ad-interim relief granted earlier, the learned Sessions Judge recorded the statement of the first Respondent who was present before her. The learned Judge recorded that the first Respondent stated that she has got married to the Applicant on 28 April 2016 and the document of Nikahnama was placed on record. This fact is also recorded in order dated 17 May 2016 passed by the Sessions Court on Application made by the Applicant seeking permission to travel abroad. There is an Affidavit dated 18 July 2016 filed by the first Respondent in this Court. In the said Affidavit, she has stated that she got engaged with the Applicant on 30 April 2015 and ultimately got married with the Applicant on 28 April 2016.

4 On the last date, we directed the Investigating Officer to verify the correctness of the stand taken before this Court as regards the marriage. Today the Senior Inspector of Police, Wadala TT Police Station has

submitted a Report dated 28 July 2016 and the same is taken on record and marked 'X-1' for identification. In the report it is stated that verification of the documents was carried out and it was found that the statement made regarding the marriage solemnized on 28 April 2016 is correct. It also records that the Applicant and the first Respondent are staying together at Pune.

5 The allegation made in the statement of the first Respondent on the basis of which the First Information Report was registered is that the Applicant had promised to marry her and the said promise was not fulfilled. As far as physical relationship is concerned, the first Respondent has stated that initially she refused to maintain physical relationship with the Applicant. She stated that the Applicant informed her that if she refuses to maintain physical relationship, he would not marry her. Thereafter, the first Respondent stated that on three occasions there was physical relationship between them on three different dates. She has not stated that the relationship was maintained without her consent. On the contrary, she has stated that she reluctantly agreed to maintain the relationship. Therefore, going by the statement of the first Respondent, by no stretch of imagination, an offence under section 376 of the Indian Penal Code is made out. As far as the offence alleged under section 420 of the Indian Penal Code is concerned, now that the

Applicant has admittedly married to the first Respondent, the prayer for quashing the First Information Report in exercise of powers under section 482 of the CrPC can be considered. The allegation of the first informant was that offence under Section 420 was attracted as the Applicant did not marry as promised. As stated earlier, even the police on necessary verification have confirmed the fact of solemnization of the marriage between them on 28 April 2016.

6 Therefore, in our view, in the light of the aforesaid discussion, this is a fit case to exercise the power under section 482 of the CrPC to quash the First Information Report.

7 As the Applicant and the first Respondent are residing together as the husband and wife, continuation of criminal proceedings will cause undue harassment to them.

8 Hence, we pass following order:

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

“b) This Hon'ble Court be pleased to quash and set aside First Information Report bearing C.R. No.16 of 2016 of Wadala TT Police Station.”

(A.A. SAYED, J.)

(A.S. OKA, J.)

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