

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.790 OF 2015**

Mr. Mohd. Aftab Riyaz Pasha Shaikh	... Applicant
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. Rabindra Kumar Yadav for the Applicant.
Mrs. S.V. Sonawane, APP for the Respondent No.1.
Mr. Manoj Kumar Singh for the Respondent No.2.

**CORAM : A.S. OKA &
R.D. DHANUKA, JJ.**

DATE : 6th SEPTEMBER, 2016

PC.

1 Rule. The learned APP waives service for the first Respondent. The learned counsel appearing for the second Respondent waives service. Forthwith taken up for final hearing.

2 The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report (FIR) registered at the instance of the second Respondent. The FIR is for the offences punishable under Section 376 and Section 420 of the Indian Penal Code. The allegation in the FIR is that the second Respondent and the Applicant used to meet very often after the second

Respondent lost her husband. The allegation is that by giving assurance of marriage, the Applicant forced the second Respondent to maintain physical relationship. It is alleged that on 20th April, 2015 the marriage was solemnized between the Applicant and the second Respondent. It is alleged that with effect from 24th April, 2015 the Applicant deserted the second Respondent.

3 An affidavit was filed by the second Respondent before the learned Metropolitan Magistrate. In the said affidavit she stated that she has married to the Applicant. The order of anticipatory bail dated 12th May, 2016 passed by the Sessions Court records that the second Respondent was pregnant. Even in the said application, the second Respondent filed an affidavit recording settlement.

4 The second Respondent has filed an affidavit in this application stating that initially she had filed a missing complaint as the Applicant was missing from 24th April, 2015. She stated that on that day, the Applicant left the house without informing anyone. She has stated that as the Applicant deserted her, out of anger, she lodged a complaint on the basis of which the impugned FIR has been registered. In paragraph 8, she has stated that she has a child born on 18th November, 2015.

5 The learned APP on instructions of the Investigating Officer states that the Investigating Officer has found that the stand taken by the Applicant and the second Respondent about their marriage and birth of child is correct and in fact the Applicant and the second Respondent are residing together.

6 Perusal of the FIR shows that the allegation is that the Applicant forced the second Respondent to maintain physical relationship by promising her to marry with her. In the statement of the second Respondent on the basis of which the FIR was registered, it is stated that on 20th April, 2015 the Applicant married to the second Respondent. The only allegation is that on 24th April, 2015 the Applicant left the matrimonial home and his whereabouts could not be located. Therefore, by no stretch of imagination, offence under Section 420 of the Indian Penal Code is attracted. As the subsequent conduct of the parties shows that they got married and they have a child. Therefore, the physical relationship maintained by them was purely consensual. Moreover, the Applicant and the second Respondent are residing together as husband and wife. Therefore, on merits as well as on the basis of the law laid down by the Apex Court in the case of Gian Singh Vs. State of Punjab¹, this is a fit case to exercise powers under

1 (2012) 10 SCC 303

Section 482 of the Criminal Procedure Code, 1973. The FIR itself discloses that there was a marriage between the Applicant and the second Respondent. Essentially the dispute is a matrimonial dispute which is completely settled. Hence, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (A) which reads thus :-

“(A) This Hon'ble Court be pleased to quash and set aside the FIR in CR No.197/15 registered with the Oshiwara Police Station, Mumbai for the aforesaid offences.”

- (ii) All concerned to act upon an authenticated copy of this order.

(R.D. DHANUKA, J)

(A.S. OKA, J)