

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

CRI. WRIT PETITION NO. 2702 OF 2016

Miss. Thea Ajit D'Suuzza

... Petitioner.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Mr. Mahesh Vaswani a/w. Ms. Dharini Nagda, Miss Amala Salvi & Mr. Farooque Ansari i/by Ms. Duraiya Retiwala for the Petitioner.

Mrs. S. V. Sonawane, APP for the State-Respondent No.1.

Miss. Manashi Mahanta, Advocate for Respondent No.2.

**CORAM : V. M. KANADE AND
Ms.NUTAN D.SARDESSAI,JJ.**

DATE : 07th DECEMBER, 2016

P.C. :

1 Heard the learned counsel appearing on behalf of the Petitioner, the learned counsel appearing on behalf of the Respondent No.2-Complainant and the learned APP for the State.

2 The Petitioner is the complainant, who had lodged a criminal complaint against the Respondent No.2, which was registered with the Khar Police Station vide CR No. 620 of

2015 for the offences punishable under sections 326, 377 and 417 of the Indian Penal Code. It is alleged in the complaint that the petitioner and the respondent no.2 met on number of occasions and had a sexual relationship. According to the Petitioner, in the FIR she has stated that she fell in love with the Respondent No.2 and thereafter they met at various places and hotels. According to her, she was not aware that the Respondent No.2 was married and when she came to know about it, in the heat of moment she lodged the FIR. According to her, her statement was recorded in Marathi and the contents of the said statement were not correctly explained to the petitioner -complainant.

3 It is stated in the petition that after the charge-sheet was filed, the Petitioner wrote several letters to the DCP, Zone -9, Bandra, Mumbai and one such letter is dated 18.5.2016, requesting him to record her further statement since the allegations which were made in the FIR were not correctly recorded. She also stated in the said letter that she did not wish to pursue the prosecution in CR No. 620 of 2015.

4 We have interviewed the petitioner who is present in the court. In order to protect her identify, she has got her original name changed and has also obtained pass-port and pan card etc. in the new name. She has stated that she does not

wish to pursue the said complaint and the allegations made in the complaint are not correct. She is 20 years old.

5 We are satisfied with the reasons given by the Petitioner. Even otherwise, when there is a complaint which indicates that there was consensual sex between petitioner and respondent no.2, the offence under section 376 is not attracted.

6 We have noticed that recently the number of such cases where allegation of rape is made, after consensual sexual relationship has failed, is on the rise and while filing a complaint very often it is alleged that because of the assurances and promises were given the prosecutrix had given consent to have sex and had such an assurance not been given she would not have agreed to have consensual sex. Very often such complaints are filed after both the parties have sex over a long period of time, namely, for six months to couple of years and after the relationship turns sour, such allegations are made. As a result the police has no other option but to register the offence under section 376 since it is a cognizable offence. The accused on many occasions languishes in jail for number of months or years and thereafter the application is filed for quashing. It is necessary to mention here that the legislature has taken a note of such relationship and has given protection to women and such relationship is defined as “live-in-

relationship”, which is defined under the Domestic Violence Act. In an appropriate case, therefore, we propose to consider what has to be done in such cases by the police.

7 In the present case, the Petitioner has stated that when her compliant was recorded by the police it was written in Marathi and not in the language understood by her. It is her case, therefore, that the police have not properly recorded her statement. Though it is difficult to accept this submission because there is normally no reason why a police officer would wrongly record a statement. It is equally possible that if the contents of the FIR have not been explained to the complainant, the complainant may be under a wrong impression that what has been narrated by her is recorded in the FIR. This question also needs to be looked into.

8 Since we have interviewed the petitioner, we are satisfied that the ingredients of the offence mentioned in the FIR are not made out which is also clear from the perusal of the criminal complaint and on further statement which have been recorded. We are, therefore, of the view that the ratio of the judgment of the Apex Court in the case of **Madan Mohan Abbot vs. State of Punjab**, reported in (2008) 4 Supreme Court Cases 582 will clearly apply to the facts of the present case. Further the ratio of the judgment of the Apex Court in the case of **Gian Singh vs. State of Punjab & Anr.**, reported

in (2012) 10 Supreme Court Cases 303 will also apply to the facts of the present case.

9 We, therefore, allow the petition in terms of prayer clause (a) and accordingly quash the complaint filed by the petitioner-complainant.

10 The Petition is disposed of in the aforesaid terms.

(Ms.NUTAN D.SARDESSAI,J)

(V.M.KANADE,J)

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