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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3607 OF 2016

Shailesh Baban Vane

..Petitioner.

V/s.

State of Maharashtra and Anr.

..Respondents.

Mr.Santosh Pandit Sonawane for the petitioner.

Ms.M.H.Mhatre, APP for respondent No.1.

Mr.Dilip Shinde for respondent No.2.

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

DATED : 21ST OCTOBER, 2016

P.C. :-

1. Heard the learned counsel appearing for the petitioner. Prayers in this petition under Article 226 of the Constitution of India is for quashing of the first information report registered at the instance of the second respondent for the offences punishable under section 354A as well as sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012. The victim of the offence is 9 years old girl. The victim is the daughter of brother of the second respondent. The incident is of 28th August, 2016. On the very

day, the first information has been registered.

2. Prayer for quashing is based on the affidavit filed by the second respondent in the application for bail filed by the petitioner. In the affidavit of the second respondent, she has stated that the first information report was filed due to misunderstanding on the part of the victim of the offence.

3. Considering the sensitive nature of the complaint, we are not reproducing the allegations made by the victim. The learned APP has brought for the perusal of the Court a statement of the victim dated 1st September, 2016 recorded by the learned Judicial Magistrate First Class, first Court at Kalyan. The statement has been recorded under section 164 of the Code of Criminal Procedure, 1973. We have perused the said statement. Certain preliminary questions were asked by the learned Magistrate to the victim and on the basis of the answers given to the said preliminary questions which are recorded by the learned Magistrate, a conclusion has been recorded that the victim is capable of understanding the questions and capable of giving reply to the same. After recording this conclusion, certain questions have been asked

to the victim on the basis of which the learned Magistrate recorded the satisfaction that the victim understands the significance of oath. We have carefully perused the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973. The statement has been recorded within three days of the incident. If the statement is perused, a clear case of commission of offences as alleged against the petitioner is made out.

4. The learned counsel appearing for the second respondent has tendered an affidavit. In the affidavit, it is stated that even the victim has no objection for quashing the first information report.

5. Firstly, the second respondent has no authority to file such an affidavit. She is the first informant who has given information to the police about a cognizable offence. Secondly, after perusal of statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973 on 1st September, 2016, it is impossible to accept that the victim has no objection for quashing the first information report. In any event, the offence alleged is of a very serious nature. It

is most heinous offence. It is an offence against the society at large. Such an offence cannot be quashed the ground of alleged settlement.

6. Considering the fact that the offence alleged is made out against the petitioner, for the reasons which are recorded above, it is not possible to interfere at this stage. Accordingly, the writ petition is rejected.

(A.A.SAYED, J.)

(A.S.OKA J.)