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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1258 OF 2015**

Mehboob Dashtgir Shaikh

... Applicant

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Ganesh K. Gole for the Applicant.

Dr. F.R. Shaikh, APP for the Respondent No.1.

Mr. Ritesh Ratnam for the Respondent Nos.2 and 3.

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

DATE : 20th OCTOBER, 2016

PC.

1 Rule. The learned APP waives service for the first Respondent. The learned counsel appearing for the second and third Respondents waives service. Forthwith taken up for final disposal.

2 The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report alleging commission of offences under Sections 363 and 366 of the Indian Penal Code. The second Respondent is the first informant. The third Respondent is the daughter of the second Respondent who is the alleged victim of the offence. The allegation in the FIR is that in the night of 16th December, 2013 the third Respondent whose age at the relevant time was 16 years was kidnapped by the present Applicant. In

fact, charge sheet has been filed after investigation. Date of birth of the third Respondent as seen from the bonafide certificate issued by Rais High School is 5th August, 1997.

3 In the affidavit filed by the second Respondent, he has stated that the third Respondent is the lawfully wedded wife of the Applicant and in fact the couple has been blessed with a child which is 15 months old.

4 By order dated 30th September, 2016 the Applicant was directed to furnish documents evidencing his marriage with the third Respondent as well as the birth certificate of the child. The Investigating Officer was directed to make verification of the said documents. Accordingly, the Assistant Police Inspector of Bhoiwada Police Station has submitted a report. A photocopy of the Nikahnama was produced by the Applicant. A copy of birth certificate of a female child born on 24th December, 2014 was produced by the Applicant which shows that a female child has been born to the third Respondent and the Applicant is the father of the child. The learned APP on instructions of the Investigating Officer states that the Applicant and the third Respondent are residing together as husband and wife.

5 Considering these subsequent events, continuation of criminal proceedings will cause undue hardship to the Applicant and to the third Respondent. Moreover, chances of conviction are very bleak.

There is material on record to show that the Applicant was having a love affair with the third Respondent and accordingly the third Respondent on 16th December, 2013 accompanied the Applicant to Banaras in U.P. Thereafter they stayed together at Manmad and Ranjangaon.

6 Hence, this is a fit case to exercise power under Section 482 of the Code of Criminal Procedure, 1973. Accordingly, we pass the following order :-

ORDER

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

“(b) quash the C.R.No.197 of 2013 dated 30.12.2013 registered with Bhoiwada Police Station, Bhiwandi, Thane as well as the Chargesheet bearing no.I-31 of 2015 dated 16.03.2015 pending before the learned J.M.F.C. 5th Court, Bhiwandi, Thane for the offences punishable under section 363 and 366 of the Indian Penal Code.”

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

(A.A. SAYED, J)

(A.S. OKA, J)