

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4600 OF 2015

Totan @ Akbar Pathan Bhola Shaikh. ..Petitioner.
Versus
State of Maharashtra & Another. ..Respondents.

Mr. R. V. Gupta for the Petitioner.
Ms. Aarti B. Bhoir for Respondent No. 2.
Mr. J. P. Yagnik, learned APP for the State.

Coram : RANJIT MORE &
 V. L. ACHLIYA, JJ.
Date : **January 14, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. By this petition filed under Article 226 of the Constitution of India and also invoking the jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973, the Petitioner is seeking to quash the proceedings of CC No. 1196/PW/2012 pending on the file of learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai. Said case has arisen from the FIR No. 434 of 2011 registered with MIDC Police Station against the Petitioner at the instance of Respondent No. 2 wherein the allegations are concerning the commission of the offence punishable under sections 363 and 366 of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that during the pendency of trial of above criminal case, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petition is filed for quashing the above criminal proceedings, by consent of original complainant and victim.

3. Original complainant - Respondent No.2 herein has filed an affidavit dated 18th December 2015 wherein he has stated that he is not interested in continuing with the criminal prosecution of the Petitioner. He has categorically stated that disputes between himself and the Petitioner are settled amicably and he has no objection if the prosecution of the Petitioner in the subject criminal proceeding is quashed.

4. So far as the victim girl is concerned she also has filed an affidavit before this Court wherein she has stated that she was in love with the Petitioner and she had willing and voluntarily eloped with him as there was steep opposition to their marriage from the

family. She has further stated that on her instance only, the Petitioner had taken her to his native place where they got married and started living as husband and wife. She has further stated that out of their marriage, she has given birth to a male child on 18th September 2015.

5. On last occasion when the matter was on board, Respondent No.2 was present. On specific query made by us, he had submitted that he has made the affidavit giving no objection for quashing on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the criminal proceedings in question initiated by him against the Petitioner for the offence punishable under sections 363 and 366 of the Indian Penal Code, 1860.

6. Today, victim Seema is present before us. She submitted that she has willingly gone with the Petitioner and she has got married with him and presently leading a happy and peaceful married life with him. She also submitted that out of their wedlock, a son is born. She submitted that in these circumstances, the proceedings against the Petitioner may be quashed.

7. The Petitioner is present before us. He assured that he will take care of Seema.

8. It is true that offence under sections 363 and 366 of IPC are of serious nature and are the offences against society. Consequently, such an offence cannot be quashed even by consent. Nonetheless, in the instant case we are persuaded to exercise our extra-ordinary jurisdiction and inherent powers to quash the subject proceedings in the backdrop of above stated facts wherein the victim girl had voluntarily and willingly gone with the Petitioner and subsequently got married with him and presently leading a happy and peaceful married life with him. We are of the view that the continuation of the prosecution in the scenario stated above would not be healthy for the married life of Seema and it is in the interests of the victim and Respondent No.2, to quash the proceedings. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

9. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings. Hence, petition is made absolute in terms of prayer clause (a).

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]