

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.30 OF 2016

Siddharth alias Bhimrao Uttam
Kamble

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

...

Mr. Govind Bajirao Pawar for the Petitioner.

Mr. Avinash Naikwadi for Respondent No.2.

Mr. S.K. Shinde, PP with Mr. K.V. Saste, APP for Respondent No.1-State.

CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 13th JANUARY, 2017.

P. C. :

Prayer in this Petition under the Article 226 of the Constitution of India is for quashing the First Information Report registered for offences punishable under Sections 354(d) and 506 of the Indian Penal Code as well as Section 8 of the Protection of Children from Sexual Offences Act, 2012. Quashing is sought only on the ground of settlement on the basis of an affidavit filed by one Mr. Anand Magade, who is the father of the First Informant /victim of the offence.

2. We have perused the statement of the First Informant on the basis of which the impugned First Information Report has been

registered. The said statement is recorded on 21st November, 2015, in which she has stated that her age as 15 years. The learned counsel appearing for the Petitioner states that the Petitioner is not sure about her age. We have carefully perused the affidavit of Mr. Anand Magade. In Paragraph No.3 and Paragraph No. 5 he has specifically referred to his daughter as a minor daughter.

3. The offence alleged is of very serious nature. It is against the society at large.

4. The learned counsel appearing for the Petitioner relied upon the decision of the Apex Court in *B.S. Joshi and Ors. Vs. State of Haryana and Anr*¹, *Prashant Bharti Vs. State (NCT OF DELHI)*² and *Narinder Singh and Ors Vs. State of Punjab and Anr.*³ These are the judgments which take a view that this Court has a power under Section 482 of the Code of Criminal Procedure, 1973 to quash non compoundable offence on the basis of settlement between the accused and the First Informant /victim of the offence.

5. In the present case, the victim is a minor, who is not capable of entering into any settlement. On the basis of so called

1 2003 4 SCC 675

2 2013 9 SCC 293

3 2014 6 SCC 466

settlement entered into by and between the Petitioner and parents of the minor- victim, the power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised for quashing the First Information Report.

6. The jurisdiction of this Court under the Article 226 of the Constitution of India is always discretionary. It cannot be exercised for quashing a serious offence where the victim is a minor only on the basis of a settlement entered into by the parents of the victim with the accused.

7. We, therefore, decline to entertain this Petition. The same is accordingly dismissed.

8. We however, make it clear that we have made no adjudication on merits as the relief of quashing is sought only on the ground of the settlement.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)