

CRIMINAL WRIT PETITION NO. 353 of 2017

V/s.

State of Maharashtra & anr. ... Respondents

Ms. Vinita Muley i/b. Advocate Arun Nile for the petitioner.

Ms. Shraddha Worlikar for respondent no.2.

Mr. V.B. Konde Deshmukh, APP for the State.

***CORAM : NARESH H. PATIL AND
NITIN W. SAMBRE, JJ.***

14th December, 2017.

P.C.

Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith.

3. The FIR No.320 of 2016 dated 29th August, 2016 came to be registered against the petitioner at Kandivali police station, Mumbai

under sections 323, 376 and 504 of the Indian Penal Code. Complainant- Respondent No.2 alleged that she started residing with petitioner in his two bed room flat. Mother of the petitioner was also residing with him. Out of the two bedrooms, one bedroom was occupied by the petitioner and the Complainant. During their stay they became intimate with each other and had developed physical relations. Respondent No.2 conceived out of the said relationship. In the month of September 2015, respondent no.2 was in the 5th month of pregnancy. With the assistance of medical officer, pregnancy was terminated. Thereafter, respondent no.2 insisted that petitioner shall marry with her but as the petitioner started giving evasive replies, respondent no.2 got agitated. It was alleged that after noticing conduct of the petitioner, respondent no.2 had no other option then to file a complaint alleging that from the period from May 2015 to August, 2016, petitioner on the false pretext of marriage, maintained physical relations forcibly with respondent no.2.

4. Respondent No.2 was working as Assistant Professor in the year

2013-14 in a College at Haryana. She was interested in the field of acting and, therefore, she left her services and shifted to Mumbai to search for some work in the film industry. She met the petitioner during her stay in Mumbai and started residing with petitioner.

5. Learned Counsel appearing for petitioner submits that petitioner is doing trading business. After going through the complaint and contentions raised in the petition and the affidavit filed by respondent no.2, the Counsel submits that admittedly both the petitioner and respondent no.2 were in 'live-in' relationship. They had consensual sex. Due to some misunderstanding between both of them, respondent no.2 filed a complaint against the petitioner. The parties have now resolved their misunderstandings and misgivings with each other and, therefore, parties have approached this Court for getting the criminal proceedings quashed which will be in the best interest of the parties.

6. Learned Counsel appearing for respondent no.2 placed reliance

on the affidavit filed by respondent no.2. In Paragraph 3 and 4, it is contended as under:-

“ I say that I and the Petitioner were voluntarily in a live-in relationship since May 2015 till August 2016 i.e. till the lodging of the FIR. I say that during our said live-in relationship, I had indulged in voluntary sexual intercourse with the petitioner. I say that though I and the petitioner had planned to take forward our relation and get married, however, since differences developed between myself and the petitioner, we unanimously decided to part our ways and get separated from each other.

4. I say that however after being separated from the petitioner, I was mentally disturbed and on ill advice took this drastic step to lodge an FIR against the petitioner. I say that however after realizing and foreseeing the consequences of the said complaint, I on my own voluntarily and without any coercion, have

mutually agreed to settle all the disputes pending between me and the Petitioner herein. I say that, I do not wish to continue the proceedings arising out of FIR lodged by me against the abovenamed Petitioner.”

7. Learned Counsel on instructions of respondent no.2 who is present in Court submits that the FIR registered against the petitioner be quashed as respondent no.2 does not want to proceed against the petitioner. Learned Counsel submits that the complaint came to be lodged out of misunderstanding and now they have resolved mutually and amicably to sort out the differences which had cropped up between them.

8. The learned Prosecutor submits that final report has not been filed so far. The case is under investigation. Learned APP submits that appropriate orders be passed in the facts of the case.

9. The law on the principle of quashing by exercising inherent

power under Section 482 is settled in the case of ***Narindra Singh & ors. v/s. State of Punjab & anr.***¹. The Apex Court observed as under:

“29.7.Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High

1 (2014) 6 Supreme Court Cases 466

Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits....”

10. In a recent case of *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur & ors. v/s. State of Gujarat & anr.*² the Apex Court observed in Paragraph 16.5 and 16.6 as under:-

“**16.5.** The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be

² (2017) 9 SCC 641

quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”

11. While dealing with such cases, due regard needs to be shown to the facts and circumstances of each case. The inherent powers of the High Court are to be exercised; (i) to secure the ends of justice (ii) preventing abuse of process of Court.

12. In the light of settled principles, we have carefully examined the facts of this case. The parties have admitted their 'live-in' relationship during the period they were staying together in the flat possessed by the petitioner. The petitioner and respondent both have averred in their affidavit that out of their 'live-in' relationship, they had developed physical intimacy and relationship. It is apparent from the record that the petitioner and respondent no.2 were involved in

consensual sex. Hence, to meet the ends of justice and particularly on the request made by the parties, we find this to be a fit case to exercise inherent jurisdiction conferred under Section 482 of Cr.P.C. We accept the request made by the parties to quash and set aside the FIR registered with the police.

13. Learned APP at this stage submits that respondent no.2 ought to have considered seriously before moving the investigating agency for making allegation of this nature. The thrust of submission of learned APP seems to be that complaints of such nature shall not be casually be filed with the police. After getting it registered, police is duty bound to investigate the serious offences on priority basis. Learned APP in these circumstances submits that some reasonable cost be awarded. The learned Counsel appearing for petitioner on instructions of the petitioner who is present in Court submits that the petitioner is willing to pay reasonable cost to some good cause.

14. For the reasons stated above, we are inclined to quash and set

aside the FIR. We pass following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The FIR 320 of 2016 dated 29th August, 2016 registered against the petitioner Viral Mehta with Kandivali Police Station, Mumbai under sections 323, 376 and 504 of the Indian Penal Code is hereby quashed and set aside subject to payment of costs of Rs.25,000/- to be paid to the Police Welfare Fund, Commissionerate Office (Account No.465010100008693 in the Axis Bank).
- (iii) The receipt of payment shall be submitted to the Registry of this Court by 22nd December, 2017.

16. The Rule is made absolute in the above terms.

17. All concerned to act on an authenticated copy of the order.

(NITIN W. SAMBRE, J)

(NARESH H. PATIL, J.)