

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.95 OF 2016

Naved Shamim Shaikh & Ors. Applicants
versus
The State of Maharashtra & Ors. ... Respondents
.....

- Mr.S.V. Marwadi, Advocate for the Applicants.
- Mr.K.V. Saste, APP for the State/Respondent.
- Ms. Prabha Badadare i/b. Omkar G. Nagwekar, Advocate for the Respondent No.3.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE : 24th JULY, 2017.**

P.C. :

1. Heard the learned counsel for the applicant, respondent No.3 and learned APP.
2. The application is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside FIR bearing C.R.No.301/15, registered with Vijapur Naka Police Station, Solapur. The said FIR is registered against the applicant

for the offences punishable u/s 376, 366, 343 r/w 34 of the Indian Penal Code.

3. The offence was registered at the instance of the respondent No.2, the brother of the respondent No.3. It is alleged that applicant No.1 in collusion with other applicants abducted and kept the respondent No.3 in confinement.
4. Mr.Marwadi, the learned counsel for the applicants submits that FIR came to be filed against the applicant under misconception. He submits that the applicant No.1 and respondent No.3 were in love relationship much prior to the registration of the FIR. The applicant No.1 and respondent No.3 got married 7 to 8 days prior to filing of FIR and they were staying as husband and wife. Out of this wedlock, pending investigation of the subject FIR, the applicant No.1 and respondent No.3 have given birth to son Rehaan on 20/11/2016. He submits that the respondent No.3 has no objection to quash the subject FIR.

5. The matter was placed before this Court on 10/10/2016. On that day after hearing both the learned counsel this Court issued notice to respondent No.2 and granted interim relief. Thereafter matter was placed before this Court on 02/05/2016. This Court recorded assurance of the applicants that they will do everything to protect the future of the respondent No.3 and accordingly directed the applicants to file an affidavit. Thereafter the affidavit was placed before this Court on 24/02/2017. This Court recorded that the applicants had given two assurances namely that they will transfer the flat in the name of respondent No.3 and secondly will invest an amount of Rs.10,00,000/- in the name of respondent No.3. This Court also found that the applicants have not complied with the assurances. The Court accordingly directed the applicants to file further affidavit. The Court also recorded the statement of the first applicant that he will deposit an amount of Rs.5,00,000/- in the name of the respondent No.3.

6. As on today also the applicants have not complied with the said assurances. The applicant No.2 has filed an affidavit. In the affidavit he has stated that the flat cannot be transferred in the name of the respondent No.3 in as much as there is a loan outstanding on it. He has given undertaking that as soon as his loan is cleared, he will transfer the same in the name of the respondent No.3. Undertaking is accepted. So far as the deposit of Rs.10,00,000/- is concerned, the learned counsel for the applicant submits that the applicant No.1 has deposited an amount of Rs.5,00,000/- in the name of respondent No.3. This fact is not disputed by the learned APP. So far as balance amount of Rs.5,00,000/- is concerned, the motor vehicle worth Rs.13,00,000/- is transferred in the name of the respondent No.3. The applicant No.2 has also tendered unconditional apology for his inability to transfer the flat as assured before this Court in favour of the respondent No.3.

7. The petitioner No.1 and respondent No.3 are present before this Court. On specific query they stated that they have

already been married and blessed with a son. They also stated that they are happily residing together. The respondent No.3 specifically stated that with such circumstances, she does not want to proceed against the applicant. She has stated that the subject FIR may be quashed and set aside. At this stage, it is also worth to note that at the time of incident in question both, the applicant No.1 and the respondent No.3 were major. The respondent No.3 seems to have gone with the applicant on her own will and therefore there is no question of commission of offence either 376 or 366 of the Indian Penal Code as the relationship between them is consensual. In above circumstances, we exercise our jurisdiction u/s 482 of Cr.P.C. and quash the proceedings of the subject FIR.

8. As such the application is allowed in terms of prayer clause (b) and is disposed off accordingly.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)