

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4394 OF 2017

- 1] Kiran @ Shailesh S/o Chotu Pawar,
Age : 22 Years, Occu. Labourer,
- 2] Sunil S/o Chotu Pawar,
Age : 16 years, Occu. : Education,
(Through his real brother Kiran @
Shailesh S/o Chotu Pawar)
Both R/o : At Virkhel, Post
Shevage,
Tq. Sakri, District Dhule. ...Applicants.

Versus

- 1] The State of Maharashtra
Through Police Inspector,
Pimpalner Police Station,
Tq. Sakri, Dist. Dhule.
- 2] Chintaman Atmaram Desale,
Age : 45 years, Occu. Labourer,
R/o Virkhel, Tq. Sakri,
District Dhule. ...Respondents.

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Mr. Desale Nilesh N., Advocate for Applicants.
Mr. R. B. Bagul, Addl. Public Prosecutor, for
Respondent No. 1 / State.
Mr. P. S. More, Advocate for Respondent No. 2.
.....

**CORAM : PRASANNA B. VARALE &
SMT.VIBHA KANKANWADI, JJ.**

RESERVED ON : 09-04-2018.

PRONOUNCED ON : 16-07-2018.

JUDGMENT : [Per Smt. Vibha Kankanwadi, J]

By this criminal application under Section 482 of Criminal Procedure Code, the petitioners are seeking quashment of the first information report vide C. R. No. 36/2017 dated 11.5.2017 registered with Pimpalner Police Station, Tq. Sakri, Dist. Dhule. The respondent No. 2 is the resident of Virkhel Tq. Sakri, Dist. Dhule. The victim is his minor daughter. Respondent No. 2 lodged report stating that he resides with his daughter and two sons and wife. Victim had taken education upto 8th standard. Since last 3 years prior to the F. I. R. she was not attending the school. He was doing labour work in the agricultural fields. Informant and his wife had taken the she-goats for grazing and returned around 6 PM. After having dinner around 8 PM informant, his wife, son Dileep and the victim were sleeping in the courtyard. When he woke up at about 1 AM on 11.5.2017 for answering nature's call, he found that his daughter was not on her cot. He

looked for her. When she could not be found, he woke up his wife and son and then to the elder son and daughter-in-law. All of them searched for the girl, but, she was not found. They had searched her for the next day and came to know that two boys and one girl went on a motor cycle, after filling the petrol from petrol pump at Tahrabad. Therefore, they checked CCTV footage and saw that the daughter had gone alongwith the present applicants. It was stated that the present applicants had taken away the daughter under some pretext. On the basis of the said report offences came to be registered vide C. R. No. 36/2017 for the offences under Sections 363, 366 read with Section 34 of Indian Penal Code.

02. The applicants have contended that the applicant no. 1 and victim were in love with each other. Applicant No. 1 was aged 22 and the victim was 17 years and 10 months old. They have performed marriage on 18.7.2017 when victim was 19 years of age at Omkar Mangal Karyalaya, Alandi Devachi, Tq. Khed, Dist. Pune. Before reading of the complaint, we make it clear that victim was about to complete her 18

years of age and she had gone alongwith applicants on her own wish and will. The step was taken by them due to the love affair and since now the marriage has been performed, they have prayed for quashing of the F. I. R.

03. Notice was tried to be served on the respondent No. 2. However, he has refused to accept the notice and therefore, it will have to be said that it was served on him.

04. Heard learned Advocate appearing for the applicants and learned Addl. Public Prosecutor for respondent No. 1. It has been submitted on behalf of the applicants that the victim was about to complete 18 years. She was in love with applicant No. 1 and therefore, when the informant and his family members resisted the marriage between them, she was required to take that step. She had left the house voluntarily and there was no active role played by the applicants. Now, they have performed the marriage and the marriage certificate has been produced on record. Therefore, in order to have a

happy married life, the F. I. R. be quashed.

05. The learned Addl. Public Prosecutor vehemently submitted that the offence that has been committed by both the accused is serious. Merely because accused has married the victim that does not absolve him from punishment.

06. The victim was present before this Court. As aforesaid, the respondent No. 2 has refused to accept the notice, we have confirmed from the victim about the facts in the petition. She has stated that she had gone with the applicant No. 1 on her own and she has now performed marriage with him. We have seen the birth certificate, Adhaar card of the victim as well as the school leaving certificate of the applicant No. 1. It appears that on the date of alleged incident, applicant No. 1 was major and the victim was 17 years and 10 months old. She had attained the age of understanding and therefore, it can be said that she was able to understand the difference between what is wrong and what is right about her. The fact is reiterated by the applicant

No. 1 and the victim that they were in deep love with each other. The offence with which F. I. R. has been filed are in fact against society and they can not be quashed by consent. So also merely because the accused has married the victim that will not absolve, in general, the accused from criminal liability. However, taking into consideration, peculiar circumstances, we are required to consider the facts as stated above. Though opportunity was given to the informant to contest the present application, he has preferred not to come before this Court and object the application.

07. The circumstances that is required to be seen that though the informant, his wife and one son were sleeping near the victim, they could not realize that the applicants had come and the victim was going alongwith them. Therefore, the said act was not forcible and she was not kidnapped or abducted to compel her to marry with applicant No. 1 against her will.

08. We would like to rely on the decision in

Writ Petition No. 4168/2013 by the Principal Bench wherein almost similar facts were there. It was observed that :

"In the instant case, the FIR reveals that the Petitioner and Respondent No. 2 were in love with each other and physical relationship between them was consensual. However, at the relevant time Respondent No. 2 was minor. After she attained majority, she got married to the Petitioner. Now, they are living together. Under such circumstances, if prosecution is allowed to be continued against the Petitioner it will bring discord in their matrimonial relationship and they will be unnecessarily required to face the consequences of prosecution, which is not at all likely to end into conviction. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Petitioner".

09. These observations are equally applicable here. Applicant and victim are happily married. Taking into consideration, said circumstances and in the light of principles laid

down by the Apex Court in the decision of **Narinder Singh V/s State of Punjab (2014 AIR SCW 2065)** there is no impediment in quashing the F.I.R.. The powers of this Court under Sec. 482 of Code of Criminal Procedure is required to be used in the interest of justice, in order to avoid the abuse of process of law.

Hence, following Order;

ORDER

- (i) Criminal application is hereby allowed.
- (ii) The F. I. R. Report bearing C. R. No. 36/2017 registered at the behest of respondent No. 2 at Police Station, Pimpalner Police Station, Tq. Sakri, Dist. Dhule for the offences punishable under Sections 363, 366 read with Section 34 of Indian Penal Code

is hereby quashed and set aside.

[SMT. VIBHA KANKANWADI]
JUDGE

[PRASANNA B. VARALE]
JUDGE

ggd/-.