

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 581 OF 2017

Khaja Faizanuddin NaseeruddinPetitioner

V/s.

The State of Maharashtra and anr.Respondents

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Ms. Neha Philip, Advocate for the petitioner.

Mrs. Anamika Malhotra, APP for the State, respondent
no.1.

Ms. Archana P. Rupwate, Advocate for respondent no.2.

CORAM :-

R.M.SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

15TH FEBRUARY, 2018.

P.C. :-

1. The above Writ Petition has been filed for quashing of the FIR being No. 137 of 2014 dated 24th May, 2014 registered with the Nirmal Nagar Police Station, Mumbai for the offence punishable under Section 363 of

the Indian Penal Code. The said FIR has been lodged by the respondent no.2 in respect of his daughter, Saba Shaikh. The petitioner is the person against whom the gravamen of the allegations have been made in so far as the offence under Section 363 of the Indian Penal Code is concerned. The respondent no.2 i.e. the First Informant has filed Affidavit bearing today's date and affirmed in this Court on 23rd January, 2018. In the context of the relief sought, para-5 of the said Affidavit is material and is reproduced hereinunder :-

“5. I say that I am executing this affidavit in support of Criminal Writ Petition to file it before this Hon'ble High Court to quash and set aside the FIR No. 137 of 2014 filed against the Petitioner. I further say that as my daughter Saba Shaikh and the Petitioner are adult and have capacity to take their own decisions. I say that, as the petitioner and my daughter are happily married and have two minor children aged 2 years and 7 months old respectively. I don't want to proceed with the FIR No. 137 of 2014 against the Petitioner and request that the FIR No. 137 of 2014 may be quashed and I have No Objection for the same.”

2. The reading of the said para, therefore

discloses that the petitioner and the said Saba Shaikh are happily married and have two minor children, aged 2 years and 7 months respectively. It is in view of the aforesaid fact that, respondent no.2 does not desire to proceed with the FIR being 137 of 2014. The said Saba Shaikh is personally present in the Court. She is identified by the Learned Counsel, Neha Philip. She is also identified by her Aadhar Card bearing No. 4731 7531 9707. When put in the box and queried, she states that, she is married to the petitioner and that she is residing with the petitioner and out of the said wedlock, they are having two children. The petitioner, Khaja Faizanuddin Naseeruddin is also personally present in the Court. He is identified by the Learned Counsel, Ms. Neha Philip. He is also identified by his Aadhar Card bearing No. 9260 2381 2249. When put in the box and queried, he states that, Saba Shaikh is his wife, they are married and out of the said wedlock, they have two children. The First Informant i.e. respondent no.2 who is the father of the victim is also personally present in the Court. He is

identified by the Learned Counsel, Ms. Archana Rupwate. He is also identified by his Pancard bearing No. CFPPS 2864N. When put in the box and queried, he states that, Saba Shaikh is his daughter and that the petitioner and Saba Shaikh are married and they have two children out of the said wedlock. The reading of the Affidavit of the respondent no.2, as well as having regard to the statements made by the petitioner, the said Saba Shaikh and the respondent no.2, the same unequivocally point out that the parties have settled the matter and that the said, Saba Shaikh and the petitioner are happily married and have two children out of the said wedlock. It is in view thereof, that respondent no.2 i.e. the First Informant does not desire to proceed with the FIR.

3. In view of the judgment of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in (2012) 10 SCC

303 would also lead to the same conclusion. No useful purpose would therefore be served by keeping the proceedings pending. The petition is allowed and made absolute in terms of prayer clause (a).

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)