

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 308 OF 2018

Shankar Swami Harijan and Others. ..Applicants.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. P. G. Pandey for the Applicants.

Mr. S. R. Shinde, APP for the Respondent-State.

Ms. Pragati Shirke for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : September 18, 2018.

P. C. :

1. Heard the learned counsel for the Applicants, the learned counsel for Respondent No.2 and learned APP for the Respondent-State.

2. The petition is filed for quashing and setting aside the proceedings of POSCO Special Case No. 294 of 2015 pending on the file of learned Sessions Judge for Greater Mumbai. The said case has arisen from the FIR bearing No. 32 of 2015 registered with Sewri Police Station at the instance of Respondent No. 2, alleging the commission of the offence punishable under sections 354A, 354B, 323, 509, 504 and 34 of the Indian Penal Code, 1860 and section 12 of the POSCO Act.

3. Learned Counsel appearing for the respective parties submitted that during the pendency of above criminal proceedings, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present application petition is filed for quashing the above criminal proceedings, by consent of Respondent No.2. Parties have reduced into writing those terms by preparing consent terms dated 27th April 2018.

4. Respondent No.2 has filed an affidavit dated 27th April 2018. In paragraph 3 of the said affidavit, she has stated that she has no objection for quashing the special criminal case against the Applicants.

5. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the subject criminal proceedings initiated by her against the Applicants.

6. Having perused the FIR and prosecution case, we are of the opinion that provisions of sections 354A and 354D of IPC are not at all attracted in the present case inasmuch as the act alleged on the

part of the Applicants are not with sexual intention. For similar reasons, even the provision of section 12 of the POSCO Act are not attracted.

7. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. There is no element of public law involved in the crime. The offence alleged cannot be said to have any impact on the society. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened.

8. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject criminal proceedings. Accordingly, application is allowed in terms of prayer clause (a). In the facts and circumstances of the case, we find it would be appropriate to saddle the Applicants with the cost of Rs.5,000/- each, which shall be paid to **"Tata Memorial Hospital"** an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Applicants shall pay the said cost

and produce the receipts thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, application shall stand dismissed automatically without further reference to the Court and order quashing the proceedings shall be treated as *non-est*. Registry will then intimate the concerned Judge/Magistrate that the subject proceedings shall not be treated to have been quashed and that Magistrate shall proceed against the Applicants in accordance with law.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]