

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

CRIMINAL WRIT PETITION NO.1450 OF 2018

Ayush Loknath Pandey and ors. : Petitioners.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Jitendra Kumar Tiwari for the Petitioners.
Mrs. P P Shinde, APP for the Respondent/State.
Mr. Virendra Tripathi for the Respondent No.2.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**
DATE : 22nd JUNE 2018

P.C.

1 The above Writ Petition has been filed for quashing and setting aside the FIR being CR No.201 of 2017 registered with Kalamboli Police Station, Panvel, District Raigad for the offences punishable under Section 376, 376(1)(n), 328 and 34 of the Indian Penal Code. The said FIR was lodged by the Respondent No.2 who was at the relevant time in a relationship with the Petitioner No.1 and which relationship at the relevant time had gone sour.

2 It is not necessary to dilate further on facts as between registration of the FIR and filing of the above Writ Petition in the intervening period the Petitioner No.1 and the Respondent No.2 have got married at Bandra, Mumbai on 20/01/2018 and have got their marriage registered with Registrar of Maharashtra, Panvel City Municipal Corporation. Their Marriage Certificate is annexed to the above Writ Petition at Exhibit-B. The said fact has been

disclosed in the affidavit filed by the Respondent No.2 dated 29/03/2018 and affirmed before Shri Bhagwatprasad A Tripathi, Advocate & Notary (Govt. of India), having his office at 301/302, Keshav Apt. Opp. St. Francis School, Nallasopara (West), Palghar – 401203.

3 The parties are personally present in Court. The parents of the Petitioner No.1 as also the parents of the Respondent No.2 are also present. We had in fact directed the parents of the Respondent No.2 to remain present so as to confirm the veracity of the statement made in the affidavit as regards the marriage of the Petitioner No.1 and the Respondent No.2.

4 The Respondent No.2 is personally present in Court. She is identified by the learned counsel Shri Virendra Tripathi. She is also identified by her Aadhar Card bearing No.637758330556. When put in the box and queried, she states that she has married the Petitioner No.1 on 20/01/2018. She further states that she has read her affidavit and understood the contents thereof. She fully accepts what has been stated in the said affidavit. She further states that she is residing with the Petitioner No.1. She lastly states that she has signed the affidavit of her own free will and volition.

5 The father and mother of the Respondent No.2 are personally present in Court. They are identified by the learned counsel Shri Virendra

Tripathi. The father of the Respondent No.2 Shri. Gyaneshchand J Dwivedi is also identified by his PAN Card bearing No.BAMPD1585J. When put in the box and queried, they accept the factum of marriage having taken place between the Respondent No.2 with the Petitioner No.1 and that they have no grievance against the Petitioner No.1.

6 The Petitioner No.1 – Ayush Pandey is also personally present in Court. He is identified by the learned counsel Shri Jitendra Kumar Tiwari. He is also identified by his Aadhar Card bearing No.601457232397. When put in the box and queried, he accepts the factum of the marriage having taken place between him and the Respondent No.2. He also states that he and the Respondent No.2 are residing together.

7 The parents of the Petitioner No.1 i.e. Petitioner Nos. 5 and 6 are personally present in Court. They are identified by the learned counsel Shri Jitendra Kumar Tiwari. The father i.e. the Petitioner No.6 is also identified by his Aadhar Card bearing No.516968907962. When put in the box and queried, he and his wife i.e. the Respondent No.5 accept the factum of the marriage having taken place between their son i.e. the Petitioner No.1 and the Respondent No.2. They further state that the Petitioner No.1 and the Respondent No.2 are residing together.

8 Having regard to the fact that the offences alleged against the Petitioner No.1 is one under Section 376 of the Indian Penal Code and considering the fact that there has to be certain amount of circumspection before the powers under Section 482 of the Criminal Procedure Code or under Article 226 of the Constitution of India are exercised for quashing of the FIR involving the said offence, we had to satisfy ourselves that the parties in fact have no grievance against each other. In the said exercise that we have carried out, facts have been revealed which leave no room for doubt that the Petitioner No.1 and the Respondent No.2 are married and therefore the fact situation at the time of registration of the FIR has undergone a change warranting exercise of our jurisdiction under Article 226 of the Constitution of India. We are satisfied that keeping the FIR in question pending would unnecessarily prolong the mental agony and would serve no useful purpose. Hence in the peculiar facts of the present case, we deem it appropriate to exercise our writ jurisdiction to quash and set aside the FIR in question. The above Writ petition is accordingly allowed and made absolute in terms of prayer clause (a). In the facts and circumstances of the present case, we direct the Petitioners to deposit costs of Rs.10,000/- with the State Legal Aid Fund within six weeks from date. Receipt to be obtained and filed in the Registry of this Court.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]