

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2353 OF 2018**

Piyushbhai Jentibhai Surani	...Petitioner
Versus	
State of Maharashtra & Ors.	...Respondents

Mr. Aabad Ponda a/w Ms.Tripty Kapadia and Ms. Kunjal Patil i/b Joy
Legal Consultants for the Petitioner

Mrs. S. D. Shinde, A.P.P for the Respondent-State

Mr. Nilesh Tribhuvann a/w Ms. Asna Patel for the Respondent No. 2

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
FRIDAY, 29th JUNE, 2018***

P.C. :

1 The above Petition has been filed for quashing and setting aside of the FIR being No. 153 of 2015 registered with the Kasturba Marg Police Station, Mumbai, on 11th May 2015 for offences punishable punishable under Sections 376 and 506(2) of the Indian Penal Code. The allegations in the FIR are in respect of an incident which occurred prior to the marriage of the first informant with the Petitioner. The marriage took place on 2nd September 2014 and the incident has allegedly occurred on 11th May 2015 i.e. after marriage.

2 The Respondent No. 2 herein, who is the first informant, has filed an affidavit dated 7th May 2018 affirmed before Mr. S. M. Bhatt, Notary, having address at 305, Amar Arcade, 1, Manhar Plot, Rajkot. The said affidavit is entered on page No. 37-2018 at Serial No. 726 dated 7th May 2018. In the context of the reliefs sought in the above Petition, paragraphs 4, 5 and 6 of the said affidavit are material and are reproduced hereinunder :

“4. I say that the said alleged incident took place prior to my marriage with Mr. Piyush Surani and at that time I was in courtship with Mr. Piyush Surani. I say that whatever had happened during that period was with my consent.

5. I say that I am aware that my husband, Mr. Piyush Surani has filed A Petition for Quashing of the Criminal Complaint filed by me.

6. I say that I and my husband, Mr. Piyush Surani have settled all issues pertaining to our marriage and wish to cohabit as husband and wife. I say that I do not wish to proceed with the Criminal Complaint filed by me against my husband, Mr. Piyush Surani. I say that therefore I have no objection if the present Criminal Complaint is quashed against my Husband Mr. Piyush Surani.”

A reading of the aforesaid paragraphs, therefore, indicates that the allegations made against the Petitioner are in respect of an incident

which took place during their courtship. It is further stated by her that whatever happened during that period was with her consent. Hence, the undertone of the said averment appears to be that there was some estrangement between the parties after their marriage, which has resulted in the allegations made in the FIR.

3 The Respondent No. 2 is personally present in Court. She is identified by the learned counsel Mr. Tribbhuvann. She is also identified by her Aadhar Card bearing No. 770153291896. The said Aadhar Card bears the address of the Respondent No. 2 as Vaniya Vali Road, Rajkot, Bhakti Nagar, Gujarat – 360 002. When put in the box and queried, she states that she has read and understood the contents of the said affidavit dated 7th May 2018. She further states that she has filed the said affidavit in view of the settlement between the parties and in view thereof, she states that she does not desire to proceed with the case in question. She states that she has filed the said affidavit of her own free will and volition. She further states that though she is presently residing with her parents, she intends residing with her husband and join him shortly.

4 The Petitioner-Piyushbhai Jentibhai Surani is also personally present in Court. He is identified by Ms. Tripty Kapadia, the representative of Joy Legal Consultants, who are the Advocates for the Petitioner. He is also identified by his Aadhar Card bearing No. 288927634575. The Aadhar Card bears the address of the Petitioner as Madhu Sudan, New Rameshwar Street No. 4, Virat Nagar, Rajkot, Gujarat-360 002. When put in the box and queried, he accepts the factum of settlement between him and the Respondent No. 2. He further states that he and the Respondent No. 2 intend to reside together as husband and wife.

5 The mother of the Respondent No. 2-Bharatiben Pandya is personally present in Court. She is identified by the learned counsel Mr. Tribhuvann as the mother of the Respondent No. 2. She is also identified by her Aadhar Card bearing No. 848445650888. When put in the box and queried, she accepts the factum of the marriage between her daughter i.e. the Respondent No. 2 and the Petitioner.

6 Hence, the affidavit of the Respondent No.2, the statements made by the Respondent No. 2 and the Petitioner as also the statement made by the mother of the Respondent No. 2 when put in the box and queried, indicate that the Respondent No. 2 and the Petitioner were married and they have now settled their dispute amicably and intend to live together. Though amongst the offences alleged against the Petitioner, one is under Section 376 of the Indian Penal Code and insofar as the said offence is concerned, it is trite that certain amount of circumspection has to be exercised whilst exercising jurisdiction under Section 482 of the Cr. P. C. or Article 226 of the Constitution of India for quashing of the FIR, in the peculiar facts and circumstances of the case, we deem it appropriate to exercise our writ jurisdiction under Article 226 of the Constitution of India to quash and set-aside the FIR.

7 A gainful reference could be made to the judgment of the Apex Court in the matter of *Narinder Singh & Ors. vs. State of Punjab & Anr.*¹, wherein, the Apex Court has expounded that if on account of a settlement, there is minimal chance of the witnesses

1 2014 AIR SCW 2065

coming forward in support of the prosecution case, then the jurisdiction under Section 482 would have to be exercised. Having regard to the said dictum, we deem it appropriate to exercise our writ jurisdiction to quash and set-aside the FIR. The Petition is accordingly allowed and is made absolute in terms of prayer clause (a).

8 The above Criminal Writ Petition is accordingly disposed of.

9 In the facts and circumstances, the Petitioner and the Respondent No. 2 both to deposit costs of Rs.10,000/- each, totalling amount to Rs. 20,000/- with the Mumbai Police Welfare Fund in the Office of the Commissioner of Police, Mumbai, within six weeks from date. Receipts to be obtained and filed in the Registry.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.