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

CRIMINAL WRIT PETITION NO.2357 OF 2018

Nitin Mohan Sharma and Ors.	...Petitioners
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.S.N.Gimekar, i/b Mr.Abhijit Nimkar, for the Petitioners.

Mr.R.M.Pethe, A.P.P for the Respondent-State.

Mr.Mohsin Pathan, for the Respondent No.2.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 27th JULY, 2018

P.C. :

1. The above Writ Petition has been filed for quashing of the FIR being C.R.No.214 of 2018 registered on 31st March, 2018 with Yerwada Police Station, for the offences punishable under Sections 376, 376(2)(n), 325, 323, 504, 506(2) of the Indian Penal Code.

2. The said FIR is a result of the temporary estrangement between the Respondent No.2 herein and the Petitioner No.1, who are husband and

wife. The cause for filing of the FIR are the incidents which allegedly took place between the period 2nd March, 2018 to 30th March, 2018. The Petitioner No.1 – Nitin Mohan Sharma i.e. the husband is an Army Officer and is presently a Major in the Indian Army. As indicated above, the Respondent No.2 is his wife. The allegations as regards Section 376 and 376(2)(n) are qua the husband i.e. the Petitioner No.1 and the allegations against the other Petitioners are only in respect of assault.

3. The Respondent No.2 i.e. the First Informant has filed an affidavit dated 26th July, 2018, and affirmed before Murlidhar Dharmaji Jagtap, Notary, Government of India, Pune District (M.S.) and bears the Notarial Registration No.855/2018. Before the Notary, the Respondent No.2 is identified by the learned Counsel Mr.M.P.Pawar. The said affidavit is also signed by Mr.Mohsin Pathan, who is appearing for her. In the context of the relief sought in the above Petition, paragraph 3 of the said affidavit is material and is reproduced herein under:-

“3. I say and submit that I hereby giving my consent for quashing the FIR bearing No.214/2018 registered at Yerwada Police Station u/s 376, 376(2)(n), 325, 323, 504, 506 of IPC, in view of our future life and for better future

of our son.”

4. The Respondent No.2 – Poonam Nitin Sharma is also personally present in Court. She is identified by the learned Counsel Mr.Mohsin Pathan. She is also identified by the Dependent Identity Card issued by Major Second-in-Command, for Officer Commanding (GREF), dated 22nd September, 2016, in which identity card, it is mentioned that she is the wife of IC – 68687N Major Nitin Mohan Sharma. When put in the box and queried, she states that she has read the affidavit tendered today by the learned counsel dated 26th July, 2018. She further states that she has filed the affidavit as she is not desirous of proceeding with the FIR in question. She lastly states that she has filed the said affidavit of her own free will and volition.

5. The Petitioner No.1 – Major Nitin Mohan Sharma is also personally present in Court. He is identified by the learned Counsel Mr.Gimekar. He is also identified by his Identity Card of the Indian Armed Forces wherein his Personal Number is mentioned as IC – 68687N. He accepts the factum of the settlement having taken place between him

and his wife i.e. the Respondent No.2.

6. Hence the affidavit filed by the Respondent no.2 and the statements made by the Respondent no.2 and the Petitioner No.1 when put in the box and queried, the same indicate that the parties have settled their dispute as a result of which the Respondent No.2 is not desirous of proceeding with the case in question. Though the offence under Section 376, 376(2)(n) is alleged against the Petitioner No.1, having regard to the relationship between the Petitioner No.1 and the Respondent No.2, the question that begs an answer is whether the said provision would be attracted.

7. Be that as it may, having regard to the relationship between the Petitioner No.1 and the Respondent No.2 and looking to their future as also the future of their child, it would be just and proper for this Court to exercise its jurisdiction under Article 226 of the Constitution of India for quashing and setting aside the FIR in question.

8. In the said context reliance can be gainfully placed on the

judgments of the Apex Court in the matter of ***Gian Singh vs. State of Punjab & Anr.***¹ and ***Narinder Singh & Ors. vs. State of Punjab & Anr.***², which would assist in quashing of the FIR in question.

9. The above Criminal Writ Petition is therefore required to be allowed and is accordingly allowed in terms of prayer clause (b).

10. The above Criminal Writ Petition is accordingly disposed of.

11. In the facts and circumstances of the case, where the machinery of this Court is utilized for settling the dispute between the parties, the Petitioner No.1 to deposit costs of Rs.10,000/- with the Army Martyrs Fund, within six weeks from date. Receipt to be obtained and filed in the Registry.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)

1 (2012) 10 SCC 303

2 2014 AIR SCW 2065