

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

CRIMINAL WRIT PETITION NO.2384 OF 2018

Dinesh Devram Kalingade : Petitioner.
Versus
Geeta Ganpat Vatas and anr. : Respondents.

Mr. Amol Mhatre a/w Mr. Dilip B Shinde for the Petitioner.
Mr. Nilesh M Wable for the Respondent No.1.
Mrs. P P Shinde, APP for the Respondent/State.
Mr. Rakesh Pagare – PI of Jawhar Police Station present.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**
DATE : 26th JULY 2018

P.C.

1 Leave to amend is granted so as to incorporate the proceedings number in prayer clause (a) of the above Writ Petition. Amendment to be carried out forthwith.

2 The above Writ Petition has been filed for quashing of the Special POCSO Case No.62 of 2016 arising out of the FIR being No.I-98 of 2015 registered with the Jawhar Police Station, Tal. Jawhar, Dist. Palghar for the offences punishable under Sections 376 and 417 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act (POCSO Act).

3 The said FIR was a fall out of the relationship that the Petitioner

and the Respondent No.1 were having. The Petitioner and the Respondent No.1 have thereafter got married on 04/04/2016 i.e. after the FIR in question was lodged. The marriage invitation card is annexed to the above Writ Petition as Exhibit B pages 17 and 18. The marriage of the Petitioner and the Respondent No.1 is also registered with Grampanchayat of Kaulale, Tal. Jawhar, Dist. Palghar. The marriage certificate is annexed to the above Writ Petition at page 19. The parties are belonging to Warli tribe who are predominately based in Thane/Palghar District. The Petitioner and the Respondent No.1 have a male child who is born after they have got married on 04/04/2016.

4 The Respondent No.1, who at the relevant time of registration of the FIR in question was a minor being 17 years of age but less than 18 years of age, has filed an affidavit dated 22/06/2018 and affirmed before Mrs. Aliya N Pathan, Notary, Greater Mumbai, Government of India and bears notarial registration No.30475 dated 22/06/2018. Paragraph 5 of the said affidavit is material and is reproduced herein under :-

“5 The Respondent further state and submit that, dispute of petitioner and respondent no.1 is amicably settled between the parties and now both are staying together and therefore for the interest of both the parties it is necessary to quash and cancel the FIR No.I-98 of 2015 with Javar Police Station, against the petitioner for the alleged offences under section 376, 417 of Indian Penal Code and under section 4 and 8 of Protection of Children from Sexual Offences Act and therefore by way of present affidavit the respondent is

given free consent before this Hon'ble Court for quashing of FIR No.I-98 of 2015 with Javar Police Station, against the petitioner for the alleged offences under section 376, 417 of Indian Penal Code and under section 4 and 8 of Protection of Children from Sexual Offences Act.”

5 The Respondent No.1 – Geeta Ganpat Vatas is personally present in Court. She is identified by the learned counsel Shri Nilesh Wable. She is also identified by her Aadhar Card bearing No.547334610152. When put in the box and queried, she states that the affidavit dated 22/06/2018 tendered by the learned counsel Shri Nilesh Wable is hers. She accepts the factum of she and the Petitioner having got married on 04/04/2016. She further states that she and the Petitioner are residing together as wife and husband, and that she is not desirous of proceeding with the case in question. She lastly states that she has filed the said affidavit of her own free will and volition.

6 The mother of the Respondent No.1 viz. Vandana Ganpat Vatas is personally present in Court. She is identified by the learned counsel Shri Nilesh Wable. She is also identified by her Aadhar Card bearing No.909040025976. When put in the box and queried, she accepts the factum of marriage having taken place between the Petitioner and her daughter Geeta i.e. the Respondent No.1. She further states that her daughter Geeta i.e. the Respondent No.1 and the Petitioner are residing together as wife and husband and they have a male child.

7 The father of the Respondent No.1 viz. Ganpat Pandu Vatas is also personally present in Court. He is identified by the learned counsel Shri Nilesh Wable. He is also identified by his Aadhar Card bearing No.676145171185. When put in the box and queried he also states likewise as his wife. He has also filed his affidavit bearing today's date i.e. 26/07/2018. In paragraph 5 of his affidavit he states that he has no objection for quashing of the proceedings arising out of the FIR No.I-98 of 2015 registered with the Jawhar Police Station.

8 The Petitioner Dinesh Devram Kalingade is also personally present in Court. He is identified by the learned counsel Shri Amol Mhatre. He is also identified by his Election Identity Card bearing No.SVR3836913. When put in the box and queried, he accepts the factum of he and the Respondent No.1 getting married on 04/04/2016. He states that he and the Respondent No.1 are residing together as husband and wife and that he undertakes that he would treat his wife properly and lead a happy married life.

9 The father of the Petitioner viz. Devram Vishnu Kalingade is also personally present in Court. He is identified by the learned counsel Shri Amol Mhatre. He is also identified by his Aadhar Card bearing No.731504202253. When put in the box and queried, he accepts the factum of his son Dinesh i.e.

the Petitioner herein and the Respondent No.1 getting the married and staying together as husband and wife.

10 The mother of the Petitioner viz. Kusum Devram Kalingade is also personally present in Court. She is identified by the learned counsel Shri Amol Mhatre. She is also identified by her Aadhar Card bearing No.831979063947. When put in the box and queried, she states likewise as her husband.

11 Having regard to the documents on record i.e. the marriage invitation card, marriage registration certificate, the affidavit filed by the Respondent No.1 dated 22/06/2018, the affidavit filed by her father, the affidavit filed by the father of the Petitioner and the statements made by the parties when put in the box and queried which have been recorded as above, they unequivocally indicate that the Respondent No.1 and the Petitioner are married and living together and that there are cordial relations between their parents.

12 Though the offence alleged against the Petitioner is one punishable under Section 376 of the Indian Penal Code, the aforesaid facts would undoubtedly impact our consideration whilst adjudicating the above Writ Petition for quashing the FIR/proceedings in question. The aforesaid facts indicate that the marriage between the Respondent No.1 and the Petitioner has

transcended the FIR which was registered by the Respondent No.1 as a result of which no useful purpose would be served in continuing the proceedings in question in the Trial Court.

13 In the said context a useful reference could be made to the judgment of the Apex Court in the matter of Narinder Singh & ors v/s. State of Punjab & Anr reported in 2014 AIR SCW 2065, in which judgment the Apex Court has laid down the considerations which ought to weigh whilst considering the proceedings for quashing of the FIR/proceedings. In our view, having regard to the said considerations, the above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a). Resultantly the proceedings being Special POCSO Case No.62 of 2016 would stand quashed and set aside. The above Criminal Writ Petition is accordingly disposed of.

14 The Investigating Officer Shri Rakesh Pagare – Police Inspector of Jawhar Police Station, who is personally present in Court, would inform the Trial Court accordingly.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

Laxmikant
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Chandan
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signed by
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