

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2339 OF 2017

Shri. Shashikant Maugi SolankiPetitioner

V/s.

Administration of Daman and
Diu, (Union Territory) and anr.

....Respondents

* * * * *

Mr. A.D. Sale, Advocate for the petitioner.

Mr. A.R. Kapadnis, APP for State.

Ms. Purnima Kantharia, Advocate for respondent no.1.

Mr. S.K. Hande, Advocate for respondent no.2.

CORAM :-

R.M.SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

11TH JANUARY, 2018.

P.C. :-

1. The above petition is filed for quashing Crime No. 39 of 2017 registered against the petitioner at Diu Police Station, Diu for the offences punishable under

Sections 376, 323, 420, 452, 504, 506(II) of the Indian Penal Code. The said offences were registered at the instance of the complainant, who is the respondent no.2. Without going into the narration/facts of the case, suffice it to would be to state that, the complainant has filed an Affidavit dated 12th January, 2018 sworn before this Court and admitted her live-in relationship with the petitioner since 2012. It would be appropriate to reproduce paras-4, 5 and 8 of the Affidavit of the complainant;

“4. I say that, I am original resident of Diu. My marriage took place in the year 1999, as per Hindu custom, with Hasmukh Ramji Jadav. I have two children from this marriage. My husband was serving as Government servant and I was also serving as Government servant. At that time petitioner had friendship with my husband Hasmukh and therefore my family used to visit this Shashikant's house and his Shivam Hotel Bar and restaurant. Similarly, this Shashikant and his children too used to visit our home. Since, we were in love with each other, sometimes petitioner used to visit me in absence of my husband, and used to drop me at my job office and take me home from there as the Petitioner got attracted towards me and on 31.12.2012 told me that he shall adopt me (keep me). Thereafter, me with petitioner's nephew

Shashikant Vala went to Mumbai and from Mumbai to Goa and had applied for Portuguese passport which I got in due course.

5). I say that, I started staying in one room of Petitioner's Hotel Shivam as I had left my husband thereafter the petitioner sent me to London and I stayed at London for two month and when I came back to Diu from London again I started to stay at Shivam Hotel. I say that, we both were living like husband and wife and were having consensual physical relationship by our own accord and wish which continued till lodging of above complaint.

8. I say that, during the course of live in relationship between the Petitioner and me the quarrel started between us on the count that I shall reside at London and the same was disliked by me which made our live in-relationship sour and unhappy. Resultantly, the relationships between us became bitter and as a result thereof I made a complaint at Diu Police Station against the petitioner, due to temporary phase of anger and to imbalance of mind at the relevant point of time.”

2. Thus after going through the Affidavit, it is crystal clear that the said FIR was lodged on account of discord between respondent no.2 and the petitioner on the ground of her insistence to reside at London.

3. Be that as it may, after reading of the affidavit

of the complainant, prima-facie, we are of the view that continuation of the criminal proceedings against the petitioner at the instance of respondent no.2 would be a futile exercise and wastage of judicial time.

4. Respondent no.2 is present in the Court. She is identified by her Advocate, Shri. Sachin Hande. She is also identified by her Aadhar Card bearing No. 5726 3359 0160. When put in the box and queried, the respondent no.2, admits the contents of the Affidavit and states that she does not wish to continue with prosecution against the petitioner, in view of the settlement arrived at between herself and the petitioner.

5. Petitioner is also present in the Court. He is identified by his Advocate, Mr. Sale. He is also identified by his Aadhar Card bearing No.9148 2387 8422. He accepts the contents of the Affidavit and reiterates that he has arrived at a settlement with respondent no.2.

6. Considering the peculiar facts of the case and the affidavit filed by the Complainant, we are of the

opinion that keeping the trial pending against the petitioner would be a futile exercise in-as-much as prosecution is not likely to result in conviction for the offence for which he is charge-sheeted. We observe this in the light of the contents of the affidavit filed by the complainant. We are conscious of the fact that, though the allegations against the petitioner are serious in nature in view of the complainant's admission that she was in live-in-relationship with the petitioner since 2012 and such other attending circumstances stated in her affidavit, we think it appropriate to quash the proceedings.

7. Thus, considering the principles laid down in the case of **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]**, we are of the view that there is no impediment in quashing the subject proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab, reported in (2012) 10 SCC 303** would also lead to the same conclusion. That even otherwise, no

useful purpose would be served by keeping the proceedings pending. The above petition is accordingly allowed in terms of prayer clause (a).

8. The petitioner is directed to pay Rs.25,000/- as costs to the Mumbai Police Welfare Fund, in the office of the Commissioner of Police, Mumbai within a period of 4 weeks from today.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)