

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 697 OF 2018**

Farid Farukh Qureshi

...Applicant

Versus

Muskan Nafis Khan @

Muskan Farid Qureshi & Ors.

...Respondents

Mr. Mateen A. R. Shaikh for the Applicant

Ms. Adeeba Khan for the Respondent No. 1

Mrs. P. P. Shinde, A.P.P for the Respondent Nos. 2 & 3-State

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
WEDNESDAY, 25th JULY, 2018***

P.C. :

1 The above Application has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing of the proceedings in Special Case No. 521 of 2016 pending on the file of the Sessions Court, Mumbai. The said proceedings have arisen out of C.R. No. 298 of 2016 registered with the Nagpada Police Station, Mumbai on 13th September 2016 for the offences punishable under Section 376 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act.

2 The victim herself is the Complainant, who is the Respondent No. 1 in the above Application. The FIR has been registered when the victim was more than 17 years of age but less than 18 years of age. It is not necessary to further dilate on facts in view of the fact that the marriage between the Applicant and the Respondent No. 1 has taken place and they have also a child born out of the said wedlock. The Marriage Certificate issued by the Qazi, which also bears the signature of the Mutavalli/Secretary of the Mosque in question, is annexed at Exhibit 'C' at page 37 to the above Application. The photographs of the marriage are also annexed at pages 38 and 39 of the above Application. The Respondent No. 1 has filed her affidavit which is affirmed in this Court on 15th June 2018. In the context of the relief sought in the above Application, paragraph 7 of the said affidavit is material and is being reproduced hereinunder :

“7. I am executing this present Affidavit with my free own consent and without influence and pressure of any person to support the Criminal Application under Section 482 of Code of Criminal Procedure filed by my husband Mr. Farukh Farid Qureshi for quashing proceeding of C.R. No. 298/2016 registered with the Nagpada Police Station Mumbai against Applicant.”

3 The reading of the said Paragraph 7, therefore, discloses that the Respondent No. 1 consents to the quashing of the FIR in question. The Respondent No. 1 is personally present in Court. She is identified by the learned counsel Ms. Adeeba Khan. She is also identified by her Aadhar Card bearing No. 482383055531. When put in the box and queried, she accepts the factum of the marriage having taken place between her and the Applicant herein. She further states that she and the Applicant are residing together and they have a child born out of the said wedlock.

4 The father of the Respondent No. 1 Mr. Nafis Khan is also personally present in Court. He is identified by his Aadhar Card No. 786113769762. When put in the box and queried, he accepts the factum of the marriage having taken place between his daughter i.e. the Respondent No. 1 and the Applicant. He further states that the Respondent No. 1 and the Applicant are living together.

5 The mother of the Respondent No. 1 Mrs. Tahira Nafis Khan is also personally present in Court. She is identified by her Aadhar Card No.

465992848102. When put in the box and queried, she also accepts the factum of the marriage having taken place between her daughter i.e. the Respondent No. 1 and the Applicant. She further states that the Respondent No. 1 and the Applicant are living together.

6 The Applicant- Farid Farukh Qureshi is also personally present in Court. He is identified by the learned counsel Mr. Mateen A. R. Shaikh. He is also identified by his Aadhar Card No. 418545756706. When put in the box and queried, he accepts the factum of the marriage having taken place between him and the Respondent No. 1 and that he and the Respondent No. 1 are residing together. He further states that they have a child born out of the said wedlock.

7 The father of the Applicant Mr. Farukh Ahmed Qureshi is also personally present in Court. He is identified by his Aadhar Card No. 373691535915. When put in the box and queried, he accepts the factum of the marriage having taken place between the Applicant and the Respondent No. 1 and also the factum of they residing together and a child being born out of the said wedlock.

8 Having regard to the facts as aforesaid, the same indicate that though an offence punishable under Section 376 of the Indian Penal Code has been registered against the Applicant at the behest of the Respondent No. 1, post the registration of the offence, the parties have married and out of the said wedlock, a child has been born, which would undoubtedly have an impact whilst considering the above Application for quashing of the FIR. Though an offence punishable under Section 376 of the Indian Penal Code is involved, having regard to the aforesaid facts, we are of the view that the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure is warranted, as the pendency of the proceedings in the trial Court would unnecessarily cause mental agony to the parties, who, otherwise are living as husband and wife. In the said context, a useful reference can 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, by way of illustration, has mentioned the circumstances in which the exercise of powers under Section 482 of the Code of Criminal Procedure are warranted. In our view, the instant case fits within the guidelines which have been laid down by the Apex Court in the said judgment.

1 2014 AIR SCW 2065

9 The above Application is, therefore, required to be allowed and is accordingly allowed in terms of prayer clause (a) and stands disposed of.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.