

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.198 OF 2018**

Kamal Kishor Gupta

... Applicant

Vs.

The State of Maharashtra & Ors.

... Respondents

Ms.Nidhi S. Sharma for the Applicant
Mr.A.R. Patil, APP, for the Respondent – State
Mr.B.J. Chavanke, P.I., present

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: FEBRUARY 22, 2019**

P.C.:

1. This revision application is directed against the order dated 13.2.2018 passed by the learned Additional Sessions Judge below exhibit 9 in Sessions Case No.615 of 2016, thereby rejecting the application for discharge from the offences punishable under sections 376 and 417 of the Indian Penal Code. The complainant is an adult married woman, who has lodged the complaint of rape and cheating against her husband, during the subsistence of her marriage and when their divorce case was pending in the Family Court, Mumbai.
2. To get a quick grasp of the matter, it is necessary to state the chronology of the incidents. The alleged incident of rape took

place on 19.5.2013 at Mumbai. The marriage between the complainant and the applicant-accused/husband took place on 30.7.2014. Divorce petition was filed in the same year which is numbered as Petition No.A-2655 of 2014 under section 25(i) of the Special Marriage Act. The said petition was allowed on 22.12.2016 and the marriage was dissolved by a decree of mutual consent under section 28 of the Special Marriage Act by the learned Judge of the Family Court, Mumbai.

In the meantime, a private complaint was filed by the complainant on 2.2.2015 before the learned Metropolitan Magistrate. Pursuant to the directions given under section 156(3) of the Criminal Procedure Code by the learned Magistrate in the said complaint, the police from Ghatkopar police station registered MECR No.6 of 2015 on 1.4.2015 for the offences punishable under sections 376 and 417 of the Indian Penal Code against the respondent/accused. The case was committed to the Sessions Court. Then, an application for discharge was filed under section 227 of the Criminal Procedure Code, which is marked exhibit 9. However, the said application for discharge was rejected by the learned Sessions Judge.

3. Heard submissions of the learned Counsel for the applicant/accused and the learned Prosecutor. Perused the FIR and the other records; so also the impugned order. The complainant prosecutrix in the year 2015 was 26 years old and she was a Commerce Graduate. After going through the FIR and also the decree of divorce, it is evident that it was a love marriage and it was dissolved by decree of divorce by mutual consent in December, 2016. The alleged incident has taken place on 19.5.2013 when the prosecutrix went to meet the accused at his residence and at that time, according to her, he administered stupefying drug in the juice and thereafter, she became unconscious. When she regained her consciousness, she found that she was raped and at that time, the applicant/accused promised her that he would marry her. Thereafter, both of them got married on 30.7.2014 i.e., one year after the alleged incident of rape. The applicant/husband filed a petition for divorce on the ground of nullity in October, 2014 under section 25(i) of the Special Marriage Act. Finally, it was converted into a petition by mutual consent for divorce and the decree of divorce was passed under section 28 of the Special Marriage Act.

4. During the pendency of the divorce petition, the Respondent/wife filed a complaint before the Additional Chief Metropolitan Magistrate, 49th Court, Vikhroli, being C.C. No.173 of 2014, subsequent to which the offence was registered 2 years after the incident of alleged rape. The dates and events as put up in the FIR and also as they are pointed out in the documents, clearly disclose that this is not a case of rape and the case ought not to have been registered against the respondent/husband. The learned Sessions Judge has failed to appreciate all these facts and circumstances and chronology of the events. The reasoning given for rejecting the application for discharge is illegal and it deserves to be set aside as this is an example of abuse of process of law especially of sections 376 and 417 of the Indian Penal Code. There is no material to frame charge under sections 376 and 417 of the Indian Penal Code against the respondent/accused.

5. In the circumstances, the revision application is allowed and the impugned order dated 13.2.2018 is quashed and set aside. The revision application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)