

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3248 OF 2019

Faiyaz Abdul Razzaq Mudrawala .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents

...

Mr. Vijay Upadhyay for the petitioner.
Ms.Sangita Shinde, APP for the State.
Ms.Asha Kansaniya for respondent no.2.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 9th JULY 2019

P.C:-

1 Heard learned counsel for the petitioner, learned counsel for respondent no.2 and learned APP for the State.

2 Petition is filed for quashing and setting aside the FIR bearing C.R.No. 153 of 2019 registered with Bandgarden Police Station, Pune at the instance of respondent no.2 for an offence punishable under section 376, 376(2)(n) and 506(1) of the Indian Penal Code.

The aforesaid FIR came to be registered on a complaint filed by the respondent no.2 who is aged 32 years.

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She stated that she was working in Pune and during her stay in Pune, she came to be introduced to the petitioner aged 36 years through a dating site. The acquaintance converted into friendship and friendship blossomed into a love relationship which culminated into sexual relationship. The FIR disclose that the couple use to meet at times in hotel rooms, and after some days, complainant became aware that the petitioner is married and there was a daughter born out of the said wedlock. Thereafter, the complainant conceived and she was opposed to the idea of terminating the pregnancy on which the petitioner was insisting. This resulted into filing of the FIR, alleging that the petitioner had committed forcible intercourse with the complainant.

The investigation in the said offence was set into motion. During the pendency of the investigation, the parties have arrived at an amicable settlement.

3 Learned counsel appearing for the respective parties submit that during the pendency of investigation in the subject FIR, parties have arrived at amicable settlement and pursuant to an understanding arrived at between them, the present petition is filed for quashing subject FIR by consent of respondent no.2. Respondent no.2 – original complainant has also filed an affidavit dated 9th July 2019. In paragraph nos.4 to 9, she has made the following averments :

4. I say and submit that I am presently pregnant and further confirm that I have never been married to the present petitioner and out of my own free will and consent, undertake to this Hon'ble Court and confirm that neither myself nor my child have any relation with the petitioner herein and further confirm of no such relation in future as well. I state and submit that I have reconciled my differences with the petitioner and further confirm that the petitioner and myself had consensual physical relationship and the same was not an incident of any force, coercion or false promises.
5. I hereby confirm that all my claims have been fully settled by the petitioner herein and I do not have other claim for compensation, maintenance or any other liabilities remaining to be paid and satisfied all my claims, if any for my unborn child.
6. I further submit that I shall be fully and solely responsible for his or her maintenance, upbringing, education, health expenses or any kind of expenses or liabilities. I hereby affirm and confirm that the petitioner has fully satisfied my claims and expenses to be incurred in future for pregnancy delivery and upbringing of the unborn child.
7. I have arrived at a binding understanding with the petitioner that both myself and the petitioner shall not publicize and/or make any disclosure whether orally or in writing against each other personal publicly or in

near relatives and shall ensure that no harm to reputation is caused to either party.

8. I further submit that I shall be solely and exclusively entitled to the custody of the unborn child and shall at my sole discretion have sole and absolute authority to decide about giving the said unborn child in adoption or provide for said unborn child personally.
9. I hereby confirm, admit and accept that the petitioner have also paid me an aggregate sum of Rs.8,00,000/- (Rupees Eight Lakhs) in cash from time to time against full and final settlement of all my claims forever including but not limited to my alleged claims of compensation, maintenance or claims for my unborn child and I shall not raise any further claims and/or demands in future from the petitioner.

In the said affidavit, the respondent no.2 has given no objection to quash the subject FIR. The respondent no.2 is personally present in the Court and we inquired from her as to whether she has given consent to quash the FIR to which she answered in the positive. Very boldly, she stated before us that she has understood the consequences of her act and since she is pregnant, she is ready to take the responsibility of the child in her womb. She also state that she would take care of the child as a single parent and provide financial and mental assistance

to the child. She do not wish to claim any rights whatsoever in movable or immovable property of the petitioner. She, however, submit that she had received an amount of Rs.8 lakhs from the petitioner and she has accepted the said amount towards the full and final claim towards herself and unborn child.

4 We have gone through the subject FIR. The petitioner and respondent no.2 were both major at the time when they entered into a relationship.

Though the FIR disclose that the respondent no.2 was not aware of the petitioner being married till she entered into a sexual relationship with him, but the FIR also disclose that after being aware of this fact, she continued the said relationship with the petitioner and when we interacted with the respondent no.2, we could find that she do not put the blame solely on the petitioner. In the affidavit, she has categorically stated that she is presently residing in Pune and is in the process of relocating to her native place and plan to re-marry in near future and to have an independent family of her own. She has accepted the responsibility of the child and has decided to move ahead in life. For her, it is a case of a relationship gone sour, however, with great maturity, she intends to proceed further in her life. The respondent no.2 before us has come to a realization that the petitioner is her past and she wants to move ahead and live her future. By the

demeanor of the petitioner, we reminded the words of Steve Maraboli "Letting go" means to come to a revelation that some people are a part of your history but not a part of your destiny". The respondent no.2, a highly educated lady, on her own have taken a decision and do not wish to blame the petitioner for the happening and has, therefore, consented for quashment of the subject FIR.

4 Though we are conscious that the offence of rape is a serious and societal offence, we should be rather slow in allowing quashing of such an heinous offence. However, before us, we have a couple who entered into a relationship out of their own accord by meeting each other on a dating site, move together and then moved away from each other and the complainant herein has also decided to move further in her life in spite of the fact that she is pregnant. The respondent no.2 has also expressed that she had reconciled the differences with the petitioner and whatever relationship she maintained with the petitioner was not forcible or under any coercion or false promise but was a consensual relationship. Making the respondent no.2 undergo the rigmarole of trial or keeping the proceedings pending would only create an impediment in her decision to move ahead in life and to establish a family of her own.

In such circumstances, we deem it expedient in the interest of justice to quash the subject FIR and allow the

petitioner as well as respondent no.2 to take their life in their own stride without any interference from each other and that is what the respondent no.2 intends to do and we can only assist her to progress ahead as per her determination, as set out in her affidavit.

In such circumstances, we are sure that this is a fit case where we should exercise our inherent jurisdiction to quash and set aside the subject FIR.

6 Accordingly, Writ Petition is allowed and the subject FIR No.153 of 2019 is quashed and set aside subject to the following :-

(i) The petitioner shall pay costs of Rs.50,000/- to “Tata Memorial Hospital” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the petitioners shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today failing which, the aforesaid order allowing the Petition would automatically stand recalled.

Subject to the above, Criminal Writ Petition stands disposed of.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)