

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION (APL) NO. 1541 OF 2016

Mr. Nihal Wahab Bagadia ... Applicant

Versus

The State of Maharashtra and Ors. ... Respondents

Mr.Aabad Ponda a/w Mr. Ashish Raghuvanshi for the applicant.

Mr. Rizwan Merchant for respondent nos. 2 and 3.

Mr. F.R. Shaikh, APP for the State.

**CORAM : B.P. DHARMADHIKARI &
SMT. S.S. JADHAV, JJ.**
DATE : NOVEMBER 05, 2019

P.C.:

The applicant husband seeks quashing of CR No. 255 of 2014 dated 28/7/2014 and Sessions Case No. 202 of 2015.

2. The fact that the dispute arose out of matrimonial controversy between the applicant and respondent no. 3 is not in dispute.

3. There were two other persons namely mother and sister of the present applicant as co accused and in terms of the consent terms, entered into between the parties on 13/09/2014, the above proceedings, qua the co-accused, have been quashed and

set aside. A copy of the order dated 25/2/2016 passed by the Division Bench of this court in Criminal Application No. 283 of 2015 is made available as annexure with the petition.

4. It appears that at that time the prayer of the present petitioner for quashing could not be looked into as the question of constitutionality or otherwise of section 377 IPC was pending.

5. During the arguments our attention has been invited to the fact that on 16/10/2013 view of Full Bench of Delhi High Court against the constitutionality was in force and it was upset by the Hon'ble Apex Court on 11/12/2013. The controversy ultimately has been settled by constitute Bench of Hon'ble Apex Court in the case of Joseph Shine Vs. Union of India reported at 2018 SCC Online SC 1676 on 27/09/2018 and the consensual relationship has been excluded from the said provision.

6. In this backdrop, learned counsel for the applicant submits that the video clip relied upon by the prosecution does not show any such relation with the complainant and the third person who appears therein has never made any grievance about the relationship. It is further pointed out that there is no allegation of any poisonous substance being used or administered by the petitioner and the provisions of section 328 IPC are also not attracted.

7. Learned senior counsel for the respondent nos. 2 and 3 has not disputed the consent terms and or relevant development in the field of law. He however, points out that having filed complaint, it has been looked into in accordance with law and if the prosecution has to be withdrawn, the jurisdiction is with respondent no. 1 State Government.

Learned APP appearing for respondent no. 1 supports the contention of respondent nos. 2 and 3.

8. The matter essentially is arising out of the matrimonial dispute. Offences involved are under sections 328, 377, 417, 418, 494, 495 read with section 34 IPC and section 67 and 67(A) of the Information Technology Act, 2000.

9. The consent terms are even today accepted by the parties. Accordingly except for the technical objection, pointed out by the learned counsel for respondent nos. 2 and 3, the matter could have been disposed of.

10. The law as settled by the Constitution Bench in Joseph Shine (supra) is not in dispute and it therefore, is law prevailing in the year 2013. The concerned victim (if any) shown in the video clip has never made any grievance about the relationship. There is no material on record to substantiate the charge under section 328 IPC.

11. In this situation, we are inclined to make the rule absolute in terms of prayer clause (a). Petition is accordingly allowed and disposed of.

(SMT. S.S. JADHAV, J.)

(B.P. DHARMADHIKARI, J.)