

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APL) NO.179 OF 2019

(Raju Rameshwar Kandalkar ..vs.. State of Maharashtra, through PSO, PS Loni and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. S.S. Jadhav, Counsel for the applicant,
Shri C.A. Lokhande, Addl.P.P. for non-applicant No.1.

**CORAM : P.N. DESHMUKH AND
ROHIT B. DEO, JJ.**

DATED : 27-02-2019

Applicant as well as complainant/non-applicant No.2 are present before the Court. This application is for quashing of First Information Report No.61/2015 registered by Police Station Loni on the basis of report lodged by non-applicant No.2 for the offences punishable under Section 377 of Indian Penal Code read with Sections 3 and 4 of Protection of Children from Sexual Offences Act and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

2. We also perused the affidavit placed on record. Learned Counsel for applicant makes a statement that matter has been resolved amicably between complainant and applicant and, therefore, this application be allowed thereby quashing proceedings initiated on the basis of above referred first information report, which are pending on the file of learned Special Judge, Amravati registered as Special Case No.212/2015.

To substantiate the submissions, learned Counsel for applicant has placed on record notarised affidavit of Rani Ganeshrao Khandekar of whose complainant is maternal uncle. In her affidavit, she has stated that on 17-5-2015 as there was pity quarrel between her and applicant Raju Kandalkar at a public tap, she along with complainant had falsely involved applicant in present crime involving Shubham, minor son of complainant alleging that applicant had sexually assaulted complainant's minor son thereby attracting provisions of Section 377 of Indian Penal Code. However, according to her no such act is committed by applicant learned Counsel has also placed on record affidavit of complainant to this effect.

3. In the circumstances, the learned Counsel for applicant, relied on the law laid down in the cases of *Gian Singh v. State of Punjab and another* reported in (2012) 10 SCC 303 and *Narinder Singh and others v. State of Punjab and another* reported in (2014) 6 SCC 466, has thus contended that there is no purpose in prosecuting the crime, and the application be allowed.

In view of the facts as aforesaid and the law relied by applicant, wherein it is held that in case dispute is between the parties and compounding of offence is prayed for and if there is settlement arrived at between the parties then the case should be allowed to compound as allowing the matter to proceed would amount to abuse of process of law. In view of the facts involved in

the matter, we find that the law laid down in above stated cases can be duly applied to the case in hand.

4. In that view of the matter, application is liable to be allowed in terms of prayer clauses (A) and (B) of the same, subject to payment of costs of Rs.10,000/- to be paid by complainant-Vilas Sadafale with the Registrar of this Court, which shall in turn be paid to High Court Bar Association, Nagpur. Learned Counsel for applicant submits that amount of costs shall be paid within one month from today. This shall come into effect on payment of costs as afore said.

5. We have noted that contents in the affidavit of complainant dated 18-1-2019 on the face of record, appear to be totally false made with regard to act of police officials that on 17-5-2015 complainant visited police station along with Rani Khandekar for lodging report about incident of quarrel which took place at the public tap, but police on their own got registered report against the applicant, involving complainant's minor son Shubham as aforesaid upon which offence punishable under Section 377 of Indian Penal Code is registered. In that view of the matter, on directions issued by this Court, applicant has placed on record complainant's affidavit withdrawing such allegations.

6. To a specific query put to complainant, Vilas

Sadafale in the open Court about compensation if any received by him from State Government since according to First Information Report No.61/2015, his minor son, aged about 8 years, is stated to be victim of sexual assault at the hands of applicant, complainant states that he has received Rs.60,000/- (Rupees Sixty Thousand) after registration of crime. Since from above discussion, we find that complainant has filed false report, only for receiving such compensation amount, we direct complainant Vilas Sadafale to deposit Rs.60,000/- (Rupees Sixty Thousand) with the Registrar of this Court within one month, who shall in turn refund it back to the concerned authority of the State, who had paid this amount to complainant as compensation. In the event such amount is not deposited by complainant/non-applicant No.2, same shall be recovered as per recovery of land revenue.

7. Application stands disposed of as allowed in the above terms.

JUDGE

JUDGE

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