

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.637 OF 2021

ATISH DALITKUMAR TAPASE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Shinde Mahesh P
APP for Respondents : Mr. R V Dasalkar
Advocate for Respondent 2 : Mr. Shekade S.E.

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.
Dated: August 09, 2021

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PER COURT :-

1. Heard finally with consent the consent of the parties at admission stage.

2. The petitioners are the accused persons in connection with the crime no.I-113 of 2021 registered with Hingoli City Police Station, District Hingoli for the offences punishable under sections 376(2)(n), 354, 294, 506 r/w section 34 of the Indian Penal Code. This application is filed for quashing the said FIR on the ground that parties have arrived at an amicable settlement.

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3. Learned counsel appearing for the petitioners submits that, initially, Crime was registered for the offences punishable under sections 354, 294, 506 r/w 34 of IPC, however, on the basis of the supplementary statement of the informant, section 376 (2)(n) came to be added. The learned counsel submits that, those allegations have been made against petitioner no.1-Atish Tapase for having committed rape on the informant repeatedly by giving false promise of marriage. Learned counsel submits that, due to intervention of the well wishers, near relatives and common friends, they have arrived at amicable settlement.

4. Learned counsel appearing for respondent no.2 submits that, respondent no.2 has filed her affidavit-in-reply. Learned counsel submits that, the petitioners' family and family of respondent no.2 are well acquainted with each other since long and they are resident of the same locality. They have decided to maintain cordial relations in future. Learned counsel submits that, FIR was lodged on account of some misunderstanding. They

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have decided to settle the dispute due to intervention of well- wishers, near relatives and common friends. They wanted to live with peace in future.

5. Learned A.P.P. has placed his reliance on a case Gian Singh Vs. State of Punjab and another reported in (2012) 10 Supreme Court Cases 303, wherein in paragraph no.48 of the judgment, the Supreme Court has framed guidelines for quashing of the FIR on the basis of the settlement between the parties. Learned APP submits that the clause 'E' of the said guidelines is relevant for the discussion. Learned APP submits that, in terms of clause 'E' of the said guidelines, the heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category.

6. We have carefully gone through the supplementary statement of the informant. The informant has stated in her supplementary statement that there was love affair between herself and petitioner no.1 since last two years prior to filing of the complaint and, petitioner no.1 took
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her at various places and performed the intercourse with her by giving her promise of marriage. In the given set of allegations, possibility of consensual relations cannot be ruled out. Furthermore, the informant is a major girl. She is in private employment. She was knowing the consequences of her act.

7. In a case of Gian Singh Vs. State of Punjab and another (supra), relied upon by the learned APP, in clause 'e', the Supreme Court has mentioned prohibited category which includes commission of rape. Clause 'e' of the said guidelines framed by the Supreme Court, which is relevant for the discussion is reproduced herein below :-

21.

- a.
- b.
- c.
- d.

"e. The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by Public Servants purporting to act in that capacity as also offences against public servant while the victims are acting in the

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discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter-VII (relating to army, navy and air force) must remain non-compoundable.”

8. We have carefully gone through clause ‘e’ of the said guidelines. It is observed by the Supreme Court that highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category.

9. In the instant case, though there are allegations against petitioner no.1 for having committed intercourse with the informant on various occasions by giving false promise of marriage, as observed by us, possibility of consensual relations cannot be ruled out. As such, there are no clear-cut allegations about commission of rape. It further appears that, in order to maintain cordial relations between two families residing in the same locality, respondent no.2 and petitioner no.1 have decided to settle their differences forever. Respondent no.2 has stated in her affidavit-in-reply that due to some misunderstanding allegations about commission of rape have been made. It further appears that, due to
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intervention of well-wishers, common friends and nearest relatives, parties have decided to settle their dispute amicably. We are satisfied that the settlement has been arrived at voluntarily. Hence, we pass the following order.

ORDER

- I. Criminal Writ petition is hereby allowed in terms of prayer clause '**B**'.
- ii. Criminal Writ Petition accordingly disposed off.

(**SHRIKANT D. KULKARNI, J.) (V.K. JADHAV, J.)**

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