

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 565 OF 2021

Moiuddin @ Monu Sharfuddin Sayyed

Aged : 22 years, Occ : Student,

R/o. Plot No. 9/E/1/2, Road No.1,

Shivaji Nagar, Govandi,

Mumbai 400 043

.... Applicant

Versus

1. The State of Maharashtra

At the instance of Senior Inspector of
Police, Shivaji Nagar Police Station vide
C.R. No. 582 of 2019

2. Ms. Namira Shamshuddin Shaikh,

Aged : 21 years, Occ : Housewife,

R/o Plot No. 9/E/1/2, Road No.1,

Shivaji Nagar, Govandi,

Mumbai 400 043.

....Respondents

Mr.Rahul Arote for applicant.

Mrs. S.D. Shinde, APP for respondent No.1-State.

Ms. Namira Shamshuddin Shaikh-respondent No.2 present in
Court.

CORAM : S. S. SHINDE &

N.J. JAMADAR, JJ.

Date : 10th AUGUST 2021.

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JUDGMENT (PER N.J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith and, with the consent
of the learned counsels for the parties, heard finally.

2. This application under section 482 of the Code of Criminal
Procedure, 1973 ('the Code') is filed to quash and set aside the first

information report No.582 of 2019, registered with Shivaji Nagar Police Station, for the offences punishable under sections 376, 376(2)(n), and 420 of the Indian Penal Code, 1860 ('the Penal Code').

3. The background facts leading to this application can be summarized as under :

(a) The prosecutrix-respondent No.2 is a resident of Shivaji Nagar, Govandi. She had known the applicant since five years prior to the occurrence. Friendship blossomed into a romantic relationship. The prosecutrix alleged that the applicant repeatedly gave promises to marry her. Starting from the month of April 2019, the applicant and the prosecutrix had physical relations multiple times. Eventually, in the month of October 2019, the prosecutrix became pregnant. The applicant assured the prosecutrix that he would solemnize marriage with her. However, when the applicant broached the subject with his parents, the latter flatly refused permission to the applicant to marry prosecutrix. Even the parents of

the prosecutrix approached the parents of the applicant, but to no avail. Hence, the prosecutrix was constrained to approach the police and lodge report on 21st December 2019, whilst she was carrying seven months pregnancy. Crime was registered at C.R.No. 582/2019 for the offences punishable under sections 376, 376(2)(n), and 420 of the Penal Code.

(b) The applicant has invoked the inherent jurisdiction of this Court with the assertions that after the registration of the F.I.R., the differences have been resolved and the applicant and the prosecutrix solemnized the marriage on 28th September 2020. In the meanwhile, the prosecutrix delivered a boy, Zaid. The applicant and the prosecutrix have since been cohabiting together. Even the parents of the applicant and the prosecutrix have buried the hatchet. Hence, this application for quashing the F.I.R.

4. We have heard Mr.Rahul Arote, the learned counsel for the applicant and Mrs.S.D. Shinde, the learned APP for the State. With

the assistance of the learned counsels for the parties, we have carefully perused the material on record.

5. The applicant and the respondent No.2 appeared before the Court today. They jointly made a statement that they solemnized marriage on 28th September 2020 and have since been cohabiting happily as a married couple. The prosecutrix had lodged the F.I.R. against the applicant in view of the then resistance to the marriage of the applicant and prosecutrix by the parents of the applicant. With the passage of time, the differences have been resolved and things have fallen in place for the better.

6. The respondent No.2-prosecutrix has filed an affidavit. We have interacted with respondent No.2. She made a solemn statement that she has filed the affidavit out of her own volition. There is no coercion or duress. In fact, there were no differences between the prosecutrix and the applicant. The resistance of the parents to the alliance led to the events which necessitated the lodging of the F.I.R. The prosecutrix claimed that she is happily residing with the applicant and her in-laws. Paragraphs 2 to 6 of the affidavit read as under :

“2 I say that the Complaint subject matter of the aforesaid crime was result of differences and disputes between myself, my family Members on one side and Applicant and his family member. I say that

myself and applicant were in love affair, which had unfortunately ended up in differences and disputes between ourselves. I say that out of said affair, I got pregnant and therefore our family members were upset and angry.

3 I say and submit that myself and the Applicant have cleared misconceptions/ misunderstandings and amicably settled our disputes. I say that myself and the Applicant got married on 28th September, 2020, and we have male child by name Zaid who was born on 26.01.20. I say that now we are living peaceful and happy married life.

4 I say that I am filing the present Affidavit at my own free will and with complete consent of my parents and other family members. I say that no one including the Applicant abovenamed have influenced me by any pressure, threat, duress and/or conspiracy so as to compel me to file the present Affidavit.

5 I respectfully submit that my no objection to quash the C.R.No. 582 of 2019 registered with the Govandi Police Station as we have got married now and living peaceful life.

6 Whatever is stated hereinabove is true and correct to the best of my knowledge and I believe the same to be true, in witness whereof, I have signed hereunder."

7. In the light of the aforesaid submissions and averments in the affidavit, we have carefully perused the material on record. In the context of the nature of the accusation and gravity of the offences, for which the applicant has been arraigned, we minutely considered the allegations in the F.I.R. Indisputably, the prosecutrix had attained majority when the applicant and the prosecutrix became intimate. From the tenor of the F.I.R., it

becomes evident that the applicant and the prosecutrix were in a courtship for five long years. It does not appear that the applicant had forcible physical relations with the prosecutrix, without her consent. In the light of the long courtship and the circumstances in which the applicant and the prosecutrix became intimate, the physical relations, in all probability, were consensual. Trouble crept in when the prosecutrix became pregnant and the parents of the applicant categorically declined to bless the couple. Undoubtedly, the offences with which the applicant is charged are of grievous nature. However, taking the allegations in the F.I.R. at their face value and in their entirety, an inference becomes inescapable that the relationship was consensual. In our view, no *prima facie* case for the offences punishable under sections 376 and 376(n) is made out. To add to this, the applicant and the prosecutrix have solemnized marriage. They have been blessed with a son. Marital bond, as per the statements of the applicant and the prosecutrix, seems to be growing stronger by the day.

8. It is trite that, where in the facts of the given case, based on the settlement between the parties, the Court finds that quashing of the prosecution would secure the ends of justice and prevent the abuse of the process of the Court, the High Court, in exercise of its

inherent jurisdiction under section 482 of the Code, can quash the prosecution though the offences are non-compoundable.

9. A useful reference in this context can be made to the judgment of the Supreme Court in the case of ***Gian Singh vs. State of Punjab and another***¹, wherein the Supreme Court has observed as under :

“61..... the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.”

10. The aforesaid pronouncement was followed in the case of ***Narinder Singh Vs. State of Punjab*** ².

1 2012 (10) SCC 303

2 2014 AIR SCW 2065

11. In the case at hand, in our view, the continuation of the prosecution may turn out to be counter productive. No fruitful purpose would be served by continuing the prosecution. It would amount to abuse of the process of the Court. It will not only put the applicant and the prosecutrix to great prejudice but also strain the marital bond. We are, thus, persuaded to allow the application.

12. Hence, the following order :

O R D E R

- (i) The application stands allowed.
- (ii) The F.I.R. bearing C.R. No. 582 of 2019 registered with Shivaji Nagar Police Station and all the consequent proceedings arising therefrom stand quashed and set aside.

Rule made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]