

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

CRIMINAL WRIT PETITION NO. 204 OF 2021

Raja Sushanta Sharma
Presently lodge in Taloja Jail
Age- 32 yrs, Occupation- Service
Presently residing at Flat No. 1001,
10th floor, 2/C wigh, Saffair Lake site,
CHS, behind Union Bank, Oppo.
Powai Lake, Powai, Mumbai- 400072.

...PETITIONER

Versus

1. Srijia Prakash Shetty
B-602, Benhur Apartment
Oppo. Runwal Lokhandwala
Andheri (West), Mumbai- 40005.

2. The State of Maharashtra
Through Powai Police Station,
Mumbai.

...RESPONDENTS

...
Mr. Harihar Bhawe i/b. Hrishikesh U. Ambre for Petitioner.
Mrs. S.D. Shinde, APP for State.
Ms. Divya Menon for Respondent No. 1.
Respondent No. 1 present in the Court.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

DATE : 18th FEBRUARY, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

. Rule. Rule made returnable forthwith and heard with the consent
of learned counsel appearing for the parties.

2. Background facts leading to filing the present writ petition are as under:-

In August 2019, the Petitioner and Respondent No. 1 separately went on the tour and met in the said trip in Himachal Pradesh. They developed a good friendship between them. They were frequently meeting with each other thereafter on weekends. In February and March 2020, the said friendship turned into love affair. Thereafter, the Petitioner and the Respondent No. 1 were regularly meeting on holidays and for long drives. In June 2020 the Petitioner and Respondent No. 1 with consent had a physical relationship. In October 2020 there was a small altercation between the Petitioner and Respondent No. 1 and after that they stopped talking to each other for around 10 to 15 days, so there was a communication gap between the Petitioner and Respondent No. 1. This led to misunderstanding between them and for registration of an F.I.R. The Respondent No. 1 made her grievance to the Oshiwara Police Station. The Oshiwara Police Station, called the Petitioner and asked him to meet Respondent No. 1 and solve/resolve issues between them. Then the Petitioner went to meet Respondent No. 1, but they did not had any fruitful discussion and on the contrary they had a verbal altercations between them. Thereafter, in the rage of anger the Petitioner left house of 1st respondent. The Oshiwara Police registered zero FIR and then sent to the Powai Police Station.

In November 2020 the Petitioner was arrested by the Powai Police Station. Thereafter, common friends and relatives of both the sides of Petitioner and 1st respondent met the Respondent No. 1 and they cleared all the misunderstanding between them. The friends had also called the parents of petitioner from Dhanbaug to Mumbai. The relatives and parents on both side had a joint meeting and cleared all misunderstandings. Thereafter, Petitioner and 1st respondent decided to marry.

3. On 17.12.2020, learned counsel for the Petitioner on instructions made a statement before this Court that the Petitioner is ready to marry with 1st respondent and swore the affidavit to that effect. The matter was again heard on 21.12.2020. On said date, learned counsel for the Petitioner had tendered across the bar, affidavit of petitioner signed by him before the jail authority, Taloja Central Prison, dated 19.12.2020. A copy of the said affidavit was also served upon 1st respondent and learned APP appearing for State. Respondent No. 1 i.e. Srija Prakash Shetty was present before the Court. On specific query to her, she stated that she has no objection to release the Petitioner from jail. She further stated that the Petitioner and herself have decided to marry. Keeping in view the averments in the affidavit filed by the Petitioner and interaction with Respondent No. 1, this Court directed to release the petitioner from jail forthwith.

4. After release from the jail the Petitioner and 1st respondent got married on 03.01.2021. They have also registered their marriage. Certificate of registration of marriage is placed on record. The contents of the said certificate show that the marriage was solemnized on 03.01.2021 and same was registered on 04.01.2021.

5. Since the petitioner and 1st respondent have amicably settled the dispute and their marriage is solemnized, and they are leading peaceful life and according to both of them they have good prospects/future aboard, therefore in our opinion no fruitful purpose would be served by continuing investigation of C.R. No. 597 of 2020 registered with Powai Police Station for the offences punishable under Section 376 (2) N and 377 of IPC. Further continuation of investigation of aforesaid FIR would be an exercise in futility, since the 1st respondent is not going to support the allegations in the FIR and chances of conviction of petitioner would be remote and bleak.

6. Even otherwise upon careful reading of allegations in the FIR and interaction with 1st respondent, we are of the opinion that the offence under Section 376 (2) N and 377 of IPC are not made out.

7. Be that as it may, since the petitioner and 1st respondent have settled the dispute and thereafter marriage has been solemnized and subsequently registered, in the peculiar facts and circumstances of this case, we are inclined to allow the writ petition. Accordingly, the writ petition is allowed in terms of prayer clause (a). The FIR No. 579 of 2020 lodged by Respondent No. 1 against the Petitioner for offence punishable under Sections 376 (2) N and 377 of IPC is quashed and set aside. Rule made absolute to above extent. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)