

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3097 OF 2021

Dilshad Mohammad .. Petitioner
v/s.
The State of Maharashtra & Anr. .. Respondents

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Mr. Nargis Khan, for the Petitioner.

Mr. J.P. Yagnik, APP, for Respondent State.

Mr. Prathamesh Mandal, for Respondent No.2.

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 29 NOVEMBER 2021.

P.C:-

Heard learned Counsel for the parties. By consent taken up for disposal. The Registry will mask the name of Respondent No.2 and substitute it with XYZ.

2. The Petitioner has filed this petition for quashing of C.R. No.546 of 2021 registered at Oshiwara Police Station. The learned Counsel for the Petitioner and the learned Counsel for Respondent No.2 state that the FIR be quashed by consent of Respondent No.2 and they rely upon the decision of the Apex Court in the case of *Gian*

*Singh vs. State of Punjab And Another*¹.

3. Respondent No.2 in the FIR has stated that she is married with two children. Both children are 18 and 17 years old. Her husband has left for Canada in the year 2004 and has not contacted her since. She has narrated the physical relationship with herself and the Petitioner. The relationship with the Petitioner started in the year 2014 and continued till year 2020. Respondent No.2 has filed an affidavit in this Court earlier and has filed another affidavit today, after verifying before the Officer of the Court, who has examined the identity documents. The interaction with Respondent No.2 shows that she has given the affidavit without any coercion. In the affidavit, Respondent No.2 has stated thus:-

“1. She knows the Petitioner and his family members since a long time.

2. She and the Petitioner (Dilshad Mohammad) were in live-in relationship with each for long period of more than 10 years.

3. Many a times they had sexual relationship during the course of that relationship and the same was with each others consent.

4. In a fit of rage she has lodged F.I.R. No.546 of 2021 with Oshiwara Police Station against the Petitioner.

¹ (2012) 10 Supreme Court Cases 303

5. *After the registration of the FIR their common acquaintances and mutual friends approached her to put an end to the dispute with the Petitioner. After deep introspection over the events and after due deliberation with her family members and friends, she has realized that she acted in undue haste and in a moment of anger proceeded to lodge complaint against the Petitioner.*

6. *In view of the same, she has no objection if the Hon'ble High Court quashes FIR No.546 of 2021 which was registered with Oshiwara Police Station on the basis of her complaint as well as further proceedings arising out of the said FIR."*

4. Though Respondent No.2 has specified Sections 376, 420, 406, 506(2), 323 and 324 of the IPC, in the peculiar facts of this case, we find that keeping the FIR pending would in fact be against the interest of justice. Respondent No.2 has not stated that she was put to threat of violence and rape was committed. She had stated that the Petitioner and Respondent No.2 were in physical relationship for almost a decade. She has stated on affidavit that there was no coercion on false promise and the relationship was with her consent and it was in a fit of rage that she has filed the FIR. It is, therefore, quite obvious that the prosecution will depend entirely on the evidence of Respondent No.2 as regards her state of mind, which she has stated on oath before us that the relationship was with her consent. Therefore, if there was consent and both, Respondent No.2 and the Petitioner being adults, under no incapacity, the offence under Section 376 itself is not made out. Therefore, in the facts of this case, in light of the clear and

specific affidavit the offence itself is not committed, we find that case for exercising of extra ordinary jurisdiction for quashing of the FIR is made out.

5. Accordingly, writ petition is allowed in terms of prayer clause (b). Both, the Petitioner and Respondent No.2, will pay Rs.10,000/- each to the Police Welfare Fund within period of four weeks and the order passed today is conditional upon this payment.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)