

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

CRIMINAL WRIT PETITION NO.4667 OF 2019

Ashutosh Motilal Yadav

.... Petitioner

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr.Anand V. Upadhyay, Advocate for Petitioner.
- Mr.M.H. Mhatre, APP for the State/Respondent.
- Mr.Manoj Shukla i/b. Amit Mishra, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, J.**

DATE : 13 OCTOBER 2021

P.C. :

. Heard learned counsel for Petitioner, the learned counsel for Respondent No.2 and the learned APP.

2. The Petitioner has filed this Petition under Article 226 Constitution of India and under Section 482 of Cr.P.C. to quash the FIR No.424/2019 under Section 420, 376 & 376(n) of Indian Penal Code dated 12 July 2019 filed at Ghatkopar Police Station against the petitioner.

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3. The FIR was lodged at the instance of Respondent No.2 against the Petitioner on 12/07/2019 under Sections 420, 376 and 376(n) of the Indian Penal Code.

4. In brief, the allegations are that the Respondent No.2, who is 26 years old, had become friendly with the Petitioner, aged 30 years old and had physical relationship with him from July 2016 to February 2019. She has stated that physical relations was because the Respondent No.2 believed that the Petitioner would marry her. When the Petitioner informed her that he has got married. On 12 July 2019, the FIR was lodged.

5. In this case there are certain peculiar facts, which we must take note of. When the statement of the Respondent No.2 was recorded under section 164 of Code of Criminal Procedure before the learned Metropolitan Magistrate, the Respondent No.2 stated that it was her personal matter and wanted to withdraw her complaint. When the bail application of the Petitioner came up for consideration, the Respondent No.2 appeared and informed the Court by filing an affidavit that in a heat of anger she had filed an FIR and she had no objection to grant of bail. The same stand is being reiterated before us by the Respondent No.2 upon instructions from the Respondent No.2, who is present. The affidavit to that effect is also filed in this Court, wherein she has stated that she was in

mutual relationship from October 2016 to January 2019 and upon learning that the Petitioner had got married, she got emotional and in a heat of anger she filed the complaint.

6. We must take note that it is not a stand that has been taken after a passage of time in this Court, but immediately as the above events would show. The learned counsel for the Petitioner therefore is right in contending that all these facts would show that physical relationship was with consent of the Respondent No.2 and at the most based on the misconception of fact.

7. The Respondent No.2 is present in the Court and she has reiterated that she does not want to proceed further and wants the situation to end as early as possible as she wants to settle down in life.

8. Having considered the totality of facts, we are of the opinion that keeping the investigation pending would be a harassment to both, the Petitioner and the Respondent No.2 and that the proceedings will also be a needless waste of judicial time resulting into eventual acquittal. In the affidavit filed before the trial Court, in this Court and in the statement made on section 164 of Cr.P.C, the Respondent No.2 has stated that it was her personal matter. In the facts of this case we do not find any reason to take a different view than the assertion of the Respondent No.2.

9. In the circumstances, the Petition deserves to be allowed. It is accordingly allowed in terms of prayer clause (a).

10. The registry is directed to mask the name of the Respondent No.2 from the records and she will be referred to as 'XYZ'.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)