

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 702 OF 2018

Faizul S/o. Hasan Ahmed,
Aged about 30 years, Occu.: Labour,
R/o. Saifinagar, Near Lal Building,
Mominpura, Nagpur.

.... **APPLICANT.**

// VERSUS //

1. The State of Maharashtra,
Through P.S.O., Hudkeshwar Police
Station, Distt. Nagpur.
2. Ashwini Suresh Dey,
Aged about 26 years,
R/o. Shiv Nagar, Mate Tailor,
Khamla, Nagpur, Distt. Nagpur.

.... **NON-APPLICANTS.**

Ms S.S.Deshpande, Advocate for Applicant.
Ms Mayuri Deshmukh, A.P.P. for Non-applicant No.1/State.
None for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 19, 2021.

ORAL JUDGMENT : (Per : Amit Borkar, J.)

1. Heard.
2. **RULE.** Rule is made returnable forthwith.

3. This is an application under Section 482 of the Code of Criminal Procedure challenging First Information Report No.671 of 2017, dated 2nd November 2017, registered with non-applicant No.1-Police Station for the offences punishable under Sections 312, 506, 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

4. The First Information Report came to be registered on 2nd November 2017 on the basis of the allegation that the applicant had forcible sexual intercourse with the non-applicant No.2-informant in the year 2012. It is alleged that when the informant was alone, the applicant came to the room of the non-applicant No.2 with her brother and had sexual intercourse with the non-applicant No.2. The applicant has, therefore, filed instant application challenging the First Information Report.

5. This Court on 19th October 2018 issued notice for final disposal to the non-applicants. The non-applicant No.2 is served. The non-applicant No.2 has not filed reply contesting the application.

6. We have considered the contents of the First Information and the reply filed by the Non-applicant No.1. From the accusations in the First Information Report and the reply, it appears that the alleged incident took

place in the year 2012 and the First Information Report came to be registered in the year 2017. There is a considerable delay in filing of the First Information Report. Apart from the said fact, from the reply filed by the non-applicant No.1 it appears that the age of the non-applicant No.2 was about 16 years and was having age of understanding.

7. Having considered the accusations in the First Information Report, we are satisfied that the essential ingredients of the offences alleged against the applicant are not made out. We are therefore, satisfied that continuation of the prosecution would amount to abuse of process of the Court.

8. We, therefore, pass the following order:

First Information Report bearing Crime No.671 of 2017, dated 2nd November 2017, registered with non-applicant No.1-Police Station for the offences punishable under Sections 312, 506, 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 is quashed and set aside.

Rule is made absolute accordingly.

CRI.APPLN.NO. 2147/2018.

In view of disposal of Criminal Application No.702 of 2018, the application praying for dispensing with typed copy of F.I.R. does not survive, hence, it is **disposed of**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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