

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

61 CRIMINAL APPLICATION NO. 2946 OF 2021

VIPUL S/O ANTWAN SALVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Andhale Sandip Ramnath
APP for Respondent No.1-State : Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Mr. Govind Bhagwan Chate

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 21st FEBRUARY, 2022**

PER COURT:-

1. Heard finally with consent at admission stage.
2. The applicants are seeking quashing of the FIR bearing crime no. 544/2019 registered with Shevgaon Police Station, Taluka Shevgaon, District Ahmednagar for the offence punishable under Sections 363, 366 r/w 34 of IPC. The charge-sheet is yet not filed in connection with the present crime. The applicants are seeking quashing of the FIR on the basis of the settlement arrived at between the parties.
3. Learned counsel for the applicants and learned counsel appearing for respondent no.2, who happened to be the mother of the

victim, submit that both the parties are from the same village and in order to maintain cordial relations between them, they have arrived at amicable settlement. It is submitted that the applicants and respondent no.2 have filed a joint affidavit to that effect.

4. Learned APP submits that applicant no.1 Vipul allegedly kidnapped the victim, who was around 15 years of age at the time of the alleged incident. Learned APP submits that during the course of investigation, the victim has given a statement to the Investigating Officer to the effect that she left her parents' house on her own will and joined the company of the applicant-accused. There was a love affair between them and she wanted to marry him desperately. Even the victim has further stated in her statement before the Investigating Officer that she got married with applicant no.1 Vipul and they have a baby of six months at present. Learned APP submits that the said settlement is not permissible in the eyes of law. The victim was at the most 16 years of age at the time of her marriage with applicant no.1 and as such, the FIR cannot be quashed on the basis of such settlement arrived at by the parties.

5. Learned counsel for the applicants and learned counsel for respondent no.2 submit that as per the affidavit filed by respondent

no.2, who happened to be the mother of victim, the victim is born to her in the year 2001 when the couple was residing at Mumbai, and thereafter, her husband died. Consequently, the entire family returned to village Bhatkudgaon. Learnd APP has pointed out the bonafide certificate obtained by the Investigating Officer during the course of investigation wherein the date of birth of the victim is recorded as 26.05.2004. However, the same also appears to be not possible as the said bonafide certificate came to be issued when the victim was studying in 8th standard in the year 2016-2017. Thus, there is confusion about the age of the victim. The Investigating Officer has not collected birth certificate of the victim.

6. In the case of *Gian Singh vs. State of Punjab and others*, reported in *(2012) 10 SCC 303*, the Supreme Court in para 48 has referred the view taken by the five-Judge Bench of the Punjab and Haryana High Court in **Kulwinder Singh v. State of Punjab (2007) 4 CTC 769** and particularly quoted para 21 and referred the guidelines framed by the five-Judge Bench for quashing of the proceedings on the basis of settlement. Guidelines under clauses (e) and (f) which are relevant for the present discussion read as under :

“21. (e) The offences against human body other than murder and culpable homicide where the victim dies in the course of transaction would fall in the category where compounding may not be permitted. Heinous offences like highway robbery, dacoity or a case involving clear-cut allegations of rape should also fall in the prohibited category. Offences committed by public servants purporting to act in that capacity as also offences against public servant while the victims are acting in the discharge of their duty must remain non-compoundable. Offences against the State enshrined in Chapter VII (relating to army, navy and air force must remain non-compoundable.

(f) That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary and fair”

7. In the instant case, there are no allegations about commission of rape and there is no charge under Section 376 of IPC levelled against applicant no.1 Vipul. In terms of clause (f), the offences against human body other than murder and culpable homicide may be permitted to be compounded when the court is in the position to record a finding that the settlement between the parties is voluntary

and fair. It further appears from the statement of the victim that she not only got married with applicant no.1 Vipul, but the couple has got a baby of six month. It thus appears that the settlement between the parties is voluntary and obviously fair since the applicant no.1 and the victim got married and have a baby. We do not think that the settlement is the result of undue pressure. Both the parties are from the same caste and as per the affidavits filed by the other family members from the applicant's side, there is no further obstacle to accept the said marriage. Learned APP has fairly accepted that there are no antecedents of applicant no.1 Vipul.

8. In view of the above and in terms of the ratio laid down by the Supreme Court in the case of *Gian Singh v. State of Punjab* (supra), we proceed to pass the following order:

ORDER

I. The criminal application is hereby allowed in terms of prayer clause "C".

II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)