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

CRIMINAL APPLICATION NO. 1 OF 2020

Faizal Ainul Haque Siddiqui

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Mateen Shaikh a/w. Ms. Farzana Sawant for the Applicant

Ms. S.D. Shinde, APP for the Respondent - State

***CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.***

DATE : 23 AUGUST 2022

P.C. :-

The Applicant has annexed the affidavit of consent by the Respondent – Complainant to this Petition. No notice is given to the Complainant. The learned Counsel for the Applicant insisted that this is the normal practice followed and urged to proceed on the basis of this affidavit.

2. The power of this Court to quash the FIR by consent of the Complainant/Informant of a cognizable offence is an exception made out by the judicial pronouncements of the Apex Court and it is not a matter of right of the accused. The voluntary consent of the

Complainant/Informant is one of the factors to quash the FIR by consent when cognizable offence is made out. This consent must be given by the Complainant voluntarily by appearing in the matter and by filing an affidavit. It is basic that the same advocate cannot represent the cause of the Accused and the Complainant. The affidavit of consent filed by the Complainant/Informant has to be duly verified, and vouched for either by the Complainant by appearing in person with necessary identity documents, or by engaging an advocate, or by Court appointed advocate. Since the learned Counsel for the Petitioner is not ready to adopt this procedure, we cannot proceed on the basis that the Complainant has given the consent voluntarily.

3. Therefore, the Petition, as presented, cannot be considered and is disposed of.

N.R. BORKAR, J.

NITIN JAMDAR, J.

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