

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

CRIMINAL APPLICATION NO.61 OF 2021

Ricky Kanayalal Chhabria
Age 35 years, Occ: Advocate
R/a Block No.196, Room No.8
Naer Sadhubella High School,
Ulhasnagar 1, Thane

....Petitioner.

Vs.

1.The State of Maharashtra
(At the instance of Ulhasnagar
Police Station, Thane)

2. XYZ,
Age 30 years, Occ: Advocate
R/o Vikas Palace, 1st floor,
Near Nana Nani Park, Ulhasnagar,
Thane.

...Respondents.

....

Mr Ganesh Gole, Advocate i/b Mr. Ateet Shirodkar, for the
Applicant.

Mr KV Saste, for Respondent no.1-State.

Mr Arif Ali M.Ali, Advocate for Respondent No.2

....

**CORAM: REVATI MOHITE DERE &
R.N.LADDHA.**

DATE : 22 NOVEMBER 2022.

Order (Per R.N.Laddha,J.)

At the outset, the learned Counsel for the Applicant
seeks leave to amend to delete the name of the prosecutrix

wherever it appears in the Application and replace it with the alphabet 'XYZ'. Leave granted.

2. Heard learned Counsel for the parties.

3. Rule. The Rule is made returnable forthwith, at the request of and with the consent of the learned Counsel for the parties. Learned Counsel for the Respondents waived service.

4. This is a petition for quashing FIR No.89 of 2014 registered at the Ulhasnagar Police Station, Thane, alleging the commission of an offence punishable under Section 376 of the Indian Penal Code. It is alleged that on 22.01.2013 and after that from time to time till 15.1.2014, numerous times on promising to marry, the Petitioner established a sexual relationship with Respondent No.2. He, however, did not fulfill his promise and cheated Respondent No.2.

5. When this Criminal Application for quashing the impugned FIR and the proceeding arising therefrom was placed before us, it has been stated by both the learned Counsel for the Applicant and Respondent No.2 that the dispute has been amicably settled. They submitted that Respondent No.2 had filed the consent affidavit. It is submitted that no purpose would be served by keeping the prosecution alive, given the settlement

between the parties. They submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Shambhu Kharwar Vs. State of Uttar Pradesh and Another*¹. They submitted that the Applicant and Respondent No.2 were having a love affair but due to personal reasons and differences, the present FIR came to be filed. They further submitted that the parties have amicably settled their dispute. The physical relations between the Applicant and Respondent No.2 were of free will and without any inducement of any nature being offered, and their relations were consensual. Respondent No.2 has no complaint against the Applicant.

6. Learned APP for Respondent No.1 submits that appropriate orders may be passed.

7. It revealed from the record that Respondent No.2 had filed a consent affidavit dated 4.1.2021 and a copy of the Aadhar Card duly attested by her. Respondent No.2 is present before the Court and stated that she has no objection if the FIR and the Sessions case in question are quashed against the Applicant, given the settlement between them. Respondent No.2 reiterated what was said by her in her affidavit and further stated that she lodged the impugned FIR due to misconception and misunderstanding.

¹ AIR 2022 SC 3901.

Respondent No.2 has been identified by her Counsel. Learned APP has verified the original Aadhar Card of Respondent No.2.

8. We have examined the facts of the present case. Based on the material on record, more particularly the affidavit of the second Respondent, it is seen that the FIR was lodged due to misconception and misunderstanding and the Applicant and Respondent No.2 were having a love affair, and they maintained a consensual physical relationship on several occasions. Admittedly, at the time of the alleged incident, Respondent No.2 was aged about 26 years. It revealed from the record that the Petitioner and Respondent No.2 had known each other since 2012 and, after that, have been intimate with each other. They met regularly and engaged in sexual relations. The relationship between the parties was consensual. Taking the allegations in the FIR as they stand, the ingredients of the offence under Section 375 of IPC are absent.

9. Considering the peculiar facts and circumstances, we see no difficulty in quashing the impugned FIR. Accordingly, the Application is allowed, and the impugned C.R.No.89 of 2014 registered at Ulhasnagar Police Station, Thane, and consequently proceedings pending before learned Additional Sessions Judge, Kalyan, being Sessions Case No.322 of 2014 are quashed and set aside.

10. Rule is made absolute in the above terms.
11. Learned Counsel for Respondent No.2 to file his Vakalatnama, if not filed, within two weeks of the uploading of this order.
12. All concerned to act on the authenticated copy of this order.

(R.N.LADDHA, J.)

(REVATI MOHITE DERE, J.)