

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

CRIMINAL WRIT PETITION NO.718 OF 2022

Anoop Manohar Parwani
Age 37 years, Occ: private
service, R/o 103, B-Montana,
Lokhandwala Complex,
Andheri(W), Mumbai-400 053. .. Petitioner.

V/s

1. The State of Maharashtra
Through Naupada Police Station,
Thane.

2. XYZ

Aged about 36 years, Occ: private
service, R/a c/o Pushpa Dhaware
301, Gautam Deep, BPD road,
Vishnu Nagar, Ghantali Mandir,
Thane, Maharashtra-602. Respondents.

....
Mr Shirish Gupte, Senior Advocate i/b Mr. Karansingh
Rajput, for the petitioner.

Mr KV Saste, APP for the State.

Ms Nirali Sharma, Advocate for Respondent No.2.

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

DATE : 24 NOVEMBER 2022.

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

At the outset, the learned Counsel for the Petitioner seeks leave to amend to delete the name of the prosecutrix wherever it appears in the Petition and replace it with the alphabet 'XYZ'. Leave granted.

2. Heard Mr Shirish Gupte, learned Senior Counsel for the petitioner and Mr K.V.Saste, learned APP for Respondent No.1-State and Ms Nirali Sharma for Respondent No.2.

3. Rule. The Rule is made returnable immediately, 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.59 of 2015, registered at the Naupada Police Station, Thane, alleging the commission of offences punishable under Sections 376, 323, 506 of the Indian Penal Code and Section 66-E and 67-A of the Information Technology Act, 2000 and the Sessions Case No.328 of 2016 emanating therefrom. The First Information Report came to be registered against the Petitioner with the accusations that the Petitioner and Respondent No.2 were in love relationship since 2013 and in February 2014, the Petitioner had forcible sexual intercourse with Respondent No.2 on promise of marriage. It is

also alleged that at that time the Petitioner took her photographs and filmed a video clip and had repeatedly established sexual relations with her.

5. Mr Shirish Gupte and Ms Nirali Sharma, in unison, submitted that the parties have amicably settled the dispute. They submitted that due to a misunderstanding, Respondent No.2 lodged the impugned FIR against the Petitioner. They invited the attention of this Court to the affidavit filed by Respondent No.2 dated 21.9.2022. They submitted that the parties had been involved in a romantic relationship, and due to a misunderstanding, Respondent No.2 lodged the impugned FIR. Respondent No.2, however, does not wish to proceed further in the impugned FIR. It is submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. It is submitted that Respondent No.2 has also filed the Consent Affidavits dated 25.01.2022 and 21.5.2022. 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 & Anr.*¹ Further they also relied on the Judgments of this Court (Nagpur Bench) in *Aditya s/o Hemant Deshmukh Vs. State of Maharashtra and Anr.*²,

1 AIR 2022 SC 3901.

2 Cri.Application No.379 of 2020

decided on 12.7.2021 and Taj @ Arjun s/o Ajay Mishra and Anr. Vs. State of Maharashtra ³, decided on 22.10.2019.

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

7. It reveals from the record that Respondent No.2 had filed the Consent Affidavits duly affirmed before the Notary and a copy of the Aadhar Card duly attested by her. Respondent No.2 reiterated what was stated by her in her affidavit.

8. It reveals from the record that the dispute is predominantly related to the love affair, which could not fructify in marriage. Further, it shows that physical relations between them were consensual. Upon perusal of the affidavits, it is seen that Respondent No.2 has no grudge or grievance against the Petitioner, nor does she wish to proceed further in the impugned FIR. Further, it is seen from the affidavit that Respondent No.2 and Petitioner were involved in a romantic relationship between July 2013 and December 2014 and during this period they had consensual love relationship and had engaged in physical relations voluntarily and the FIR was lodged due to a misunderstanding between the parties. Admittedly, at the time of the alleged incident, Respondent No.2 was aged about 29 years. Since the

³ Cri.Application No.988 of 2019.

parties amicably settled their dispute, the possibility of conviction is remote and bleak. Further continuation of the proceedings arising out of the impugned C.R.No.59 of 2015 would be tantamount to the abuse of the process of law. Since Respondent No.2/first Informant will not support the allegations made by her in the impugned FIR, nothing fruitful will come out of the prosecution. Taking the allegations in the FIR and the charge sheet as they stand the ingredients of offence u/s 375 of IPC are absent. The relationship between the parties was purely of a consensual nature.

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.59 of 2015, registered at Naupada Police Station, Thane, and Sessions Case No.328 of 2016 emanating therefrom, are quashed and set aside. The Rule is made absolute in the above terms.

10. All concerned to act on the authenticated copy of this order.

11. Learned Counsel for Respondent No.2 to file his Vakalatnama, if not filed, within two weeks of the uploading of this order.

(R.N.LADDHA,J.)

(REVATI MOHITE DERE)