

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

CRIMINAL WRIT PETITION NO. 1315 OF 2020

1. Anshul Ramesh Makhija
2. Ramesh Kumar

...Petitioners

Versus

1. The State of Maharashtra
2. 'X'

...Respondents

Mr. Aabad Ponda, Sr. Advocate i/b Mr. Bhomesh Bellam for the
Petitioners

Ms. S. D. Shinde, A.P.P for the Respondent No.1-State

Mr. Ganesh Gole a/w Mr. Arif Ali M. Ali for the Respondent No. 2

**CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.
MONDAY, 26th SEPTEMBER 2022**

P.C. :

1 Heard learned counsel for the parties.

2 At the outset, learned counsel for the petitioners seek leave
to amend to substitute the name of the respondent No.2 by 'X'.

Leave granted. Amendment to be carried out forthwith.

3 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Mr. Gole waives notice on behalf of the respondent No.2.

4 By this petition, the petitioners seek quashing of the FIR/complaint bearing C.R. No. 41/2016 registered with the Oshiwara Police Station, Mumbai, for the alleged offence punishable under Sections 376(2)(n), 354, 313, 507 r/w 34 of the Indian Penal Code. Quashing is sought on the premise that the petitioners and the respondent No. 2 have amicably settled their dispute.

5 Perused the papers. According to the respondent No. 2/ original complainant, aged 24 years, she was aspiring to be an actress and hence in 2014, she took admission in an Acting Institute in Mumbai. In the said Acting Institute, she met the present petitioner No. 1 within one week of the admission. Pursuant thereto, they

exchanged their mobile numbers and got acquainted with each other and thereafter, their friendship developed into a love affair. According to the respondent No. 2, the petitioner No. 1 proposed her on 18th October 2014, pursuant to which, she went to meet the petitioner No. 1's mother at his residence. She has stated that the petitioner No. 1's mother agreed for their marriage, pursuant to which, she started regularly meeting the petitioner No. 1 in a Mall and they started watching movies together. It is further alleged that they had physical relations with each other, as they were soon going to get married. The respondent No. 2 has further alleged that in 2015, as she was pregnant, the petitioner No. 1 and she discussed about the same and pursuant thereto, underwent an abortion at Kokilaben Hospital.

6 As far as petitioner No. 2 is concerned, the respondent No. 2 has alleged that he called her and told her that if she wanted to get married to his son, she should bring Rs. 4 Crores as also money to purchase a flat or shop in Mumbai.

7 The respondent No.2 has stated that sometime in October 2015, the petitioner No. 1 came to meet the respondent No.2 at her place and they had physical relations. According to the respondent No. 2, the petitioner No. 1 told her that he had an affair with a girl and that the marriage did not take place and that he was going to marry her. Later, respondent No. 2 learnt that the petitioner No. 1 had got married to the girl in question. Pursuant thereto, the respondent No. 2 lodged a complaint/FIR with the Oshiwara Police Station on 11th January 2016. After investigation, charge-sheet was filed and presently, the cases are pending with the learned Sessions Judge at Dindoshi being Sessions Cases Nos. 175/2017 and 133/2018.

8 It appears that in the interregnum i.e. during the pendency of the trial, both, the respondent No. 2 and petitioner No. 1 moved on and got married respectively. Both have children from their respective marriage.

9 The respondent No. 2 has filed her affidavit giving her consent for quashing of the proceedings initiated at her behest. She has stated in para 7 of the said affidavit that she is happily married and has started her life afresh and as such, she does not wish to proceed with the said case initiated at her behest. She has further, in para 5, stated that as she was shocked that the petitioner No. 1 had married another lady, feeling deceived, she had approached the police and lodged an FIR as against the petitioners. She has stated that the FIR was a result of an emotional outburst. In para 12, she has given her no objection to the quashing of the FIR/proceedings pending before the learned Sessions Judge at Dindoshi, being Sessions Cases Nos. 175/2017 and 133/2018.

10 Respondent No. 2 is present in Court. Learned counsel for the respondent No. 2 has tendered a self attested xerox copy of the Aadhar Card of the respondent No. 2. The same is taken on record. Learned counsel for the respondent No.2 identified her. Learned

A.P.P has verified the original Aadhar Card of the respondent No.2. On questioning, she re-iterates what is stated by her in the affidavit.

11 It is not in dispute that both, petitioner No.1 and the respondent No. 2 were adults at the relevant time. Having regard to what is stated in the FIR, it appears that the relations were consensual.

12 Considering the nature of allegations, the fact that the parties have since moved on and have got married and have children from their respective marriages, having regard to the affidavit of the respondent No.2 giving her no objection to the quashing of the proceedings and having regard to the judicial pronouncements, there is no impediment in allowing the petition.

13 The petition is accordingly allowed. The FIR/complaint bearing C.R. No. 41/2016 registered with the Oshiwara Police Station, Mumbai, the charge-sheet and all the consequential proceedings

arising therefrom, including the proceedings pending before the learned Sessions Judge at Dindoshi being Sessions Cases Nos. 175/2017 and 133/2018, are quashed and set-aside.

14 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.