

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

CRIMINAL APPLICATION NO. 553 OF 2020

Santosh Bhayalal Gupta

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Shailesh Kharat, Advocate for the Applicant.

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

Mr. Vaibhav Jagdale, Advocate for the Respondent No. 2.

Mr. R. B. Bhat, PSI, Vartaknagar Police Station, present.

**CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.**

DATE : 10th OCTOBER 2022

P.C. :

1. Heard the learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the respondent no. 1-State and Mr. Vaibhav Jagdale, waives notice on behalf of the respondent no. 2.
3. By this Application, the applicant seeks quashing of

the FIR, registered vide C.R. No. 133 of 2019 with the Vartak Nagar Police Station, Thane, for the alleged offences punishable under Sections 363, 366A and 376 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act. Quashing is sought on the premise, that the parties i.e. applicant and the respondent no.2 have got married on 27th May, 2019 and have been living since then, as husband and wife.

4. Perused the papers. The aforesaid FIR was lodged by the respondent no.2's grandmother who is since deceased, a fact, which is confirmed by the learned APP. As the respondent no.2 was missing, her grandmother lodged a complaint which was registered vide C.R.No. 133 of 2019 initially for the offence punishable under Section 363 of the Indian Penal Code. The said FIR was lodged on 16th May, 2019 by the respondent no.2's grandmother. In the said FIR, the complainant has alleged that on 6th May, 2019, her grand-daughter aged 17 years and few months, after disclosing that she was going for her class, left the house, however, did not return. As the respondent no.2 was not traceable, the respondent no.2's grandmother lodged a complaint/FIR, with the Vartak Nagar Police Station, Thane, as

against an unknown person alleging an offence punishable under Section 363 of the Indian Penal Code. The said FIR was lodged on 16th May 2019. It appears that the applicant and the respondent no.2, were found at Nalasopara on 25th July 2019. Thereafter, the police added sections 366A, 376 of the Indian Penal Code and sections 4 and 6 of the POSCO Act.

5. In the 164 statement dated 7th July 2019, the respondent no.2, has stated that she left the house on her own accord with the applicant, as her relatives were not in favour of their marriage. She has stated that she started residing with the applicant, at Nalasopara, and that on 27th May 2019, they got married at the Mahalaxmi Temple, at Mumbai, as per their custom. It appears that subsequently the parties registered their marriage on 13th January 2020, before the Special Marriage Officer. Infact, in the 164 statement, she has stated that her family has given false complaint, against the applicant that the applicant has kidnapped her. She has stated that when the family traced her, they told her that they will take her home and get her married to the applicant, on her returning home. In the

said 164 statement, the respondent no.2, has not made a single allegation of sexual assault, as against the applicant. The birth certificate of the respondent no.2, shows that she was major at the time her statement was recorded and at the time of registration of her marriage before the Special Marriage Officer, she was 18 years. They i.e. the applicant and the respondent no.2 have been staying together for the last three years.

6. Learned APP, on the last date, was asked to verify the documents i.e. marriage certificate and also whether the parties are staying together. Learned APP, on instructions, states that the applicant and the respondent no.2, are married and are residing together since 2019.

7. Respondent no.2 has also filed an affidavit, which is at page 100, of the petition. The said affidavit is dated 4th December 2022, duly affirmed before the notary. In the said affidavit, she has stated that her date of birth is 27th January 2001, and that she attained majority on 27th May 2019, and at the time of marriage she was 18 years old. She has further

stated that she got married to the applicant, on her own free will on 27th May 2019, initially as per hindu custom, and subsequently, got the marriage registered with the Special Marriage Officer on 27th May 2019. She was 18 years on that day. She has further stated that even as per her school leaving certificate, her date of birth is 27th May 2001.

8. Learned counsel for the respondent no.2, has tendered a xerox copy of the Aadhar card of the respondent no.2. The same is duly attested by her. The same is taken on record. Learned counsel for the respondent no.2, has identified the respondent no.2, and the learned APP has verified the original Aadhar card. The photographs of the marriage of the applicant with the respondent no.2 are also annexed to the petition. In the facts, no offence either under section 376 nor under section 363 or 366A nor under the provisions of the POSCO Act are disclosed.

9. Considering what is stated above, the relations between the parties, the respondent no.2's affidavit, that the

applicant and the respondent no.2 are married and residing together since 2019, there is no unimpediment in allowing the petition.

10. The petition is accordingly allowed and the FIR, bearing C.R. No.133 of 2019 registered with the Vartak Nagar Police Station, Thane, and consequently, the proceeding which is pending before the learned Special Judge at Thane, being Special Child Protection Case No.312 of 2019, are quashed and set-aside.

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

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.