

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

CRIMINAL APPLICATION NO. 837 OF 2021

Vijay Sunil Motija

.. Applicant

Vs.

1. The Senior Police Inspector,
Goregaon Police Station, Mumbai

2. The State of Maharashtra

3. XYZ

.. Respondents

.....

Mr. Mateen Shaikh for the applicant

Mr. J.P. Yagnik, APP for the respondent – State

Ms. Muskan Shaikh for the respondent no.3

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 19th DECEMBER, 2022.

ORDER (Per Prithviraj K. Chavan, J.)

1. At the outset, learned Counsel for the applicant seeks leave to amend to mask the name of the prosecutrix, not only in the clause title but wherever it appears in the application and replace it with an alphabet.

2. Leave granted. Amendment to be carried out forthwith.
3. Heard learned Counsel for the parties.
4. Rule. Rule is made returnable forthwith, with the consent of the parties and the application is taken up for final disposal. Mr. Yagnik, learned APP waives service on behalf of respondent No. 2- State and Ms. Shaikh, learned Counsel waives service on behalf of respondent No.3.
5. By this application, preferred under Section 482 of the Code of Criminal Procedure, 1973, the applicant seeks quashing of the FIR bearing C.R. No. 65 of 2021 registered with the Goregaon Police Station, Mumbai under Sections 376(2)(n), 313, 323, 354, 417, 504, 506, 509 r/w 34 of the Indian Penal Code (for short "I.P.C"). Quashing is sought on the premise that the parties have amicably settled their dispute.
6. Facts in brief are as under :-
7. The respondent no.3 had lodged a report with respondent no.1 – Goregaon Police Station, alleging that since June, 2019 to

28.01.2021, the applicant, under the pretext of marriage, committed sexual intercourse and thereafter married with another girl. The allegations of the respondent no.3 are that the applicant had committed sexual intercourse on several occasions due to which she was pregnant and was compelled to undergo termination of the pregnancy at the behest of the applicant. It is *inter alia* alleged that father and mother of the applicant had also threatened her with dire consequences. She had, therefore, approached the police station.

8. Learned Counsel for the respondent no.3 submits that the offence came to be lodged by the respondent no.3 due to misunderstanding and in a fit of anger. She submits that the relations between the respondent no.3 and the applicant were very cordial and that they were in love for more than 2 years, however, due to some misunderstanding, they broke off their relations. She submits that the respondent no.3 after registration of the FIR had approached the Investigating Officer and submitted an application seeking to withdraw the allegations/ complaint against the applicant, much prior to the filing of the charge-sheet.

9. The copy of the said application submitted by the respondent

no.3 to the Dy. Commissioner of Police, Zone, Goregaon, Mumbai, dated 19.07.2021 is at page no.18 of the application. The said letter reads thus:-

“Respected Sir,

I, the undersigned do hereby request your goodself office as under-

I say that on the basis of my allegations and complaint crime was registered bearing C.R. No. 65/21 with Goregaon (West) Police station, u/sec. 376(2)(n), 313, 323, 354, 417, 504, 506 and 509 r/w 34 of IPC, against MR. VIJAY SUNIL MOTIJA, MR. RITESH MOTIJA and MR. SUNIL MOTIJA.

I say that I was having love affair and was in relationship with MR. VIJAY MOTIJA, for about two to three years. That as there was a break up in our relationship, I under fit of rage and anger and due to mis-understanding, registered complaint of rape and other serious allegations against MR. VIJAY MOTIJA.

I say that I am getting married and will be permanently shifting to Delhi, therefore I won't be coming back to proceed further in the above said Police Case. I further say that I don't want that my married life should get disturbed and moreover I don't want to inform my future in-laws about the present police Case.

I therefore request that looking into my present situation, I am be permitted to withdraw the Police complaint bearing C.R. No.65/21 of Goregaon (West) Police Station and I further request I should not be called for any reason to Police Station pertaining to abovesaid my allegations mentioned in C.R. No.65/21.

I say that I am filing this letter under my own free will

and wish without any force or pressure upon me.

Hope you will kindly co-operate and will allow me to withdraw the complaint/allegations at the earliest.

Thanking you,
Yours faithfully,

‘XYZ’

10. The respondent no.3 has also filed an affidavit to that effect, which is sworn before the Assistant Registrar of this Court on 11.08.2021. The said affidavit is taken on record. Learned Counsel for the respondent no.3 has tendered photostat copy of the Aadhar Card of the respondent no.3. The same is taken on record. The respondent no.3 is present in the Court and she reiterates the contents of the said affidavit. Learned Counsel appearing for the respondent no.3 identifies her. Learned APP has also verified the original Aadhar Card of the respondent no.3.

11. A useful reliance has been placed by the learned Counsel for the applicant in the case of **Shambhu Kharwar Vs. State of Uttar Pradesh & Anr.**¹. The Hon’ble Supreme Court discussed the scope of Section 482 of the Code of Criminal Procedure as well as the parameters governing the exercise of the jurisdiction by this Court.

¹ AIR 2022 (SC), 3901

It is well settled that the test is whether or not the allegations in the FIR disclose the commission of a cognizable offence. The Court is not required to enter into merits of the allegations or trench upon the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence. This is in consonance with the parameters formulated by the Supreme Court in the case of **State of Haryana Vs. Bhajan Lal**,².

12. In case of **Shambhu Kharwar** (supra), the appellant and the respondent no.2 were also in consensual relationship since 2013 to December, 2017. Both were educated and adults. Respondent no.2 during that period got married with someone else. The marriage ended in a decree of divorce by mutual consent on 17th September, 2017. The allegations made by the respondent no.2 indicated that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent. It is held that allegations in the complaint as they stand in the First Information Report or in the Charge-sheet do not attract the ingredients of Section 376 of the Indian Penal Code.

² 1992 Supp. (1) SCC, 335

13. Having regard to the ratio of the aforesaid judgment and having considered the facts of the case, we are of the view that Section 376 will have no application to the facts of this case, inasmuch as, the relationship between the parties, who are adults, was clearly consensual. A perusal of the FIR clearly reveals the nature of relationship between the parties. The allegations do not indicate that the applicant had given a promise to the respondent no.3 to marry, which at the inception was fake and that on the basis of which respondent no.3 was induced to have a physical relationship.

14. Even otherwise, the respondent no.3 has given her no objection to the quashing of the FIR for the reasons set out in the affidavit. In fact, the respondent no.3 had also given a letter as reproduced in para 7, seeking to withdraw her complaint, during the pendency of the investigation. We are satisfied that the consent given by her is genuine, out of her own free will and volition.

15. On being questioned, the respondent no.3 reiterates what is stated by her in the affidavit and that she has no objection to quashing of the aforesaid C.R.

16. The application is accordingly allowed and C.R. No. 65 of 2021 registered with the Goregaon Police Station, Mumbai under Sections 376(2)(n), 313, 323, 354, 417, 504, 506, 509 r/w 34 of the Indian Penal Code is quashed and set aside.

17. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]