

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1186 OF 2021**

1. Deepak Kumar Burma	]	
2. Om Prakash Burma	]	Petitioners
Vs.		
1. The State of Maharashtra	]	
2. XYZ	]	Respondents

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Mr. Umesh Iyer, Jitendra Jagtap and Ms. Ruchika Indalkar and
Mr. Laukik Pawar, for Petitioners.

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

Mr. Uttam Rane i/b Mr. Atul Dalvi, for Respondent No.2.

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

DATE : 16th DECEMBER, 2022.

ORDER: [Per Prithviraj K. Chavan, J.]:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal.

Learned A.P.P waives notice on behalf of the respondent No.1 – State. Mr. Rane, learned Counsel waives notice on behalf of the respondent No.2.

3. By this petition, preferred under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the First Information Report (for short "F.I.R") bearing No.53 of 2017 registered with the Antop Hill Police Station for the alleged offences punishable under sections 376, 420, 504 and 506 of the Indian Penal Code (for short "I.P.C").

4. Perused the papers. The facts in brief are as under.

5. Respondent No.2 is the prosecutrix, aged 31 years. From November, 2016, she was residing with her two friends at Varadvinayak Building, Nerul (West), Navi Mumbai. Her educational qualification is B.E Electronics and Communication. She was serving at Exenger Solution Company, Airoli. The prosecutrix is originally from Nagpur.

6. In the month of March, 2009, she was acquainted with the petitioner on "Rediff Bol App Messenger", who was a resident of Burma, District Bokaro, Jharkhand. There were exchanges of messages between them and also conversation on phone. The petitioner No.1 was studying Engineering at Bhopal at the relevant time while the prosecutrix was studying Engineering at Nagpur. The petitioner No.1 and the prosecutrix met each other. It is stated in the F.I.R that due to the acquaintance and closeness, they fell in love. The petitioner No.1, however, forcibly kept sexual relations with the prosecutrix by promising that he would marry her in future.

7. Meanwhile, the prosecutrix lost her job and, therefore, the petitioner No.1 and the prosecutrix stayed together at Ganeshvihar Society, in front of Ayyappa Garden, Dhanori Road, Pune for a period of two months. The petitioner No.1 thereafter left for *Bhuvaneshwar* in the month of June, 2015 for prosecuting M.B.A. The prosecutrix, too, went to *Bhuvaneshwar* on 16th October, 2015 and stayed with the petitioner No.1 at his room.

Till that time, he was ready to marry her. He was repeatedly saying that after completion of his M.B.A, he would marry her. Thereafter, the petitioner No.1 started avoiding the prosecutrix by saying that his family members are looking for a bride.

8. The petitioner No.1 thereafter got engaged with another girl. The prosecutrix had contacted the said girl and informed her about her relations with the petitioner No.1. Since the petitioner No.1 was avoiding the prosecutrix, she had been to his house at *Jawahar Nagar* on 24th December, 2016. She was abused and driven away by the petitioners and their family members and sisters outside the house under the pretext that she belongs to different community. The petitioner No.1, thereafter, started working at K.P.M.G Maruti Infotech Center, Bengaluru, Karnataka as a Software Engineer.

9. The respondent No.2, therefore, lodged a report against the petitioner No.1, as above. Since the parties have amicably settled the dispute, the prosecutrix has filed an affidavit "Exhibit B" dated 8th December, 2020 duly notarized before the Notary. In

the affidavit, she has stated that she was in love and had physical relations with the petitioner No.1, however, due to his family pressure, he did not agree to marry her and because of her family pressure, she lodged an F.I.R against him. However, in view of the amicable settlement between them, she does not wish to prosecute the criminal case. She has also stated that she is also married and well settled in her life.

10. Photocopy of the Aadhar Card of the respondent No.2 is annexed with the affidavit. Settlement and compromise between them is *bona fide* in nature. Nobody had induced her, in any manner, to arrive at settlement. She, therefore, has no objection if the F.I.R bearing No.53 of 2017 dated 6th February, 2017 lodged by her with the Antop Hill Station is quashed and set aside. Respondent No.2 is present in the Court. She has no objection for quashing of the F.I.R.

11. Learned Counsel appearing for the respondent No.2 has identified the Respondent No.2 and the learned A.P.P has verified the original Aadhar Card of the respondent No.2.

Learned Counsel appearing for the petitioners submits that the parties have amicably settled their dispute and as such, the respondent No.2 has no objection if the proceeding i.e the aforesaid C.R. is quashed and set aside.

12. To arrive at settlement in such matters, the learned Counsel has placed reliance on a judgment in the case of **Shambhu Kharwar Vs. State of Uttar Pradesh and another, AIR 2022 (SC), 3901**. In the said case, the Hon'ble Supreme Court had discussed the scope of section 482 of the Code of Criminal Procedure and the parameters governing the exercise of the jurisdiction of this Court. It is well settled that the test is whether or not the allegations in the F.I.R disclose the commission of a cognizable offence. The Court does not enter into the 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 case of **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC, 335**.

13. 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. The ratio in this judgment is squarely applicable to the present set of facts.

14. Having considered the nature of the allegations, nature of the dispute, amicable settlement between the parties, affidavit of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in **Gian Singh Vs. State of Punjab and another**¹ and **Narinder Singh and others Vs. State of**

¹ (2012) 10 SCC 303

Punjab and another², there is no impediment in allowing the petition.

15. The petition is accordingly allowed and F.I.R No.53 of 2017 registered with the Antop Hill Police Station as against the petitioners for the alleged offences punishable under sections 376, 420, 504 and 506 is quashed and set aside.

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

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

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]

² (2014) 6 SCC 466