

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

CRIMINAL WRIT PETITION NO. 3585 OF 2022

Siddharth Rajesh Bhoir

... Petitioner

Versus

1. The State of Maharashtra

2. XYZ

... Respondents

Mr. Jubin P. Mehta, for the Petitioner.

Mr. K. V. Saste, APP for the Respondent No.1 – State.

Mr. Robin Nazareth, for the Respondent No.2.

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

DATE : 15th DECEMBER, 2022.

P. C. :

At the outset, learned Counsel for the petitioner seeks leave to amend to remove the photographs from page Nos. 24 to 49 from the Petition. Leave granted. Amendment to be carried out forthwith. The photographs also to be removed from the copies of the petition with the prosecutor. The same also be done forthwith.

2 In addition to the aforesaid amendment, learned Counsel for the petitioner also seeks leave to amend, to delete the name of the prosecutrix from the array of the respondents and wherever it

appears in the Petition and replace it with an alphabet. Amendment be carried out during the course of the day.

3 Heard learned Counsel for the parties.

4 Rule. Rule is made returnable forthwith with the consent of the parties and the petition is taken up for final disposal and learned A.P.P waives notice on behalf of the respondent No.1–State and learned Counsel Mr. Robin Nazareth waives notice on behalf of the respondent No.2.

5 By this Petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing and setting aside of the FIR, bearing C.R.No. 1022 of 2022, registered with the Kasturba Marg Station, Mumbai, for the alleged offences punishable under Sections 376, 376(2)(n), 420 of the Indian Penal Code. Quashing is sought on the premise, that the parties have amicably settled their dispute.

6 Perused the papers. The petitioner is 28 years of age and runs

tuition classes at Dahisar (E), Mumbai. The respondent No.2 (original complainant) is aged 30 years. She has stated that she met the petitioner on Instagram when the petitioner sent her a message; and that on 01/07/2020, the petitioner invited her for having coffee, pursuant to which, she met the petitioner near Dahisar. Respondent No.2 has stated that the petitioner accompanied her to Mount Mary Church, when he learnt that she liked to visit the said Church. She has further stated that the petitioner took her to Fountain Hotel at Thane, pursuant to which closeness developed between them. According to the respondent No.2, in July, 2020, she went for a party with the petitioner at Gorai, where the petitioner had physical relations with her. She has further alleged that on 16/08/2020, the petitioner proposed to her and asked her to marry him and that on the same day they went to a hotel at Thane, where both had physical relations.

7 Respondent No.2 has further stated that in October, 2020, they started residing at Mira Road, Thane and that they lived together from October 2020 to September, 2021 i.e. they were in a live in relationship, and had physical relations regularly. According

to the respondent No.2, in January, 2022 she received a call from one lady, who informed her that she was petitioner's girlfriend; that when she confronted the petitioner, the petitioner told her that the said girl was threatening him, as he had taken financial aid from her; that the petitioner put her and the said lady on a conference call, and told the said lady, that she (respondent No.2) was to be his wife and that she should not lie to her; that pursuant thereto they (petitioner and respondent No.2) started residing together again. The respondent No.2 has stated that as the petitioner was not informing his mother about their marriage, there were frequent quarrels between them. Respondent No.2 has further stated that the petitioner called her on 24/06/2022 and told her he wanted to meet her urgently and speak with her, pursuant to which they met; that the petitioner disclosed that he got married to a girl on 10/06/2022, however, he did not want to stay with her; that he would get divorced from her, pursuant to which there was a quarrel between them, on account of the same. She has stated that thereafter again on 25/06/2022, the petitioner met her at a hotel, where they quarreled on their marriage and they had physical relations. Pursuant thereto, the respondent No.2 lodged the aforesaid FIR on

02/07/2022 as against the petitioner alleging the aforesaid offences.

8 After investigation, charge-sheet was filed in the said case and the case is presently pending before the learned Sessions Court at Dindoshi, Mumbai, being Sessions Case No. 647 of 2022. The trial is yet to commence.

9 In the interregnum, during the pendency of the aforesaid proceeding, the parties amicably settled their dispute. Learned Counsel for the respondent No.2 states that the respondent No.2 has filed her affidavit dated 12th July, 2022 duly affirmed before the Assistant Registrar, High Court, Bombay. In the said affidavit, respondent No.2, age 30 years, has stated that she met the petitioner on Instagram in July, 2020; that they knew each other; and, that both were in a relationship for about two years. She has stated that the relations between them i.e between her and the petitioner were purely consensual and that no physical force or harm was caused by the petitioner, at any point of time. She has further stated that in July 2020 till June 2022, they were living together. According to the respondent No.2, on 25th June, 2022, she had a heated argument

with the petitioner, with respect to his marriage, pursuant to which she lodged the aforesaid FIR as against the petitioner. She has stated in para 5 of the said affidavit that she thought her complaint would be an ordinary complaint and will not lead to the petitioner's arrest. According to the respondent No.2, she lodged the said FIR out of anger and it was never her intention to harm the petitioner, as the relations between them were consensual. She has stated that she has no objection for quashing of the complaint/FIR.

10 The respondent No.2 is present in person before the Court. On being questioned, she re-iterates what is stated by her in her affidavit. She states that the relations were consensual between her and the petitioner. The photographs relied upon by the learned Counsel for the petitioner also shows the nature of relationship between the parties i.e. the petitioner, aged 28 years and the respondent No.2, aged 30 years. Learned Counsel for the respondent No.2 has tendered a photo copy of the Aadhar Card of the respondent No.2 duly attested by her. The same is taken on record. She is identified by her Counsel and the learned APP has verified the original Adhar Card of the respondent No.2.

11 A perusal of the FIR/chargesheet clearly reveals the nature of relationship between the parties. The FIR reveals that the relation between the petitioner, aged 28 years and the respondent No.2, aged 30 years, was consensual in nature and that they were living together i.e. they were in a live-in-relationship, for about one year and two months. The allegations do not indicate that the petitioner had given a promise to the respondent No.2 to marry which at the inception was fake and that on the basis of which respondent No.2 was induced into a sexual relationship.

12 Considering the peculiar facts of this case, we are of the view that Section 376 will not have any application to the facts of the present case, inasmuch as, the relationship between the parties, who are adults, was consensual. Thus, there is no impediment in quashing the case. Even otherwise, the respondent No. 2 has given her no objection to the quashing of the FIR/proceeding for the reasons set out in her affidavit. We are satisfied that the consent given by her is genuine, out of her own free will and volition. The case in hand is covered by the judgments of the Apex Court in **Kapil Gupta Vs. State of NCT of Delhi and Anr.**, dated 10th August, 2022,

passed in **Criminal Appeal No. 1217 of 2022 @ S.L.P. (Cri.) No. 5806 of 2022** and **Shambhu Kharwar Vs. State of UP and Anr.**, dated 12th August, 2022, passed in **Criminal Appeal No. 1231 of 2022 (arising out of SLP (Cri.)No. 7426 of 2022)**.

13 Accordingly, the Petition is allowed and the FIR bearing C.R.No. 1022 of 2022, registered with the Kasturba Marg Police Station, Mumbai, as against the petitioner and consequently, the proceeding pending before the learned Sessions Court at Dindoshi, Mumbai, being Sessions Case No. 647 of 2022 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.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

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by REKHA
PRAKASH PATIL
Date:
2023.01.04
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Rekha Patil

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