

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

WRIT PETITION NO. 3453 OF 2021

Mr.Pravin Maruti Kothawale & Anr.

...Petitioners

vs.

Mr.Amol Anjaram Kajalkar & Anr.

...Respondents

Mr.Vilas B. Shivarkar for Petitioners.

Mr.P.D. Pise for Respondent No.2.

Mrs.S.D. Shinde, APP for State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 4 FEBRUARY 2022

P.C. :

. By the present writ petition, the Petitioners are praying for quashing of FIR dated 13 September 2019 registered with Bhosari Police Station, District Pune vide Crime No.823/2019 for the offences punishable under Section 376 of IPC and Section 3(A), 4, 8 to 12 of Protection of Children from Sexual Offences Act, 2012.

2. Petitioner No.1 is the original informant, who had lodged a report against Respondent No.1 on 13 September 2019 alleging therein that Respondent No.1 repeatedly established physical and sexual relationship with her minor daughter on the pretext of marriage and when sonography of daughter of Petitioner No.1 was conducted, it was revealed that she was pregnant. On such, the complaint was registered and during the investigation and after attaining of majority by Petitioner No.2, Respondent No.1 performed marriage with Petitioner No.2 and accordingly,

the first informant and the victim have jointly filed the present petition for quashing of FIR and chargesheet, which was filed after completing the investigation.

3. We have heard learned Counsel for the respective parties.

4. Learned Counsel for the Petitioners submit that it was never the intention of Respondent No.1 to give any false promise of marriage to Petitioner No.2. Learned Counsel for the Petitioners has drawn attention of this court to the statement of Petitioner No.2 dated 13 September 2019 wherein she had categorically stated that after revealing the fact that she was pregnant which was informed to Respondent No.1 whereupon Respondent No.1 had shown his willingness to take the responsibility of the child. Thus, he submits that looking to the intention of Respondent No.1 since beginning, it cannot be said that false promise was given by Respondent No.1.

5. Learned Counsel for the Petitioners submits that there was a love affair of Respondent No.1 and Petitioner No.2 and they wanted to marry and accordingly, after Petitioner No.2 attained the age of majority, Respondent No.1 has performed marriage with her and they both are living happily. It is submitted that even if the trial is permitted to be conducted, the whole exercise would be futile and in view of the judgment of **Madan Mohan Abbot vs. State of Punjab**, [(2008) 4 SCC 582], the FIR and chargesheet in question may be quashed and set aside.

6. After considering the factual aspects on the record, we are of the opinion that as Respondent No.1 has performed marriage with

Petitioner No.2 and they both are living happily, it is clear that there was no intention of Respondent No.1 to establish physical relations with Petitioner No.2 by giving her false promise of marriage. Moreover, undisputedly, there was love affair between Petitioner No.2 and Respondent No.1.

7. It is pertinent to note the relevant portion of the statement given by Petitioner No.2 on 13 September 2019, which reads thus :

‘ मी गरोदर असल्याचे मला डॉक्टरानकडून समजल्याने मी हि बाब अमोल ह्यास सांगितले त्या वेळी त्याने बाळास जन्म देवुन त्याचा सांभाळ करण्याचा निर्णय मला कळविला. ’

8. The above referred relevant portion of the statement of Petitioner No.2 is sufficient to show that on knowing the fact that Petitioner No.2 was pregnant, Respondent No.1 had readily shown his willingness to take the responsibility of the child and he acted accordingly and performed marriage with Petitioner No.2.

9. Thus, in the peculiar facts and circumstances of the present case, we find substance in the submissions of learned Counsel for the Petitioners that it would be a futile exercise to allow the trial to be conducted.

10. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Madan Mohan Abbot vs. State of Punjab** (supra), we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. We are of the view that in the backdrop of the aforestated fact-situation, the continuation of prosecution of the Petitioners

in the instant case will amount to abuse of the process of Court and therefore, it is in the fitness of things to quash the FIR and proceeding in order to secure the ends of justice. We are in agreement with the submission of the learned Counsel appearing for the respective parties that continuation of criminal proceedings in the instant case will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored.

11. In the peculiar facts and circumstances of the present case and in view of the law laid down in the case of **Madan Moham** (supra), We are of the opinion that the FIR and chargesheet need to be quashed and set aside.

12. Accordingly, the writ petition is allowed. The FIR registered vide C.R. No.823/2019 against the Petitioners at Bhosari Police Station, District Pune for the offences punishable under Section 376 of IPC and Section 3(A), 4, 8 to 12 of Protection of Children from Sexual Offences Act, 2012 and the chargesheet are hereby quashed and set aside.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)