

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

CRIMINAL WRIT PETITION NO.3467 OF 2022

Zaid Anwar Shaikh

...Petitioner

Versus

1. The State of Maharashtra

2. Ms. X

...Respondents

Mr. Milan Desai i/b Ms. Dhvani Shah, for the Petitioner.

Ms. M. H. Mhatre, A.P.P for the Respondent No.1– State.

Mr. Prakash N. Wagh, for the Respondent No.2.

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

DATE : 28th SEPTEMBER 2022

P.C. :

1. Heard 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 A.P.P waives notice on behalf of the respondent No.1–State. Mr. Wagh waives notice on behalf of the respondent No.2.

3. By this petition, the petitioner seeks quashing of the FIR bearing C.R. No. 645 of 2022, registered with the Kurar Police Station, Mumbai, for the alleged offences punishable under Sections 376(2)(n), 377, 420, 313, 323, 504 and 506(2) of the Indian Penal Code ('IPC'). Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2 (original complainant), aged 37 years, she is a divorcee and a mother of a son. She has stated that post her divorce, she shifted to Bengaluru and that in the year 2017 when she visited Mumbai, she met the petitioner. She has stated that their initial first meeting developed into an acquaintance and that thereafter, their friendship turned into an intimate relationship. It appears that the petitioner would visit the respondent No.2's house and would have physical relations with her on the pretext of marriage. According to the respondent No.2, she resisted, however, the petitioner continued to have physical relations with her. She has stated that she had also rendered some financial

assistance to the petitioner, as the petitioner wanted to purchase a car and wanted to invest in shares. She has stated that on 18th May 2022, the petitioner blocked her number saying that she was a quarrelsome person. According to the respondent No.2, it is then that she realised that the petitioner on the pretext of marriage, had cheated her and had physical relations with her, against her will, pursuant to which, she filed the aforesaid complaint/FIR on 20th June 2022. It appears that within a month of the lodging of the complaint/FIR, the respondent No.2 addressed a letter dated 14th July 2022, to the Sr. Inspector of Police, Kurar Police Station, Mumbai, which is at Exhibit – ‘B’, at page 19 of the petition. In the said letter addressed by the respondent No.2, she has stated that she realised that under wrong and misconceived perception, she was driven to lodge an FIR against the petitioner, and that she had resolved the dispute with the petitioner and amicably settled the dispute with the petitioner. She has stated in the said letter, that the entire episode referred to in the FIR was a product of misunderstanding and miscommunication between her and the petitioner and as the same has now been

amicably resolved, she does not wish to proceed with the said complaint/FIR. She has further in para 5 of the said letter stated that both i.e. the petitioner and the respondent No.2 have decided to lead their lives happily and that she does not wish to pursue the present case and as such wishes to withdraw the aforesaid complaint/FIR lodged by her, as against the petitioner.

5. It appears that the petitioner was arrested, pursuant to the said FIR, which was registered vide C.R. No. 645 of 2022. During the hearing of the bail application of the petitioner, the respondent No.2 filed an affidavit, which is at Exhibit – ‘C’ on page 22 of the petition, before the learned Sessions Court, at Dindoshi, Goregaon, Mumbai. In the said affidavit in para 2, she has stated that she had met the petitioner and that their formal relationship had turned into friendship and thereafter, into a love relationship, which was nurtured with mutual consent of each other. She has stated that during this period of their mutual relationship, the petitioner regularly visited her residential premises with her permission and consent and during the

said period from 2017 to 2020, she neither protested nor objected or resisted to the visit of the petitioner at her residence. She has stated that their relationship extended to having and maintaining physical relationship with each other by mutual consent and that during the said period, neither of them, either protested, objected or resisted to the said physical relationship, since the same was consensual and with her permission, as the petitioner had promised to marry her. She has further stated that she has decided to amicably settle the dispute with the petitioner, being a single parent and the only earning person in the family. She has also stated that she has no objection for the quashing of the criminal proceedings. Having regard to the nature of sections applied in the aforesaid C.R, the police continued with the investigation and ultimately filed a charge-sheet.

6. Learned Counsel for the respondent No. 2 has filed an affidavit of the respondent No.2 (original complainant) dated 18th August 2022, duly affirmed before the Assistant Registrar, High Court, Appellate Side. Respondent No. 2 is present in Court. On

being questioned, she re-iterates what was stated by her in the affidavit filed by her before the Sessions Court and affidavit filed before this Court dated 18th August 2022, and as such, it is not necessary to reproduce the same again. The fact remains, that she has stated that the relationship between them was consensual and that the misunderstandings between them are cleared and that she does not wish to pursue the aforeaid proceeding and as such has no objection for quashing of the aforeaid complaint/FIR. Learned counsel for the respondent No. 2 has tendered a self attested xerox copy of the aadhar card of the respondent No. 2. The same is taken on record. Learned Counsel for the respondent No.2 has identified the respondent No.2. Learned APP has also verified the original aadhar card with respect to the identity of the respondent No.2.

7. We have perused the FIR, the SMSs' that are part of the charge-sheet exchanged between the parties and as such we are of the opinion that the relationship between the parties i.e. the petitioner aged 29 years and the respondent No.2, aged 37 years was consensual

in nature and as such Section 376 of the IPC, will have no application, in the facts of the case.

8. Considering the aforesaid and also having regard to the amicable settlement between the parties and the affidavit of the respondent No.2, no useful purpose would be served by continuing the aforesaid proceeding.

9. The petition is accordingly allowed and the FIR bearing C.R. No. 645 of 2022, registered with the Kurar Police Station, Mumbai, and all consequential proceedings arising therefrom, are quashed and set-aside.

10. We have been coming across cases, where women after being in a relationship for several years, file cases under Section 376 of the IPC, when differences develop with the partner or when discordant note strikes or to settle personal scores between them and

the person, with whom they are in a relationship. Cases are filed at the drop of a hat, sometimes to teach the partner a lesson or in a fit of anger/impulsively. Being a serious offence, the police are duty bound to lodge an FIR. What follows is arrest of the man, only to be followed by letters/affidavits seeking withdrawal of the FIR/giving no objection to the quashing of the FIR, having amicably settled their dispute. Affidavits are filed, that out of misunderstanding, in a fit of anger/rage, the FIR was lodged. Cases such as this, certainly impact genuine cases, as genuine cases are looked upon with suspect, thus doing greater disservice to other women, whose cases are genuine. This is nothing but misuse and abuse of law. There is a rise in such cases, seeking quashing of such cases by consent. Having regard to the serious allegations, police machinery conducts investigation, arrests the accused, files charge-sheet, thus spending their valuable time, only to end in quashing of the proceedings by consent. Hence, in these facts, we deem it appropriate to direct both parties to pay costs. Accordingly, the petitioner and the respondent No.2 to deposit costs of Rs.25,000/- each with the **Mumbai Police Welfare Fund bearing**

Account No. 465010100008693, IFSC No. UTIB0000465, within four weeks from today.

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

12. Stand over to **19th November 2022,** for recording compliance of the said deposit of costs.

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.