

Shiv

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

**CRIMINAL WRIT PETITION NO.3670 OF 2019
WITH
INTERIM APPLN.NO.2772/2021 IN CRI.WP NO.3670/2019
WITH
WRIT PETITION NO.1014 OF 2022**

Mr. Binoy Kodiyeri

...Petitioner

Versus

1. State of Mahaharashtra

...

2. ABC

...Respondents

Mr. Rishi Bhuta with Ms. Ankita Bamboli for the Petitioner.

Ms. S. D. Shinde for the Respondent No.1-State.

Mr. Prashant Phopale i/b P.M.H. Law for the Respondent No.2.

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

DATE : 27TH SEPTEMBER 2022

P.C. :

1 At the outset learned Counsel for the petitioner seeks
leave to amend to delete the name of the respondent no.2 and

mask it with 'ABC'. Leave granted. Amendment be carried out forthwith.

2 Heard learned Counsel for the parties.

3 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. Prashant Phopale waives notice on behalf of the respondent No.2.

4 By this petition, the petitioners seeks quashing of the FIR bearing C.R. No. 237 of 2019 registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under Sections 376, 376(2)(n), 420, 504 and 506 of the Indian Penal Code.

5 Quashing is sought on the premise, that the parties, who are both adults, were in a consensual relationship and that they have amicably settled their dispute.

6 Perused the papers. According to the respondent no.2 (Original Complainant) aged 33 years, after the demise of her father, she shifted to Mumbai, with her mother and started residing with her sister at Oshiwara. She has stated that in July 2007, she joined her friend's dance class, where she learnt different forms of dance. The respondent no.2 has further stated that as her family was in financial difficulty, with the help of her friend, she took up a job at a dance bar, in Dubai, some time in September 2009. She has stated that while working as a dancer, at the dance bar, she met the petitioner, who frequented the dance bar, and that the petitioner would shower money on her. She has alleged that the petitioner took her contact number (Dubai number) and started calling her frequently; that the petitioner disclosed to her that he was from Kerala and was in the construction business, at Dubai, that they became friends and that the petitioner took her to his Dubai house; that after a few days, he gifted her some articles and disclosed that he was unmarried and that he would marry her, if she left working in the dance bar. The respondent no.2

expressed her willingness to do so, as the petitioner was ready to marry her. The respondent no.2 has further alleged that in October 2009, the petitioner called her to his house in Dubai, where they had physical relations. She has stated that she had physical relations with the petitioner, as he was going to marry her. She has further stated that she informed the petitioner about her pregnancy in November 2009, pursuant to which the petitioner brought her to Mumbai, where she stayed in a Hotel; that during the stay, the respondent no.2 introduced the petitioner to her family, her mother and sister. The petitioner assured the family members of the respondent no.2 that he would speak to his family about the marriage and left for Kerala. The respondent no.2 has stated that she started residing in a flat and whenever the petitioner came to Mumbai, they would spend time in the said flat. Thereafter, the petitioner took a flat on rent for the respondent no.2, where she started residing. The petitioner is stated to have come to the said flat, twice a month, when they had physical relation. On 22nd July 2010, the respondent no.2 gave birth to a boy and informed to the petitioner about the same. The petitioner is alleged to have

again promised the respondent no.2 to marry her, on the first birthday of their child. Again in 2014, the petitioner rented another apartment for the respondent no.2, after the lease of the previous Andheri flat, had expired. In 2015, the petitioner is alleged to have informed the respondent no.2 that the construction business in Dubai was near bankruptcy and as such, he could not send her money. The respondent no.2 has further stated in the complaint that in January 2018, she learnt from the social media that the petitioner was already married and when she confronted the petitioner about the same, the petitioner gave feeble answers, threatened and verbally abused the respondent no.2, pursuant to which she lodged the FIR. After investigation, charge-sheet was filed and the case is presently pending in the Sessions Court, at Dindoshi, Mumbai, being Sessions Case No.37 of 2021.

7 It appears that in the interregnum, the parties i.e. the petitioner and the respondent no.2 amicably settled their dispute and entered into consent terms. The said consent terms are annexed to Exhibit-C at page 257 to the Writ Petition

No.1014 of 2022. The said consent terms have been affirmed on 21st March 2022 before the notary. In the said consent terms, in paragraph 8, it is stated that the relationship between the petitioner and the respondent no.2 was consensual and as they were regularly meeting each other, an affair blossomed between them and subsequently, when the relationship became strained, the FIR was lodged. It is also stated in paragraph 10, that keeping in mind the interest and wellbeing of the minor child, the petitioner has to pay a sum of Rs.80,00,000/- by demand draft. We are informed that out of Rs.80,00,000/-, the respondent no.2 has received a sum of Rs.40,00,000/-. Today, learned counsel for the petitioner has handed over another demand draft of Rs.30,00,000/- and a cheque of Rs.10,00,000/- to the respondent no.2. Learned counsel for the respondent no.2, on instructions of the respondent no.2, acknowledges receipt of the demand draft. The respondent no.2, who is present in Court states that instead of a cheque of Rs.10 lakhs the petitioner be directed to transfer Rs.10 lakhs by RTGS. Learned counsel for the petitioner states that he has no objection for the same and assures to transfer the same by

RTGS. There are several other terms and conditions set out in the said consent terms and both parties have agreed to abide by the said terms and conditions as set out in the consent terms.

8 Learned counsel for the respondent no.2 has tendered the affidavit in support of the consent terms dated 11th April 2022, duly affirmed before the notary. The said affidavit is taken on record. In the said affidavit, the respondent no.2 has stated that she has withdrawn all statements made by her against the petitioner. She has stated that she has withdrawn all her statements which carry innuendo, imputation, allegation or suggestion that the petitioner is her husband. In paragraph 3 of the said affidavit, she has stated that the relationship between her and the petitioner was consensual, and as they were regularly meeting each other, an affair blossomed between them and when the relationship get strained, she lodged an FIR, bearing C. R. No. 237 of 2019. She has further stated that she as no objection to quashing of the proceedings initiated by her. As noted above, the petitioner and the respondent no.2 are both adults. It appears from a perusal of the FIR, that the parties

were in a consensual relationship from 2009 to 2019. The same has also been accepted by the respondent no.2 in her affidavit. Thus, no offence can be said to have been disclosed under section 376 of Indian Penal Code. Even otherwise, it appears that the parties have amicably resolved their dispute and as such, the respondent no.2 does not intend to proceed with the case. The respondent no.2 is present in person. On being questioned, she re-iterates what is stated by her in her affidavit. Learned counsel for the respondent no.2 has tendered a xerox copy of the Aadhar card, duly signed by the respondent no.2. Learned counsel for the respondent no.2 has identified the respondent no.2. Learned APP has verified the original Aadhar card.

9 Considering what is stated aforesaid, it appears that the relation between the parties was consensual in nature. The parties have also amicably settled their dispute by filing consent terms. Having regard to what is observed hereinabove, there is no impediment in allowing the petitions. Accordingly, the FIR, bearing C.R. No. 237 of 2019 registered with the Oshiwara Police

Station, Mumbai and consequently, the proceeding arising therefrom, are quashed and set-aside.

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

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.