

RUPALI
RAJESH
WAKODIKAR
Digitally signed
by RUPALI
RAJESH
WAKODIKAR
Date:
2022.11.14
17:43:25 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3439 OF 2022

‘A’

...Petitioner

Versus

1. The State of Maharashtra
2. ‘B’
3. ‘C’

...Respondents

Mr. Prashant Patil for the Petitioner.

Mr. J.P.Yagnik, A.P.P for the Respondent-State.

Ms. Vrushali Maindad for the Respondent Nos.2 & 3.

CORAM : REVATI MOHITE DERE &
S. M. MODAK, JJ.
DATE : 18th OCTOBER, 2022

P.C. :

1. At the outset, learned Counsel for the petitioner seeks leave to delete the names of the petitioner and the respondent Nos.2 and 3 and replace the same with alphabets, so that their identity is not disclosed. The same is done in the peculiar facts, having regard to the

age of the petitioner and the respondent No.2 and keeping in mind their future. Leave granted. Amendment to 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. Ms. Vrushali Maindad waives notice on behalf of the respondent Nos.2 & 3.

4. By this petition, the petitioner seeks quashing of the FIR, bearing C.R. No. I-490 of 2018 registered with the Mahatma Phule Chowk Police Station, Kalyan, Dist. Thane, for the alleged offences punishable under Sections 326, 504, 506 etc. of the Indian Penal Code. Quashing is sought on the premise that the parties have amicably settled their dispute.

5. Perused the papers. The respondent No.2, aged about 14

years, in his FIR has alleged that on 20th November, 2018, he received an SMS purportedly from his friend 'X', asking him to meet him (when infact, the message was sent by the petitioner); that he replied in the affirmative and accordingly, went down to meet his friend 'X'. The respondent No.2 has further alleged that when he went down, he noticed that his friend 'X' was not there and instead, 'A' (petitioner) was standing there, and was acting as if he was talking with 'X', on his phone. The respondent No.2 has further alleged that 'A' (petitioner) told him that 'X' had asked him to meet him at Khadakpada and accordingly, he sat on the petitioner's scooty and went towards Khadakpada with the petitioner; that on the way to Khadakpada, the petitioner stopped the scooty near an agricultural field and told him that he needed to change his clothes; that the petitioner changed his clothes and the petitioner pulled out a sickle from his bag and threatened him, as to why he was intervening between him and one girl 'Z' and why he was talking with her; thereafter, the petitioner is stated to have assaulted the respondent No.2 on his head with the said sickle. According to the respondent No.2, when he told the petitioner

not to assault him and that he would not disclose to anyone that he had assaulted him and to take him home, the petitioner dropped him to his house and informed his mother (respondent No.2's) that he had fallen from the scooty and had sustained an injury on his head. It appears that as the petitioner is alleged to have told the respondent No.2, not to disclose the incident to any person, the respondent No.2 did not disclose the incident of assault to his parents/doctors on 20th November, 2018. It is only on the next day, i.e. on 21st November, 2018, that the respondent No.2 disclosed the incident to his parents, pursuant to which, the aforesaid complaint / FIR was lodged as against the petitioner. The petitioner, at the time of incident, was aged 18 years and one month and the respondent No.2, was 14 years of age. After investigation, chargesheet was filed as against the petitioner and the case is pending before the learned Assistant Sessions Judge, Kalyan, Thane being S.C. No. 154 of 2019.

6. In the interregnum, the parties settled their dispute having regard to the tender age of both, the petitioner as well as the

respondent No.2, and keeping in mind their future prospects. Learned Counsel for the petitioner as well as the learned Counsel for the respondent No.2 state that the pending criminal proceeding will come in the way of the petitioner's as well as the respondent No.2's careers and as such, the respondent No.2 has no objection for quashing of the proceedings as against the petitioner. Learned Counsel for the petitioner further submits that the facts would reveal that the petitioner himself, after the assault, took the respondent No.2 to his house, and even informed the respondent No.2's mother, albeit, false information was furnished i.e. that the respondent No.2 had fallen down from the scooty. The respondent No.2 is now a major i.e. he has completed 18 years.

7. Learned Counsel for the respondent No.2 has filed an affidavit of the respondent No.2 dated 18th August, 2022, duly notarized before the Notary, which is at 'Exhibit-C' on page 85, stating therein, that he is studying in College (1st year) and that he has no objection for quashing of the FIR, having regard to both their

educational careers. The respondent No.2's father i.e. the respondent No.3 has also filed his affidavit which is at 'Exhibit-D' on page 87. The respondent No.3 has stated that he has no objection if the case is quashed, having regard to the future of his son i.e. the respondent No.2 and that of the petitioner and their ages at the relevant time, when the incident took place, and their future educational prospects.

8. The respondent No. 2 is present in Court. He is identified by his Counsel. Learned Counsel for the respondent No.2 has tendered a xerox copy of the aadhar card of the respondent No.2. The same is taken on record. Learned APP has verified the original aadhar card.

9. Having regard to the tender age of the petitioner and the respondent no.2 at the relevant time, the manner in which the incident had taken place, the subsequent conduct of the petitioner in taking the respondent No.2 back to his parents house, the fact, that both are currently pursuing their education and keeping in mind their future educational prospects, in the peculiar facts and circumstances of

the case, in order to secure the ends of justice, we deem it appropriate to allow the petition and accordingly quash the FIR, bearing C.R. No. I-490 of 2018 registered with the Mahatma Phule Chowk Police Station, Kalyan, Dist. Thane, and consequently the proceeding arising therefrom, being Sessions Case No. 154 of 2019 pending before the Assistant Sessions Judge, Kalyan.

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

11. Registry to ensure that the names of the parties i.e. the petitioner and the respondent Nos.2 and 3 are removed from the website, so as to protect the identity of the parties, having regard to the peculiar facts of this case.

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

S. M. MODAK, J.

REVATI MOHITE DERE, J.