

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

CRIMINAL APPLICATION NO. 453 OF 2020

Suraj @ Bablu Vilas Kumbhar
Age – 23 Years, Occu – Driver
R/o – Chinchani (Ambak),
Tal-Kadegaon, Dist-Sangli.

... Applicant

Versus

1. State of Maharashtra
[Though Chinchani-Wangi Police Station,
Sangli, Vide C.R. No. 102/2019]

2. Shrikant Bhimsingh Rajput
Age – 40 Years, Occu. - Farmer,
R/o. - Near Subhrao Nete Kamanijaval,
Chinchani, Tal-Kadegaon, Dist-Sangli,
Kadegaon – 415304.

3. Miss X (Minor) through her Legal Guardian
Mother Mrs. Sunita Shrikant Rajput
Age – 40 Years, Occu. - Housewife,
R/o. - Near Subhrao nete kamanijaval,
Chinchani, Tal-Kadegaon, Dist-Sangli,
Kadegaon – 415304.

... Respondents

Mr Pramod S. Kumbhar for the Applicant.

Mr A. R. Kapadnis, APP for the Respondent-State.

Mr Priyal G. Sarda for original complainant/Respondent No.3.

***CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.***

DATE : 23 FEBRUARY 2023

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith, at the request of and with the consent of the learned counsel for the parties.

3. This is an Application for quashing FIR No. 102 of 2019, registered at Chinchani-Wangi Police Station, Sangli, alleging the commission of offences punishable under Sections 363, 366A, 376 (2)(n) of the Indian Penal Code and Sections 4 and 6 of the Prevention of Children from Sexual Offences Act.

4. When this Application for quashing the impugned FIR was placed before us, it was stated by both the learned Counsel for the Applicant and Respondents No.2 and 3 that the dispute had been amicably settled. They submitted that Respondents No.2 and 3/victim girl and the mother of the second Respondent had filed the Consent Affidavit. They invited the attention of this Court to their Affidavits and submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the

parties. They submitted that, at the relevant time, the victim girl got depressed and thoughtless, and in the heat of anger, she gave a statement against the present Applicant. They submitted that due to misconception and misunderstanding, the impugned FIR was lodged against the Applicant. They submitted that the victim girl wanted to continue her studies, but due to pending the impugned CR, she could not concentrate. Further, they relied on the judgments of this Court in *Aditya s/o Hemant Deshmukh v/s State of Maharashtra & Anr.*¹; *Taj @ Arjun s/o Ajay Mishra & Anr. v/s State of Maharashtra*² and *Shambhu Kharwar v/s State of Uttar Pradesh & Anr.*³

5. Learned APP for Respondent No.1-State submits that appropriate orders may be passed.

6. It reveals from the record that, on 17.9.2019, the impugned FIR came to be lodged for the offence punishable u/s 363 of the IPC, on the complaint of the father of the victim girl/Respondent No.2 alleging therein that the victim, aged about 13 years and 11 months, left home on 08.09.2019 and did not return. Further, he learned from Ganesh Pol and Sunil Bhosale that they saw the victim girl with the Applicant. He, therefore, lodged a complaint

1 Criminal Application No. 379 of 2020 (Nagpur Bench) decided on 12.07.2021.

2 Criminal Application No. 988 of 2019, decided on 22.10.2019.

3 AIR 2022 SC 3901.

alleging that the Applicant has enticed his daughter and taken her from his lawful guardianship. Further, it reveals from the record that after receiving the information, the police team apprehended the Accused/Applicant with the victim girl at Barshi, District-Solapur. In the statement before the Investigating Officer, Respondent No.3 alleged that the Applicant had enticed her and taken her to Barshi and, on the pretext of marriage, committed sexual intercourse with her.

7. Respondents No.2 and 3 and the victim girl's mother are present before us. We have confirmed from them the contents of their affidavits. They have reiterated the facts mentioned in the affidavit. They stated that the impugned FIR was lodged due to misconception and misunderstanding. Further, the victim girl said that she is now married and happy in her married life, and she do not want to proceed with the matter. She said that, at the relevant time, she was depressed, thoughtless, and acting as per the say of other people. She got some suggestions from the people about giving statement against the Applicant, and accordingly, she gave her statement in depression, even though she did not want to do the same. She said that at present, her age is 19 years. The victim and her parents requested this Court to quash the FIR. Their Counsel has identified them. Learned APP has verified

their original Aadhar Cards.

8. We have examined the facts of the present case. Based on the material on record, particularly the affidavits of Respondent No.2, 3/victim, and the mother of the victim girl, it is seen that the FIR was lodged due to a misunderstanding between the parties. Taking the allegations in the FIR as they stand, the ingredients of the offences under Sections 363, 366A, 376 (2)(n) of the Indian Penal Code and Sections 4 and 6 of the Prevention of Children from Sexual Offences Act are absent. As the parties amicably settled their dispute, the possibility of conviction is remote and bleak. Since the parents of the victim girl and the victim girl herself will not support the allegations made by the prosecution in the impugned FIR, nothing fruitful will come out of the trial. It is not in dispute that the offences u/Ss. 363, 366A, 376 (2)(n) of the Indian Penal Code and 4 and 6 of the Prevention of Children from Sexual Offences Act are serious and can not be quashed by consent. We are also conscious that merely because the victim and her parents do not want to proceed with the matter and they have amicably settled their dispute, that will not absolve the Applicant/Accused from criminal liability. However, considering the peculiar facts and circumstances, we must also consider the rival submissions of the parties. It is the contention of the learned Counsel for the Petitioner and Respondents No.2 and 3 that the

FIR was lodged due to misconception and misunderstanding. It is also the contention of the victim girl that when her statement was recorded she was depressed and thoughtless. She got suggestions from the people to state against the Applicant, and accordingly, she gave her statement in depression, even though she did not want to do the same.

9. Considering the peculiar facts and circumstances of the case and the settlement between the parties, Respondents No.2 and 3 will not support the prosecution case. Respondent No.3/victim girl is already married and leading marital life happily. Allowing criminal prosecution to continue may disrupt her life, compromise and interfere with the restoration of peace. Nothing fruitful will, therefore, come out of the trial in question. Moreover, no offence as alleged is prima facie made out against the Applicant. In such circumstances, we see no difficulty in quashing the impugned FIR and the proceedings arising therefrom. Accordingly, the application is allowed, and the impugned FIR No. 102 of 2019, registered at Chinchani-Wangi Police Station, Sangli, is quashed and set aside. The Rule is made absolute in the above terms.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.