

Uday S. Jagtap

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

CRIMINAL WRIT PETITION NO. 355 OF 2022

1. Sachin Thondikulam Narayan Sundar
2. Thondikulam Narayan Sundar
3. Mrs. Rukmani Sundar
4. Mr. Sushil Thondikulam Narayan Sundar
5. Mr. Rama Krishnan Iyer .. Petitioners

Vs.

1. The State of Maharashtra
2. XYZ .. Respondents

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Mr. Seoul Shah for the petitioners

Mr. K.V. Saste, APP for the respondent – State

Ms. Neha Rane i/b Mr. Prasad Panchal for the respondent no.2

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 9th FEBRUARY, 2023.

P.C.

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent no.1 – State and learned Counsel Ms. Rane waives notice on behalf of the respondent No.2.

3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing and setting aside of the FIR registered vide C.R. No. 334 of 2021 with the Wadala TT Police Station, Mumbai for the offences punishable under Sections 376, 313, 323, 420 r/w 34 of the Indian Penal Code and consequently, the proceeding pending before the learned Sessions Judge, 39th Court, Mumbai, being Case No. SC 925 of 2022. Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. The petitioner no.1 is the husband of the respondent no.2; petitioner no.2 is the father-in-law; petitioner no.3 is the mother-in-law and the petitioner nos. 4 and 5 are the brother-in-law of the respondent No.2 respectively. According to

the respondent no.2 (original complainant), she was in a relationship with the petitioner no.1 since November 2019. In her complaint, the respondent no.2 has stated that the petitioner no.1 as well as his family members used to come to her residence and that on the assurance and promise that the petitioner no.1 would marry her, she had physical relations with the petitioner no.1. She has further stated that even the petitioner no.1's parents used to come and stay at her residence and that they told her that they had no issue if the petitioner no.1 married her.

5. According to the respondent no.2, in June 2020, the petitioner no.1 under the influence of alcohol assaulted her, left the house and went to his parent's house i.e. to the petitioner nos. 2 to 3' house at Pune. She has stated that the petitioner No.1, later apologized to her. According to the respondent No.2, the petitioner no.1 after promising marriage, had physical relations with her. The respondent no.2 has also alleged that while she was in relationship with the petitioner no.1, she underwent abortion, which was without her consent. Pursuant thereto, the respondent no.2 lodged the aforesaid FIR as against the petitioners alleging the aforesaid offences. After investigation, charge-sheet was filed in the

said case and the case is presently pending before the learned Sessions Judge, 39th Court, Mumbai.

6. From a perusal of the FIR, it appears that the parties were in a live-in-relationship since 2019. According to the respondent no.2, since the petitioner no.1 refused to marry her, she lodged the aforesaid complaint. As far as Section 313 is concerned, we have perused the statement of Dr. Gandhali Devrukhkar, who was consulted by the respondent no.2. From a perusal of the Doctor's statement, it appears that the abortion was done with the consent of the respondent no.2. In fact, the statement only shows that the respondent no.2 told her that she did not want the child and that she was one month pregnant, pursuant to which, she advised her Sonography and prescribed some medicines. Thus, *prima facie*, no offences either under Section 376 or under section 313 are made out, as against the petitioners.

7. Be that as it may, in the interregnum, the petitioner no.1 aged 42 years and the respondent no.2, aged 33 years, got married on 13th December, 2022 in Delhi.

8. Learned Counsel for the respondent no.2 has tendered an affidavit, dated 24.01.2023 of the respondent no.2 duly notarized before the Notary. In the said affidavit, the respondent no.2 has stated that the petitioner no.1 was a partner in her company; that their friendship developed into a love affair and that they started residing together. She has further stated that due to some misunderstanding, there were quarrels between them, which led to the registration of the aforesaid FIR. She has further stated that she got married to the petitioner no.1 on 13th December 2022 at the Arya Samaj Mandir Trust, Tis Hazari Court, Delhi. To the said affidavit, is annexed the marriage certificate issued by the Revenue Department Government of NCT of Delhi. She has stated that she has no allegations as against the petitioners and as such has no objection to the quashing of the FIR, initiated at her behest against the petitioners. To the said affidavit is also annexed a photocopy of the Aadhar Card of the respondent no.2 duly attested by her. The said affidavit is taken on record. The respondent no.2 is present in person. On being questioned, she reiterates what is stated by her in her affidavit. She states that she is happily married to the petitioner no.1 and as such has no objection for quashing of the FIR.

9. Considering the nature of relationship between the parties, respondent no.2's affidavit and the judgments of the Apex Court, there is no impediment in allowing the petition.

10. Accordingly, the petition is allowed and C.R. No. 334 of 2021 registered with the Wadala TT Police Station, Mumbai and consequently, the proceeding pending before the learned Sessions Judge, 39th Court, Mumbai, being Case No. SC 925 of 2022, are quashed and set aside.

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

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]