

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.739 OF 2023

Mr. Priyaranjan Jitendra Kumar
Age:29 years, Occ.:Service,
R/at.INSShivaji Camp, Lonavla
Lonavala City, Pune Rural,
Maharashtra.

..... Petitioner.

Vs.

1)The State of Maharashtra
(At the instance of Lonavala City
Police Station,Dist:Pune)

2) X.Y.Z.

R/at.Malkapuram, Vishakhapatnam
Andhra Pradesh-530011

..... Respondents.

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Mr Kuldeep Patil, i/by Aadesh Konde Deshmukh, for the
Petitioner.

Mr A.R.Kapadnis, APP for Respondent No.1.

Mr Shaishav Savla for Respondent No.2.

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

DATE : 3 MARCH 2023.

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Order (Per R.N.Laddha) :

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. Mr A.R.Kapadnis, learned Additional Public Prosecutor, waives service of notice on behalf of Respondent No.1-State. Mr Shaishav Savla, the learned Advocate, has entered an appearance on behalf of Respondent No.2-first informant and waives service of notice of Rule.

3. This is a petition for quashing FIR being C.R.No.0028 of 2023, registered at Lonavala City Police Station, Pune Rural, at the instance of Respondent No.2 for the offences punishable under Sections 376(2)(n) and 420 of the Indian Penal Code, with the allegations that from June 2020 and after that, from time to time till lodging the FIR, numerous times on promising to marry, the Petitioner established a sexual relationship with Respondent No.2. He, however, did not fulfil his promise and cheated Respondent No.2.

4. When this Petition for quashing the impugned FIR was placed before us, it was stated by the learned Counsel for the Petitioner and Respondent No.2 that the dispute has been amicably

settled. They submitted that Respondent No.2 has filed the consent Affidavit and no purpose would be served by keeping the prosecution alive, given the settlement between the parties. They submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in ***Shambhu Kharwar Vs State of Uttar Pradesh & Anr.***¹ They submitted that the Petitioner and Respondent No.2 were having a love affair, but, due to stiff opposition from the family members, they decided to end the relationship. They further submitted that the physical relations between the Petitioner and Respondent No.2 were of free will and without any inducement of any nature being offered, and the relations were consensual. They submitted that Respondent No.2 has no complaint against the Petitioner.

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

6. Respondent No.2 is present before the Court and tendered her consent affidavit and a copy of her Aadhar Card duly attested by her. Respondent No.2 has been identified by her Counsel. Learned APP has verified the original Aadhar Card of Respondent No.2. Respondent No.2 has stated that she has no objection if the impugned FIR is quashed against the Petitioner, given a settlement

¹ AIR 2022 SC 3901.

between them. Respondent No.2 reiterated what she said in her affidavit dated 3.3.2023 and further stated that she lodged the impugned FIR in a rage. She stated that she was in a consensual relationship with the Petitioner out of her free will and has no grievance of any nature against the Petitioner. She further stated that she did not intend to pursue allegations. She intend to marry someone and settle down in life.

7. We have examined the facts of the present case. It is not in dispute that the offence u/s 376 of the IPC is serious and cannot be quashed by consent. However, considering the peculiar facts and circumstances, we are also required to consider the other aspect of the case. Admittedly, at the time of the incident, Respondent No.2 was 27 years of age. Further, based on material on record, more particularly the consent affidavit dated 3.3.2023 of the second Respondent, it is seen that the FIR was lodged in a fit of rage. They maintained a consensual physical relationship on several occasions. It revealed from the record that the Petitioner and Respondent No.2 had known each other since 2020 and after that have been intimate with each other. They met regularly and engaged in sexual relations. The relationship between the parties was consensual. Even otherwise, taking the allegation in the FIR as they stand, the ingredients of the offence u/s 376 of the IPC, are absent.

8. Considering the peculiar facts and circumstances, we see no difficulty in quashing the impugned FIR and the proceedings arising out of the said FIR. Accordingly, the Petition is allowed, and the impugned FIR being C.R.No. 0028 of 2023, registered at Lonavala City Police Station, Pune Rural, and the proceedings arising out of the said FIR are quashed and set aside.

9. The Rule is made absolute in the above terms.

10. Learned Counsel for Respondent No.2 to file his Vakalatnama within two weeks of the uploading of this order.

[R. N.LADDHA, J.]

[NITIN W. SAMBRE, J.]