

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

CRIMINAL WRIT PETITION NO.3137 OF 2021

Rajesh Babuji Devada
Age : 49 Years, Occ:Business,
R/at:Flat No.201, Sitaram apartment,
Shreeram Nagar ,
Lowjee, Khopoli -410203 Petitioner.

Vs

The State of Maharashtra
(At the instance of the P.I.-
Khopoli Police Station,
Raigad)

2.Budhappa Subhan Kamble,
Age: 40 Years, Occ:Business,
R/o: Shreeram Nagar, Lowjee,
At post – Jagdishnagar, Khopoli,
Tal-Khalapur-410203. Respondents.

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Mr.Vivek Arote, Advocate, a/w Himalee Diwekar, for the
Petitioner.

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

Mr.Harshvardhan Khambete i/by Ankita Pawar, for
Respondent No.2.

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

DATE : 20 February 2023.

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Order (Per R.N.Laddha) :

Heard learned Counsel for the parties.

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

3. By this criminal writ petition, the Petitioner seeks the quashing of FIR bearing C.R.No.114 of 2020 registered against him at Khopoli Police Station, Raigad, dated 14.09.2020, at the instance of Respondent No.2 for the offences punishable u/s 354 of the Indian Penal Code and Section 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 8 of the Protection of Children from Sexual Offences Act. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. It is the case of the prosecution that the victim girl, aged about ten years, is the daughter of the complainant/informant. On 13.9.2020, at about 4.30 p.m., she, accompanied by her brother, went to Petitioner's Salon for a haircut. It is alleged that at that time, the Petitioner had inappropriately touched the victim girl. Further, it is alleged that though the Petitioner/Accused was aware about the fact that the victim girl belongs to Scheduled Caste, he misbehaved with her.

5. Perused the papers. Learned Counsel for Respondent No.2 pointed out the Consent Affidavit filed by Respondent No.2 dated 26.5.2021, duly affirmed before the Notary. It is stated in the affidavit that he has no objection to quashing the FIR described above. Learned Counsel for the parties invited our attention to the copy of the Affidavit of Respondent No.2 filed in the Sessions Court, Panvel. In that Affidavit, the informant specifically stated that his daughter/victim was mistaken to understand the touch of the Accused when he cut her hair and misinterpreted it. Respondent No.2 is present in person. On being questioned, he reiterates what was stated in these Affidavits. Further, he stated that he has no complaint against the Petitioner/Accused. Learned Counsel for the parties jointly submitted that no purpose would be served by

keeping the prosecution alive, given the settlement between the parties. Learned Counsel for Respondent No.2 has tendered a photocopy of the Aadhar Card of Respondent No.2 duly attested by him. The learned APP has verified the original Aadhar Card. The photocopy of the Aadhar Card of Respondent No.2 is taken on record. Respondent No.2 has been identified by his Counsel.

6. The learned Counsel for the parties submitted that the present case is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of *Gian Sing Vs State of Punjab & Anr.*¹ and *Narinder Singh & Ors Vs. State of Punjab & Anr.*²

7. Learned APP for Respondent No.1 submits that appropriate orders may be passed.

8. It revealed from the record that Respondent No.2 had filed a Consent Affidavit dated 26.5.2021 wherein he stated that due to misunderstanding and misconception, he lodged the complaint. It also revealed from the record that Respondent No.2 had also filed an affidavit before the learned

1 (2012)10 SCC 303.

2 (2014)6 SCC 466.

Sessions Court, Panvel, wherein he stated that his daughter/victim was mistaken to understand the touch of the Accused when the Petitioner cut her hair and misinterpreted it.

9. We have examined the facts of the present case in light of the law laid down by the Hon'ble Supreme Court in the cases of *Gian Singh & Narinder Singh* (supra) based on the material on record, more particularly the affidavits of Respondent No.2 referred above, it is apparent that the FIR was lodged due to misconception and misunderstanding. Since the parties have amicably settled their dispute, the possibility of conviction is remote and bleak. Moreover, prima facie, no offences as alleged are made out. Since Respondent No.2 will not support his allegations in the impugned FIR, nothing fruitful will come out of the prosecution.

10. Considering the peculiar facts and circumstances, we see no difficulty in quashing the impugned FIR and the the proceedings emanating therefrom. Accordingly, the criminal writ petition is allowed. The impugned FIR, vide C.R.No.114

of 2020, registered at Khopoli Police Station, Raigad and the proceedings arising therefrom, are quashed and set aside.

11. Rule is made absolute in the above terms.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]