

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

VAISHALI
ANIL
TIKAM

CRIMINAL APPELLATE JURISDICTION
WRIT PETITION No.1237 OF 2019

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Shakil Shakur Bijapure

...Petitioner

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. Zaid Quresh a/w. Mr. Ankita Bamboli for Petitioner

Mr. Ajay Patil, APP for the State

Ms. Aisha N. Shaikh i/b. Hulyalkar & Associates for Respondent No.2

**CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ**

DATED : 29th AUGUST, 2023

P.C.:

1. Based on the genesis that Respondent No.2- Complainant was employed with the Petitioner as a trainer in a Gym operated by the Petitioner and as the Petitioner has sexually exploited Respondent No.2, the offence being Crime No.447 of 2017 came to be registered on 29th November, 2017 for the offence punishable under Sections 376, 377, 506(B), 354, 323, 504 of the IPC and the Petitioner was charge-sheeted.
2. The Petitioner has moved this Petition for quashing of the aforesaid FIR and consequential charge-sheet.
3. The stand taken by the Petitioner is that of a consensual relationship.
4. It appears that the relationship between the Petitioner and

Respondent No.2, who were on friendly terms, got worsen which has resulted into the Petitioner and Respondent No.2 not only lodging the complaint against each other, but also in initiating separate proceedings.

5. Respondent No.2-Complainant is already married, having two daughters and she is the custodian of them.

6. In this background, Respondent No.2- Complainant, who have a peaceful life ahead in the interest of her own future as also for the her daughters, has decided to settle the differences between the Petitioner and Respondent No.2-Complainant. Accordingly, she has placed on record the consent affidavit along with consent terms. The said consent affidavit reads thus:

“1. I say that, I am the First Informant in FIR No. 447 of 2017 registered with Vile Parle Police Station, Mumbai for offence punishable U/s. 376, 377, 506(B), 354, 323, 504 of Indian Penal Code along with sections 3, 25 of Indian Arms Act, against the Petitioner in the present matter.

*2. I say that, I and the Petitioner have lodged multiple complaints and cross complaints against each other, but not we have amicably settled the matter out of our free will and without any force, threat, misrepresentation and undue influence and coercion, and recorded our terms and conditions in a Memorandum of Understanding dated 07/02/2022. Hereto annexed and marked as **Exhibit “A”(Colly)** are the copies of Memorandum of Understanding dated 07/02/2022.*

3. I say that, the Petitioner be restrained from contacting me directly or indirectly in the future or harming me during the Pendency of this case and

after the final order is passed in the present case. I say that, I will not be contacting the Petitioner directly or indirectly in the future or harming him during the Pendency of this case and after the final order is passed in the present case.

4. *I say that the Petitioner be restrained from using my name on electronic, social, digital, print media and the Petitioner be restrained from communicating with the media in respect of my case. I say that I will not be using the Petitioners name on electronic, social, digital, print media or communicating with the media in respect of my case.*

5. *I say that my family members should not be involved directly or indirectly in any cases in near future and the Petitioner be restrained from contacting my family members too, during the pendency of this case and after the final order is passed in the present case. I say that I will not involve the Petitioners family members directly or indirectly in any cases in near future and I will not be contacting Petitioner's family members, during the pendency of this case and after the final order is passed in the present case.*

6. *I say that, the present matter came to be settled amongst ourselves amicably out of the court and now I shall have no grievance against the Petitioner in the above mentioned matter any further, concerning FIR NO.447 of 2017 registered with Vile Parle Police Station, Mumbai.*

7. *I say that, our friends, family and well-wishers, interviewed in the matter and tried to extinguish grudge created amongst ourselves and while doing so, their efforts were made successful and now the matter has been settled amicably out of the court and therefore, I am not desirous to drag the Petitioner in the criminal proceedings concerning instant FIR and further and thus, I am filing the present affidavit on my own wish/violation and without there being any force or coercion from any person of any nature whatsoever.*

8. *In say that, in view of amicable settlement between ourselves, I hereby withdraw all my allegations made in the said FIR No.447 of 2017 registered*

with Vile Parle Police Station, Mumbai for offences punishable U/s. 376, 377, 506(B), 354, 323, 504 of Indian Penal Code along with sections 3, 25 of Indian Arms Act, and accordingly, I agree that I shall file necessary supporting affidavit before this Hon'ble Court for quashing the said F.I.R. and in view thereof, I am filing the present affidavit in reply supporting the prayer of the Petitioner.

9. *I say that, it is agreed by me that the Petitioner shall file necessary undertaking before this Hon'ble Court contending that he will not initiate any case for defamation and/or false prosecution against me after the said F.I.R. is quashed in view of the present Affidavit in reply.*

10. *I say that it has been agreed by both the parties that the order passed in view of the present affidavit in reply shall be binding on the Petitioner on me and both the parties will not challenge the same. I say that if the Petitioner commits breach in respect of any of the stipulated conditions stated in the Affidavit herein, my consent for quashing of the said case shall stand withdrawn and the Petitioner shall be held criminally liable. However, it is agreed that the F.I.R. bearing No.447 of 2017 registered with Vile Parle Police Station, Mumbai should be reopened in case the Petitioner would initiate any action against me and my family members in the nature in terms of clause No. (3), (4), (5) & (9) above.*

11. *I say that in view of amicable settlement between parties, I have no objection, in the event this Hon'ble Court upon being satisfied allowed the prayers of the petitioner as is sought in the above mentioned application and quashed and set aside criminal proceedings against him concerning FIR No. 447 of 2017 registered with Vile Parle Police Station, Mumbai."*

7. After the Respondent No.2- Complainant was identified by her lawyer Ms. Shaikh, we have requested Mr. Ajay Patil, learned APP to interact with Respondent No.2-Complainant so as to verify whether she has

voluntarily consented for filing the consent terms and consent affidavit.

8. Upon interaction, it was informed through learned APP that Respondent No.2- Complainant has willingly and voluntarily executed the consent terms and also consent affidavit, which is conditional as is mentioned in the said consent affidavit as also in the consent terms.

9. Having regard to the contents of the consent terms and the consent affidavit, we have confronted the Petitioner who is present in the Court and is identified by his lawyer. The Petitioner, who is physically present in the Court has undertaken that he shall abide by the contents of the consent terms and the consent affidavit as has been placed on record by Respondent No.2- Complainant. He has undertaken before this Court that he shall not be conducting himself in such a manner which will in any way hamper or prejudice the rights of Respondent No.2 or her daughters and he shall not intervene the personal life of Respondent No.2 and her daughters. The aforesaid statement is accepted as an undertaking to this Court.

10. Similarly, Respondent No.2- Complainant has assured that she will be conducting in a dignified manner and shall not interfere in the life of the Petitioner. That being so, in view of the consent affidavit and consent terms placed on record, the very object with which the petitioner is sought to be prosecuted cannot be achieved or taken to its logical end and the Petitioner

cannot be made to face rigors of prosecution before the Sessions Court.

11. In this background, having regard to the law laid down by the Apex Court in the matter of *Gian Singh vs. State of Punjab and Another* reported in *(2012) 10 SCC 303* and *Narinder Singh & Ors. Vs State of Punjab & Anr.* reported in *(2014) 6 SCC 129*, we deem it appropriate to allow the present proceedings in terms of prayer clause (b). The prosecution against the Petitioner is quashed having regard to the consent extended by Respondent No.2 Complainant.

12. The Petitioner is directed to pay cost of Rs.1,00,000/- to the Children AID Society to be deposited in the UCO Bank Account No.02370100005612, IFSC Code UCBA0000237, within four weeks from the date of receipt of the order and receipt to that effect be placed on record within a week thereafter, failing which the order of quashing of proceedings shall automatically stand recalled and this Court will be constrained to proceed against the Petitioner in accordance with law.

13. Writ petition is disposed of in the aforesaid terms.

(RAJESH S. PATIL, J)

(NITIN W. SAMBRE, J.)

Order is corrected as per the order dated 21st September, 2023 for speaking to minutes.