

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

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WRIT PETITION NO.1366 OF 2022

Shiva Chanappa Odala

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondent

Mr. Vishwanath Patil, for the Petitioner.

Mr. A. R. Kapadnis, APP for the Respondent No.1/State.

Ms. Ilsa Shaikh, Appointed Advocate for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
S. G. DIGE, JJ.**

DATE : 22nd FEBRUARY, 2023

PC.

1. The victim since was not traced, same has led to the filing of the complaint resulting into registration of Crime No.707 of 2021 on 26th November, 2021 for an offence punishable under Section 363 of the IPC. During the course of investigation, the prosecution has invoked Section 354 of the IPC and Sections 8 and 12 of the POCSO Act against the present petitioner.

2. This petition is moved by the accused person who is aged about 19 years and a student seeking quashing by consent. The victim's mother who is complainant has filed an affidavit on record through the counsel appointed by this Court and stated that upon inquiry from the victim she came to know that the victim has called

the petitioner and has went out and stayed with him without being intimation to the parents for such period as has been alleged in the complaint. It is claimed by the complainant that in this background complaint came to be lodged. It is also stated that alleged offence is registered because of communication gap between the complainant and her daughter. It is further claimed that the petitioner had no intention to kidnap the victim from the lawful custody of the complainant and as such, the ingredients of Section 363 of the IPC may not be inferred. It is also stated that the allegation under Section 354 of the IPC were made out of the frustration as the victim girl could not be located. In the aforesaid background, the quashing is sought by consent.

3. This Court has interacted with the complainant and she has admitted to have executed such an affidavit out of her own free will after having understood the contents therein in a vernacular language. We have also requested APP Mr. A. R. Kapadnis to interact with the complainant so as to verify the contents of the affidavit.

4. Learned APP Mr. A. R. Kapadnis informs this Court after interaction with the complainant that the complainant out of her own free will is extending consent for quashing by consent.

5. Counsel for the petitioner has drawn support from the Delhi High Court judgment in the matter of ***Satender Sharma Vs.***

State and Anr. decided on ***2nd March, 2016 in Criminal Misc. Case No.5188 of 2015.*** According to him, considering the fact that the complaint was lodged out of the frustration developed by the complainant having not found her daughter can be quashed, if the complainant out of her own free will consents for such quashing. The Delhi High Court has drawn support from the judgment of Apex Court in the matter of ***Gian Singh Vs. State of Punjab*** reported in ***(2012) 10 SCC 303*** and ***Narinder Singh Vs. State of Punjab (2014) 6 SCC 466.*** It is worth to refer to the observations of the Apex Court in the matter of *Gian Singh (supra)* and *Narinder Singh (supra)*, particularly, paragraph 61 and 29 respectively of the said judgments which reads thus :-

"5. In Gian Singh v. State of Punjab (2012) 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

"61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

6. The aforesaid dictum stands reiterated by the Apex Court in a recent judgment in Narinder Singh v. State of Punjab (2014) 6 SCC 466. The relevant observations of the Apex Court in Narinder Singh (Supra) are as under:-

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in

that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.”

The aforesaid both the observations are relied on by the Delhi High Court thereby permitting the prayer for quashing of complaint.

6. What can be noticed from the facts of the present case is, petitioner, a student appears to have been in friendly terms with the victim girl and it is out of friendship they appear to have stayed together without there being intimation to the parents of the victim girl which has prompted the mother of the victim girl i.e. complainant to lodge a complaint. In the aforesaid background, what can be noticed is, it will be contrary to the interest of justice to continue the criminal proceedings against the petitioner, a student as both the parties equally will be put to hardship, particularly, both of them decided for quashing by consent on the ground of the reasons cited in the consent extended in support of the quashing. Apart from above, we do not see any other reason to ask the petitioner to face prosecution. In the case in hand, as such prosecution in view of the consent extended by the complainant is not likely to achieve any conviction in the matter.

7. In that view of the matter and having regard to the law

laid down by the Apex Court in the matter of *Gian Singh (supra)* and *Narinder Singh (supra)*, prayer for quashing by consent stands allowed.

8. The petition as such stands allowed in terms of prayer clause (a).

9. Since the counsel who has assisted the complainant in deciding the present petition was appointed by this Court, we direct the Legal Aid Services Authority to pay the expenses and profession fees which in this case is quantified as per the rules.

[S. G. DIGE, J.]

[NITIN W. SAMBRE, J.]