

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

CRIMINAL APPLICATION NO. 386 OF 2019

Sangameshwar s/o Dattu Hindole

Age 31, Occ – Govt Service

R/o Sr. No. 396/2153, Sant

Tukaram Nagar, Pimpri Dist. - Pune

... Applicant

Versus

1. The State of Maharashtra

2. Malaxmi Vilas Silgari

Age – 29 Yrs, Occ : Service

R/o Flat-5, 5th floor

Bosure complex, Ganesh Nagar

Yerawade, Pune

... Respondents

Mr Abhishek Kulkarni for the Applicant.

Mrs M. M. Deshmukh, APP for the Respondent No.1-State.

Mr Satyajeet P. Dighe for the Respondent No.2.

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

DATE : 1 MARCH 2023

Order (Per R. N. Laddha, J.) :-

Heard learned counsel for the parties.

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

Mrs M. M. Deshmukh, learned Additional Public Prosecutor, waives service of notice on behalf of respondent no.1-State. Mr Satyajee Dighe, the learned advocate, has entered an appearance on behalf of respondent no.2-first informant and waives service of notice of rule.

3. By this Criminal Application, under Section 482 of the Code of Criminal Procedure, 1973, the applicant seeks the quashing of FIR bearing C.R. No. 529 of 2017, registered against him at Yerwada Police Station, Pune, at the instance of respondent no.2 for the offences punishable under Sections 376, 354, 354(A)(C), 323, 352, 406, 420, 504, 506, 494 of the Indian Penal Code. Quashing is sought on the premise that the parties have amicably settled their dispute.

4. The first information report came to be registered against the applicant with the allegations that from September 2015 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.

5. When this application for quashing the impugned FIR and the proceedings arising therefrom was placed before us, it has been stated by the learned counsel for the applicant and respondent no.2

that the dispute has been amicably settled. They submitted that respondent no.2 has filed the consent affidavit. It is submitted that 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 v/s. State of Uttar Pradesh & Anr.***¹ They submitted that the applicant and respondent no.2 were having a love affair but due to personal reasons and differences, the present FIR came to be filed. They further submitted that the parties have amicably settled their dispute. The physical relations between the applicant and respondent no.2 were of free will and without any inducement of any nature being offered, and their relations were consensual. Respondent no.2 has no complaint against the applicant.

6. Learned APP for respondent no.1 submits that appropriate orders may be passed.

7. Today, respondent no.2 is present before the Court and tendered her consent affidavit and a copy of the 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

¹ AIR 2022 SC 3901.

objection if the impugned FIR and the Sessions Case arising therefrom are quashed against the applicant, given a settlement between them. Respondent no.2 reiterated what was said by her in her affidavit dated 1 March 2023 and further stated that she lodged the impugned FIR due to misconception and misunderstanding. She stated that her alleged physical relationship with the applicant was with her consent, and the applicant never forced her into physical relations. She said that she has no complaint against the applicant. She stated that before lodging the impugned FIR, the relationship with the applicant was consensual, and today also, she and the applicant are good friends and living in a relationship.

8. We have examined the facts of the present case. It is not in dispute that the offence under Section 376 of the Indian Penal Code is serious and cannot be quashed by consent. However, considering the peculiar facts and circumstances, we are also required to consider the submission of the parties. Admittedly, at the time of incident, the victim girl/respondent no.2 was 28 years of age. Further, based on the material on record, more particularly, the affidavit dated 1 March 2023 of the second respondent, it is seen that the FIR was lodged due to misconception and misunderstanding and the applicant and respondent no.2 were having a love affair, and they maintained a consensual physical relationship on several occasions. It revealed from the record that

the applicant and respondent no.2 had known each other since 2014 and, after that, have been intimate with each other. They met regularly and engaged in sexual relations. The relationship between the parties was consensual. Taking the allegations in the FIR and the charge sheet as they stand, the ingredients of the offences under Sections 376, 354, 354(A)(C), 323, 352, 406, 420, 504, 506, 494 of the Indian Penal Code are absent.

9. Considering the peculiar facts and circumstances, we see no difficulty in quashing the impugned FIR and the proceedings. The Criminal Application, therefore, is made absolute in terms of prayer clause 'C', which reads thus:

"C. The Sessions Case No.891 of 2017 pending before the Id Additional Sessions Court, Pune, Dist. Pune against the applicant for the offence punishable u/s 323, 352, 354, 354A, 354C, 376, 403, 406, 420, 504, 506, 120B rw 34 of IPC be quashed in the interest of justice."

10. Rule is made absolute in the above terms.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

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PRITHIANI

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