

3. Leave granted. Amendment to be carried out forthwith.
4. On amendment being carried out, Registry to ensure that name of the prosecutrix (Respondent No.3) is deleted from the system.
5. Rule.
6. Rule is made returnable forthwith, with the consent of the parties. Petition is taken up for final disposal.
7. Learned A.P.P waives notice on behalf of respondent No.1-State. Mr. Ingle, learned Counsel waives notice on behalf of respondent No.2 and Mr. Bidaye, learned Counsel waives notice on behalf of respondent No.3.
8. By this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C'), the petitioner seeks quashing of the First Information Report (for short 'F.I.R') registered vide C.R. No.61 of 2020 with Amboli Police Station, Mumbai, for the alleged offences punishable

under sections 363, 376 (2) (n) of the Indian Penal Code (for short 'I.P.C') r/w section 9 of the Protection of Children from Sexual Offences Act, 2012 and consequently, the proceeding pending before the learned Additional Sessions Judge, 12th Court, Dindoshi, Goregaon, Mumbai being Special Case No.313 of 2021. Quashing is sought on the premise that the parties have amicably settled their dispute.

9. Respondent No.2 is the elder brother of respondent No.3-prosecutrix. On 17th February, 2020, respondent No.2 left for his native Village - Harkul, Taluka - Mangaon, District - Raigad. Around 4.30 p.m, he received a call from his maternal uncle's wife informing that respondent No.3 had left the house at about 4.30 p.m without informing anyone and had not returned home. Respondent No.2 went back to his uncle's house at Rehan Tower, Flat No.520, Sahakar Road, Jogeshwari (West), Mumbai around 7.00 p.m. He could not notice respondent No.3. A search was made by respondent No.2 along with his maternal uncle, however, respondent No.3 was found missing. Inquiries were made with the relatives, however, her whereabouts were not known to anyone. Respondent No.2 was already aware about the relationship between

the petitioner and respondent No.3, who is their relative. Parents of respondent No.2 tried to convince respondent No.3 to give up the relationship, however, respondent No.3 did not agree. Respondent No.2's sister was in touch with the petitioner through phone calls.

10. It was realized that respondent No.3 had eloped with the petitioner due to his enticement and consequently, an F.I.R came to be registered against the petitioner, as above with Amboli Police Station alleging that the petitioner had kidnapped respondent No.3 from her lawful guardianship as well as exploited her sexually despite knowing that she was minor at the relevant time. It is alleged that at the time of her kidnapping, respondent No.3 was 17 years and 11 months and 28 days old.

11. From the statement of respondent No.3 recorded by the Investigating Officer, it transpires that she had, on her own volition, accompanied the petitioner, and it was she, who had initiated a proposal of marriage to the petitioner in front of petitioner's family. It also transpires that it was respondent No.3, who had voluntarily left for Alibaug and reached the petitioner's house and, thereafter, both the petitioner and respondent No.3 had been to Mangaon

Police Station on 26th February, 2020.

12. Parents of both the petitioner and respondent No.3 in a joint meeting decided to end the dispute and differences, *inter alia*, permitting the petitioner and respondent No.3 to get married with the blessings of both the families. Accordingly, their marriage was solemnized on 14th September, 2020. A certificate issued by Jamatul Muslim, Goregaon is annexed at 'Exhibit C'. After the marriage, there was a grand marriage reception on 24th September, 2020 in the presence of their relatives and family members.

13. Respondent No.3 had delivered a girl child on 11th November, 2021. The birth certificate is at 'Exhibit E'.

14. Affidavits of father of respondent No.3 - Nizamuddin Abdul Samad Huzruk, mother of respondent No.3 - Mehjabeen Nizamuddin Huzruk and mother of the petitioner - Shabnam Jamaluddin Dhawalkar are tendered on record indicating that they too have no objection for the marriage as well as amicable settlement of the dispute between the parties. To the said affidavits, photostat copies of Aadhar Cards of Nizamuddin, Mehajabeen and

Shabnam duly attested by them are annexed.

15. None of the parties wish to proceed further and prosecute the complaints in view of the fact that since last two years, petitioner and respondent No.3 have been residing as husband and wife at the house of the petitioner and are also blessed with a daughter, as stated above.

16. At this stage, learned Counsel for the petitioner has relied on a judgment of Calcutta High Court in the case of **Ranjit Rajbanshi Vs. The State of West Bengal and others**¹. Emphasis has been given on paragraphs No.47 and 48, which read thus;

"47. In the present case, the victim girl was admittedly 16 ½ years old and studied in Class XII at the relevant point of time. She was not naïve enough not to know the implication of sexual intercourse; rather, the victim admittedly had a physical relationship with the accused, who was also of a very young age, on several occasions prior to the incident. Although the consent of a minor is not a good consent in law, and cannot be taken into account as 'consent' as such, the expression 'penetration' as envisaged in the POCSO Act has to be taken to

1 2021 SCC OnLine Cal 2470

mean a positive, unilateral act on the part of the accused. Consensual participatory intercourse, in view of the passion involved, need not always make penetration, by itself, an unilateral positive act of the accused but might also be a union between two persons out of their own volition. In the latter case, the expression 'penetrates', in Section 3(a) of the POCSO Act might not always connote mere voluntary juxtaposition of the sexual organs of two persons of different genders. If the union is participatory in nature, there is no reason to indict only the male just because of the peculiar nature of anatomy of the sexual organs of different genders. The psyche of the parties and the maturity level of the victim are also relevant factors to be taken into consideration to decide whether the penetration was a unilateral and positive act on the part of the male. Hence, seen in proper perspective, the act alleged, even if proved, could not tantamount to penetration sufficient to attract Section 3 of the POCSO Act, keeping in view the admitted several prior occasions of physical union between the accused and the victim and the maturity of the victim.

48. As such, it cannot be said that the accused was guilty of penetrative sexual assault, as such, since here the act of penetration, even if true, would have to be taken not as an unilateral act of the accused but a participatory moment of

passion involving the participation of both the victim and the accused.

17. The facts are more or less identical. The principles laid down by Calcutta High Court can also be considered while exercising jurisdiction under section 482 of the Cr. P.C. Learned Counsel has also placed reliance on a judgment of Delhi High Court in the case of **Kundan and another Vs. State and others**², dealing with similar case where the victim girl who had gone missing and found in the company of the accused therein had stated that she has married with the accused and a child was born from the said wedlock. Parents of both the parties have not accepted their marriage. An application under section 482 of the Cr. P.C for quashing the related F.I.R was allowed. It is submitted that while exercising powers under section 482 of the Cr. P.C, the Hon'ble Delhi High Court has referred a decision in case of **Gian Singh Vs. State of Punjab**,³.

18. Affidavit of respondent No.3 dated 14th July, 2022 duly affirmed before the Assistant Registrar, High Court, Appellate Side, Bombay is annexed with the petition at Pages No.100 to 105. To the said affidavit, photostat copy of the Aadhar Card of respondent

² CRL.M.C.27/2022

³ (2012) 10 SCC 303

No.3 duly attested by respondent No.3 is annexed. In the said affidavit, respondent No.3 has stated that she got married with the petitioner on 14th September, 2020 and from the said wedlock, they have a child. Respondent No.3 states that she has no complaint against the petitioner.

19. Respondent No.3 is present in the Court. On being questioned, respondent No.3 reiterates what is stated by her in her affidavit. Learned Counsel for respondent No.3 has identified her. Learned A.P.P has verified the original Aadhar Card of respondent No.3.

20. Considering the nature of the dispute, amicable settlement between the parties, affidavit of parents of the petitioner and respondent No.3, affidavit of respondent No.3 and having regard to the judicial pronouncements, there is no impediment in allowing the petition.

21. The petition is accordingly allowed. The F.I.R bearing C.R. No.61 of 2020 registered with Amboli Police Station, Mumbai, as against the petitioner and consequently, the proceeding pending

before Additional Sessions Judge 12th Court, Dindoshi, Goregaon, Mumbai being Special Case No.313 of 2021, are quashed and set aside.

22. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

23. All parties to act upon the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]