

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

***WRIT PETITION NO. 1833 OF 2017***

Kunal Santosh Patil  
r/at: 43, Post Ranal, At Dapode,  
Taluka Bhiwandi, Dist. Thane. ... Petitioner

v/s.

The State of Maharashtra

2. Pooja Suresh Tangade  
@ Pooja Kunal Patil  
r/at Khardi,  
Taluka Bhiwandi, Dist. Thane. ... Respondents

Mr Nitin Sejpal a/w. Ms Pooja Sejpal & Ms Akshata Desai for the  
petitioner.

Advocate Bhavesh Thakur for respondent No.2.  
Mrs G P Mulekar, APP for the State.  
Shri S J Jankar, PSI, Ganeshpuri Police station present.

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

***DATE : 5<sup>th</sup> January 2023***

P.C.:

Learned counsel for the petitioner seeks leave to amend the petition. Leave granted. Amendment be carried out forthwith.

2. In response to the Court's query, the Additional Public Prosecutor Mrs Geeta Mulekar on instructions from Mr S J Jankar, Sub-Inspector of Police, Ganeshpuri Police Station, identifies the parties i.e. petitioner and respondent No.2 who are physically present before this Court.

3. In addition to above, the petitioner and the respondent No.2 has produced their original Aadhar card for establishing their identity. They assured that they shall be placing on record true and correct copy of their Aadhar card duly self certified. Statement accepted.

4. Respondent No.2 has lodged a complaint against the petitioner resulting into registration of Crime No.0089/2017 on 3<sup>rd</sup> April 2017 for the offence punishable under Section 376 (2)(n) of the IPC read with section 4 & 12 of the POCSO Act. The case of the respondent No.2 in the FIR is based on the assurance given by the petitioner of promise to marry and sexually exploiting the victim i.e. respondent

No.2.

5. Both the parties have jointly produced for the perusal of this Court their marriage certificate certifying that on April 17 2017 they got married in the presence of their parents. The marriage certificate issued by the Gram Panchayat on 15<sup>th</sup> June 2017 is perused by this Court. Similarly, the Gram Panchayat has issued an independent certificate about the aforesaid marriage dated April 28 2017.

6. The petitioner and respondent No.2 are blessed with a son namely Tanveer whose Aadhar card is also produced on record for the purpose of establishing identity.

7. All the aforesaid original documents are returned to the concerned parties i.e. petitioner and respondent No.2 who have accepted to place on record self certified true copies of the same.

8. Since the parties hereto i.e. petitioner and respondent No.2 are married and are blessed with a child (son Tanveer) and are residing together, a joint request is made for quashing of the proceedings which are initiated against the petitioner vide Crime No.0089/2017.

9. The learned counsel has drawn support from the judgment of

this Court in the matter of *Aditya S/o Hemant Deshmukh vs. State of Maharashtra*<sup>1</sup>, *Madan Moham Abbot vs. State of Punjab*<sup>2</sup>, *Ganesh Shankar Pilane vs. The State of Maharashtra & anr.*<sup>3</sup>, *Taj @ Arjun S/o. Ajay Mishra & anr. vs. State of Maharashtra*<sup>4</sup>.

10. According to Mr Sejpal, considering the fact that petitioner and respondent No.2 are married and blessed with a son, no fruitful purpose would be served if the prosecution at the behest of respondent No.2 against the petitioner is permitted to be continued. He would have urged that case is squarely covered by the judgment of this Court in the matter of *Narindra Singh v/s. State of Punjab*<sup>5</sup> which is followed by this Court in the judgment of *Ganesh Pilane* (cited supra) so also the judgment cited supra in the matter of *Taj & anr. vs. State of Maharashtra*.

11. Learned APP Mrs. Mulekar would urge that based on the factual matrix the Court may pass an appropriate order, however, to assist the Court has relied on the judgment in the matter of *Gian Singh vs. State of Punjab*<sup>6</sup>.

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1 APL No.379/2020 dt. 12.7.21, Bombay High Court, Nagpur Bench.

2 (2008) 2 Supreme Court Cases (Cri)

3 WP No.272/2022 dt.11.3.2022, Bombay High Court

4 APL No.988/2019 dt.22.10.2019 Bombay High Court, Nagpur Bench

5 2014 6 SCC 466

6 2012 Cri. L. J. 4934

12. She would draw support from the observations in Paragraph 57 of the said judgment which reads thus:

“57. The position that emerges from the above discussion can be summarised thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the

Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. 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 proceeding or continuation of the criminal proceeding 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 the 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 proceeding.”

13. According to her, inherent powers which are protected under Section 482 of the Criminal Procedure Code can be invoked so as to secure ends of justice and to prevent the abuse of process of Court.

14. Having appreciated submissions, what can be noticed is, the Petitioner and Respondent No.2 who were studying together fell in love and since were belonging to same caste agreed to marry in 2013. Since the age of Respondent No.2 was below 18 years, both of them decided to wait till she attains majority. In 2014, not only the Petitioner but his family members also agreed for marriage and in the aforesaid backdrop, it is claimed that Petitioner committed alleged offence of rape.

15. It appears that the Petitioner subsequently refused to marry Respondent No.2. As such, Respondent No.2 consumed phenyl and as such Respondent No.2 was hospitalized. It is during this incident, aforesaid offence came to be registered. Petitioner and Respondent No.2 got married on April 17, 2017 i.e. immediately after the offence came to be registered. In the aforesaid backdrop, Respondent No.2 has extended no objection for quashing of the prosecution against the

Petitioner as both the parties are likely to suffer undue hardship. Both the parties have agreed that they want to lead peaceful life and their marriage has been duly accepted by respective family members.

16. In the backdrop of aforesaid factual matrix and having regard to the law laid down in the judgments referred to above, it cannot be said that offence alleged against the Petitioner cannot be quashed only on the ground that same is not compoundable. Section 482 preserves inherent powers of the High Court which can be exercised in the matter of prevention of abuse of process of court or to secure the ends of justice. As such, even if offence is not compoundable, there is no embargo on the powers of this Court to quash the prosecution in exercise of powers under Section 482 of the Criminal Procedure Code.

17. Having regard to the fact that the petitioner is facing trial for an offence under Section 376(2)(n) of the IPC and he having got married with respondent No.2 and are blessed with a son Tanveer, it will be appropriate in our opinion to quash the proceedings which the petitioner is facing vide the aforesaid Crime No. 0089/2017, as no fruitful purpose would be served even if such prosecution is continued against the petitioner, particularly when the petitioner and respondent No.2 are already married.

18. Accordingly, the petition stands allowed in terms of prayer clause 22(b) which reads thus:

“That this Hon’ble Court, in exercise of its jurisdiction under Articles 226 of the Constitution of India, be pleased to issue a Writ of Mandamus or any other Writ, Order of direction thereby quashing the F.I.R. No.I-0089 of 2017 registered with the Ganeshpuri Police Station under Section 376(2)(n) of the Indian penal Code and Sections 4 and 12 of the Protection of Children from Sexual Harassment Act 2012 and also proceedings arising out of aforesaid FIR vide S.C.No.261 of 2017 pending in the file of the Sessions Judge, Thane.”

***R.N. LADDHA, J.***

***NITIN W. SAMBRE, J.***

Lata Panjwani, P.S.