

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

**CRIMINAL WRIT PETITION NO.2300 OF 2019**

1. Mr. Vijay Laltaprasad Jaiswal  
Age : 40 yrs, Occ: Service  
Res/at, Room No.4, Rathi Tushetpada  
Pipeline, Ramji Kikire Chawal,  
Bhandup (E), Mumbai – 400 078.

2. 'XYZ'  
Age :14 years, Occ: Student  
Res/at, Room No.4, Rathi Tushetpada,  
Pipeline, Ramji Kikire Chawl,  
Bhadup (E), Mumbai-400078

..... Petitioners.

Vs.

1. The State of Maharashtra  
(Through Sr. Inspector of Police,  
Amboli Police Station, Mumbai)

2. Avadhesh Harilal Jaiswar @ Pintu  
Age 22 years, Occ.Service  
Indian Inhabitant, permanently  
residing at Room No.3,Munna  
Seth Chawl, Tulshetpada,  
Gavdevi Road, Bhandup (E),  
Mumbai-400089.

..... Respondents.

.....

Mr Rushita Jain i/by Abhishek Mishra, Advocate for the  
Petitioners.

Mr A.R.Kapadnis, APP for Respondent No.1.

Dr Samar S. Karmarkar, for Respondent No.2.

.....

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

**DATE : 1 MARCH 2023.**

...

**Order (Per R.N.Laddha) :**

At the outset, the learned Counsel for the Petitioners seek to leave to amend to delete the name of the victim girl/petitioner No.2 wherever it appears in the petition and replace it with the alphabet 'XYZ'. Leave granted.

2. Heard learned Counsel for the parties.

3. This is a petition for quashing FIR No.I-23 of 2019, registered at Bhandup Police Station, Mumbai, alleging the commission of an offence punishable under Sections 363, 376(2) (j), 376(3) of the Indian Penal Code, Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act). Petitioner No.1 is the original Complainant and father of the victim girl/Petitioner No.2. Quashing is sought on the premise that the parties have amicably settled the dispute as the impugned FIR was lodged due to misconception and misunderstanding of the parties.

4. When this criminal writ petition for quashing the impugned FIR was placed before us, it was stated by both the learned Counsel

for the Petitioners and Respondent No.2 that the dispute had been amicably settled. Further, they submitted that the victim/Petitioner No.2, aged about fourteen years, on her wish and accord, went to Virar with Respondent No.2. They submitted that Respondent No.2 did not pressurise Petitioner No.2 nor Petitioner No.2 was forced to enter into any relation with Respondent No.2. Further, they submitted that Petitioner No. 1 being a father of Petitioner No.2 was angry and upset with the act of the victim girl and Respondent No.2 and in a fit of rage and without asking the victim girl/Petitioner No.2 lodged the impugned FIR against the Respondent No.2 and did not want to proceed with the proceedings in the trial Court as it would cause much trauma and grief rather than doing any good to either of the parties. They submitted that leaving home was the voluntary act of Petitioner No.2. They submitted that the present case is squarely covered by the law laid down in the case of *Ramesh Nanji Badiya (Maheshwari) Vs. State of Gujarat & Ors.*<sup>1</sup> ; *Ashok Dhondiba Kale Vs. State of Maharashtra and Ors.*<sup>2</sup> ; *Mohd. Samim Vs. State of Haryana & Ors.*<sup>3</sup>

5. Learned APP for Respondent No.1-State submits that appropriate orders may be passed.

---

1 2014 SCC OnLine Guj 15131.

2 Cr.Application No.7038 of 2016.

3 Cr.WP No.532 of 2018 (O & M) dt.26.9.2018.

6. It revealed from the record that on 11.1.2019, the impugned FIR came to be lodged for the offence punishable u/s 363 of the Indian Penal Code on the complaint of Petitioner No.1 alleging therein that on 10.1.2019 at about 7.00 a.m. his daughter-Petitioner No.2 left home to go to school picnic and did not return and therefore, he suspected someone might have enticed his daughter and taken her from his lawful guardianship. Also, it revealed from the record that after receiving the information, the police, on 13.1.2019, detected Respondent No.2/Accused and the victim girl/Petitioner No.2 together.

7. Petitioner No.1 and Respondent No.2 are present before us. We have confirmed from Petitioner No.1 the contents of the petition. He reiterated the facts mentioned in the petition and stated that due to misconception and misunderstanding, he lodged the impugned FIR. Respondent No.2 said that they have amicably settled their dispute. The parties have been identified by their Counsel. Learned APP has verified their Aadhar Cards.

8. We have examined the facts of the present case. Based on the material on record, particularly the contents of the petition, it is seen that the FIR was lodged due to misconceptions and misunderstandings between the parties. It is not in dispute that the offence u/s 376 of the IPC and under the provisions of the POCSO Act are serious and cannot be quashed by consent. However,

considering the peculiar facts and circumstances, we are also required to consider the submissions of the parties. As stated above, it is the contention of the learned Counsel for the parties that the victim/Petitioner No. 2, on her own wish and accord, went to Virar with Respondent No.2. Respondent No.2 did not pressurise Petitioner No.2 nor she was forced to enter into any relation with Respondent No.2. Petitioner No.1 being a father of Petitioner No.2 was angry and upset and in a fit of rage and without asking Petitioner No.2 lodged the impugned FIR. After the victim disclosed to Petitioner No.1 the facts, he decided to stop the prosecution against Respondent No.2 and filed the present petition. Admittedly, at the time of incident, Respondent No.2 was 22 years of age. Moreover, prima facie, no offences as alleged are made out against Respondent No.2.

9. As a result, the present criminal writ petition is allowed in terms of prayer clause (b), which reads thus :

*“(b) That this Hon’ble Court be pleased to quash and set aside FIR vide C.R.No.23/2019 registered with Bhandup Police Station, Mumbai.”*

10. The Rule is made absolute in the above terms without any order for costs.

[ R. N.LADDHA, J. ]

[NITIN W. SAMBRE, J.]