

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION No.2907 OF 2023**

Sudhir Madan Saple

...Petitioner

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. A.S. Khandeparkar, Senior Advocate a/w. Saurabh Mittal a/w. Rohit Mahadi a/w. Rushikesh Bhagad a/w. Farhan Shaikh a/w. Vaibhav Kulkarni i/by Khandeparkar & Associates for Petitioner

Mr. S.V. Gavand, APP for the State

Mr. Nilesh Pandit i/by Umesh Tiwari for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
 RAJESH S. PATIL, JJ**

DATED : 25th AUGUST, 2023

P.C.:

1. Out of intimacy developed *inter se* between the Petitioner and Respondent No.2- Complainant, both had physical relationship under the promise of getting married in future.

2. As the Petitioner backed out from this promise, Crime No. 710 of 2016 punishable under Section 376(2) (n) of IPC came to be registered on 25th October, 2016 and after thorough investigation, the Petitioner came to be charge-sheeted.

3. Mr.Khandeparkar, learned Senior Counsel would urge that the relationship between the Petitioner and Respondent No.2 was consensual

and as such the very ingredients of the offence punishable under Section 376 (2) of the IPC in view of definition under Section 375 of the IPC cannot be said to be satisfied or inferred.

4. The counsel for Respondent No.2, based on the instructions from the Complainant, who is physically present in the Court, submits that Respondent No.2 intends to extend consent for quashing as she has willingly continued physical relationship with Petitioner. A consent affidavit to that effect is placed on record.

5. Based on the contents of the said affidavit, we have requested the learned APP to confront the victim as to whether she has sworn the affidavit of consent out of her own free will and whether she admits the contents of the said affidavit.

6. Respondent No.2- Complainant whose identity is verified from her Aadharcard, has accepted the contents of the affidavit wherein she has stated that the physical relationship was maintained out of her consent and free will.

7. In the aforesaid background, both the counsel jointly requested for quashing by consent.

8. Though the offence punishable under Section 376 (2) of the IPC is not compoundable under Section 320 of the Cr.P.C., this Court is required to be satisfied on the law laid down by the Apex Court in catena of judgments wherein the quashing by consent is permissible in case if it is established that the physical relationship between the parties was consensual.

9. In the aforesaid background, having regard to the stand taken by Respondent No.2-Complainant, the Petitioner cannot be made to undergo the rigor of suffering the prosecution case which is already pending since more than last seven years. Even otherwise, the case of the prosecution having regard to the stand taken by Respondent No.2- Complainant cannot be taken to its logical end.

10. In this view of the matter, we deem it appropriate to allow the Petition in view of the law laid down by the Apex Court in the matter of ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr. decided in 1st March, 2021 in Criminal Appeal No. 233 of 2021 (arising out of SLP (Cri) No. 11218 of 2019).***

11. Writ Petition is allowed in terms of prayer clause (a) subject to payment of cost of Rs.3,00,000/- by the Petitioner to The Children AID Society to be deposited in UCO Bank Account No. 02370100005612 with

IFSC Code UCBA0000237. The cost shall be deposited by the Petitioner within six weeks from the date of receipt of the order and receipt to that effect be placed on record within a week thereafter failing which the order of quashing of proceedings shall automatically stand recalled and this Court will be constrained to proceed against the Petitioner in accordance with law.

12. Writ petition is disposed of in the aforesaid terms.

(RAJESH S. PATIL, J)

(NITIN W. SAMBRE, J.)