

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2656 OF 2022**

1. Jineetkumar Baban Gawad	]	
2. Baban Gajanan Gawad	]	
3. Vibha Baban Gawad	]	Petitioners
Vs.		
1. The State of Maharashtra	]	
2. XYZ	]	Respondents

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Mr. Sangharsh V. Waghmare i/b Mr. Dhammadip A. Gavle, for
Petitioners.

Ms. P.P. Shinde, A.P.P, for Respondent No.1-State.

Ms. Bhagyesha Kurane, for Respondent No.2.

Mr. Vivek Narvekar, A.P.I, Palghar District.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**
DATE : 18th JANUARY, 2023.

ORDER: [Per Prithviraj K. Chavan, J.]

1. Heard.

2. At the outset, learned Counsel for the petitioners seeks leave to amend to truncate the name of the respondent No.2 (prosecutrix) and replace it with an alphabet not only in the cause title but wherever it appears in the petition.

3. Leave granted. Amendment to be carried out forthwith, during the course of the day.

4. Rule.

5. Rule is made returnable forthwith, with the consent of the parties. Petition is taken up for final disposal.

6. Learned A.P.P waives notice on behalf of respondent No.1-State and Ms. Kurane, learned Counsel waives notice on behalf of respondent No.2.

7. By this petition under Article 226 of the Constitution of India, the petitioners seek quashing of the First Information Report (for short 'F.I.R') registered vide C.R. No.109 of 2022 with Palghar Police Station for the alleged offences punishable under sections 306, 323, 376, 511, 420 and 417 of the Indian Penal Code (for short 'I.P.C') and consequently, proceeding pending before the Joint Civil Judge (Junior Division) and Judicial Magistrate First Class, Palghar being R.C.C. No.346 of 2022. Quashing is sought on the premise that the parties have amicably settled their dispute.

8. Briefly stated, facts are as follows.

9. Marriage of respondent No.2 was fixed with the petitioner No.1. It was an arrange marriage. Marriage was to be solemnized on 25th April, 2022. Both parties printed invitation cards, did shopping of clothes and jewelleries. However, on 20th April, 2022, there was a quarrel between petitioners and respondent No.2 and their family members, *inter se*, on account of printing the name of one Bharat (Sandesh) Subhash Cheulkar in the invitation card by respondent No.2's parents. Petitioner No.1 did not like the name of Bharat in the invitation card of respondent No.2. Respondent No.2 further alleged that on that count, petitioner No.1 refused to marry who already had committed sexual intercourse with her by giving promise to marry. The petitioner No.1, therefore, attempted to commit suicide by consuming phenyl.

10. The allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute offences, must less, punishable under sections 306 and 376 of the Indian Penal Code, for the reasons hereinbelow.

11. As stated hereinabove, talk of marriage was finalized and even invitation cards were printed. The petitioner No.1 was unhappy, for, name of so-called *manasputra* of his father-in-law i.e father of respondent No.2 was printed on the invitation card and, his in-laws refused to remove the name of the said *manasputra*. Admittedly, there was a quarrel between the two families on that count which came to be pacified by a local politician. However, by that time, respondent No.2 consumed phenyl in the heat of moment. In order to attract alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. Mere allegations of harassment of the deceased by another person would not suffice unless there be such an action on the part of the accused which compels the person to commit suicide. *Prima facie*, there is nothing to infer that the petitioners intended, provoked, incited or encouraged respondent No.2 to commit suicide. This has been observed by the Hon'ble Supreme Court in the case of **Ude Singh**

and others Vs. State of Haryana¹.

12. Similarly, so far as the allegations in respect of section 376 of the I.P.C are concerned, there is no question of petitioner No.1 giving false promise of marriage as invitation cards have already been printed and the marriage was to be solemnized on the fixed date. There is no question of giving a false promise of marriage and then establishing physical relations with respondent No.2. *Prima facie*, it cannot be inferred from the record that the petitioner No.1 had dishonest intention to cheat respondent No.2 by breaking the marriage. This is also in light of the fact that the incident was dated 1st March, 2022 and the marriage ceremony was to be solemnized on 24th April, 2022. There is a subtle distinction between breach of promise and not fulfilling a false promise. As such, even allegations are *sans* ingredients of section 376 of the I.P.C.

13. Meanwhile, petitioner No.1 approached Additional Sessions and District Judge, Palghar, seeking pre-arrest bail, which came to be allowed owing to a no objection given by respondent No.2.

¹ (2019) 17 SCC 301

14. The parties have decided to give a quietus to the dispute. It is informed that marriage of petitioner No.1 and respondent No.2 has been solemnized on 22nd May, 2022 at Chinchani, Taluka Dahanu, District Palghar. Certificate of registration of marriage is annexed which is at 'Exhibit C'. Respondent No.2 has filed an affidavit dated 20th June, 2022, duly notarized before the Notary. In the said affidavit, she has given her no objection for quashing the F.I.R bearing No.109 and R.C.C. No.346 of 2022, in view of the fact that they have amicably settled the dispute and also in view of solemnization of her marriage with the petitioner No.1.

15. Respondent No.2 is present in the Court. On being questioned, respondent No.2 reiterates what is stated by her in her affidavit. Learned Counsel appearing for respondent No.2 has tendered photostat copy of the Aadhar Card of respondent No.2 duly attested by her. The same is taken on record. Learned Counsel for respondent No.2 has verified the original Aadhar Card of respondent No.2.

16. Considering the nature of the dispute, relations between the parties, amicable settlement between them, affidavit of respondent

No.2 and having regard to the judicial pronouncements of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another**² and **Narinder Singh and others Vs. State of Punjab and another**³, there is no impediment in allowing the petition.

17. The petition is accordingly allowed. The F.I.R bearing No. 109 of 2022, registered with Palghar Police Station, District Thane, as against the petitioners and consequently, the proceeding pending before the Judicial Magistrate First Class, Palghar being R.C.C No.346 of 2022, are quashed and set aside.

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

19. All parties to act upon an authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]

² (2012) 10 SCC 303

³ (2014) 6 SCC 466