

3. Despite the mandate of section 228 of the Indian Penal Code, learned Counsel for the petitioner has disclosed the name of the prosecutrix in the petition as well as in the cause title. Hence, learned Counsel for the petitioner to deposit costs of Rs.5,000/- with the Kirtikar Law Library, Mumbai, within one week from today.

4. On amendment being carried out by the learned Counsel for the petitioner, Registry to ensure that the name of the prosecutrix 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.

8. By this petition, preferred under Article 226 of the Constitution of India and under section 482 of the Code of

Criminal Procedure, the petitioner seeks quashing of the First Information Report (for short, "F.I.R") bearing No.56 of 2019, registered with Rabodi Police Station, Thane for the alleged offences punishable under sections 376 and 506 of the Indian Penal Code (for short, "I.P.C") and consequently, C.C No. I-83 of 2019.

9. Briefly stated, facts are as under.

10. Respondent No.2 is a married woman who has been staying with her family members comprising her husband, father-in-law and daughter since last eleven years. Her husband works at Dubai since 2016. On 29th August, 2017, respondent No.1's friend introduced her with the petitioner. Respondent No.1 and the petitioner thereafter started conversing with each other and ultimately became friends. The petitioner insisted for keeping physical relations with the respondent No.1, however, she first refused being a married woman. However, she asked the petitioner that let the relations between them be remained as friends. However, the petitioner insisted respondent No.2 to part her ways from her husband and that he would look after her and her daughter. On one occasion, petitioner called the respondent No.2 at her friend's house to meet.

When she had been to her friend's house to meet the petitioner, it is alleged that the petitioner committed forcible sexual intercourse with respondent No.2.

11. Thereafter, on several occasions, there were physical relations between the petitioner and respondent No.2. It is specifically alleged that every time the petitioner used to threaten that if she refuses to have intercourse with him, he would not spare her daughter.

12. In September, 2017, respondent No.2's husband returned from Dubai. He had a doubt about extra marital relations of the respondent No.2 with the petitioner. However, the petitioner informed him that they are just friends. Husband of the respondent No.2 disliked conversation between the petitioner and his wife, therefore, he changed SIM card of her mobile.

13. However, after the departure of the respondent No.2's husband to Dubai, the petitioner collected mobile number of the respondent No.2 from her friend and again started talking to her. There was an exchange of Whats App messages between the

petitioner and respondent No.2. When husband of the respondent No.2 again returned in the month of 2018 from Dubai, he found exchange of messages between the petitioner and respondent No.2, therefore, he refused to cohabit with respondent No.2. Even the petitioner refused to accept respondent No.2 and, therefore, she lodged an F.I.R against him, as above.

14. We heard learned Counsel for the petitioner at length. We have meticulously perused the charge-sheet as well as forensic medical examination report of the respondent No.2.

15. Learned Counsel appearing for the petitioner submits that the petitioner is an innocent person who has not committed any offence, much less, the offence of rape in view of the fact that relations between him and respondent No.2 were consensual. According to the Counsel, respondent No.2 had freely, voluntarily and consciously consented to have sexual intercourse with the petitioner and that her consent was neither in consequence of any misconception of fact nor under any false pretext of marriage. He would argue that there is no material in the charge-sheet attracting ingredients of section 376 of the I.P.C. Even no *prima facie* case has

been made out against the petitioner. He, therefore, prayed for quashing of the F.I.R and the charge-sheet *qua* the petitioner.

16. Learned A.P.P, on the other hand, strongly objected quashing of the said proceedings in light of clear statement of the respondent No.2 who had, in so many words, stated that the physical relations were established by the petitioner against her will on the pretext that he would accept her, in case, she abandons her husband. Learned A.P.P also submits that the consent of the respondent No.2 appears to have been obtained by the petitioner by putting her in fear of hurt to her daughter. Third circumstance falls under the definition of 'rape' as provided under section 375 of the I.P.C.

17. *Prima facie*, we are fully agree with the submissions made by the learned A.P.P in light of the first information report and other material placed on record. The statement of the respondent No.2 recorded by the Investigating Officer on 5th March, 2019 spells out under what circumstances, respondent No.2 was compelled to submit to the petitioner in light of the fact that she was literally threatened by him against her will to keep physical relations and in case, she refuses, he would not spare her daughter.

18. Section 375 of the I.P.C is reproduced below, which reads thus;

"375. Rape._ A man is said to commit "rape" if he-

(a)

(b).....

(c).....

(d).....

under the circumstances falling under any of the following seven descriptions:-

First.-.....

Secondly-.....

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt".

19. It also appears that the petitioner had promised to marry respondent No.2, in case, she abandons her husband. It is not the contention of the petitioner that there was absolutely no physical relations between him and respondent No.2.

20. The allegations made in the First Information Report as well as in the charge-sheet, at their face value, *prima facie*, constitute an offence of rape. The allegations in that regard unquestionably make out a case as alleged against the petitioner and, therefore, in view of the ratio laid down in the case of **State of Haryana Vs. Bhajanlal and others, 1992 Supp (1) Supreme Court Cases, 335**, we do not find that the case warrants invoking writ jurisdiction of this Court as well as powers under Section 482 of the Cr. P.C.

21. Corollary of the aforesaid discussion is that the petition needs to be dismissed and as such, stands dismissed.

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]