

Uday S. Jagtap

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

CRIMINAL WRIT PETITION NO. 3905 OF 2021

Mansukh Leera Verat

.. Petitioner

Vs.

1. The State of Maharashtra

2. XYZ

3. The Senior Police Inspector,
N.R.I. Coastal Police Station,
Navi Mumbai

.. Respondents

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Mr. Mahesh Vaswani a/w Ms. Sheetal Patkar i/b Ms. Shreya Tiwari
for the petitioner

Mr. K.V. Saste, APP for the respondent – State

Ms. Dharini Nagda for the respondent no.2

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 3rd JANUARY, 2023.

ORDER (Per Prithviraj K. Chavan, J.)

1. At the outset, learned Counsel for the petitioner seeks leave to amend to mask the name of the prosecutrix, not only in the clause title but wherever it appears in the petition and replace it with an

alphabet.

2. Leave granted. Amendment to be carried out forthwith.
3. Heard learned Counsel for the parties.
4. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Mr. Saste, learned APP waives service on behalf of respondent nos. 1 and 3 and Ms. Nagda, learned Counsel waives service on behalf of respondent no.2.
5. By this petition, preferred under Section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of the FIR bearing C.R. No. 0204 of 2021 registered with the N.R.I. Coastal Police Station, Navi Mumbai under Sections 376, 376(2)(h), 376(2)(n) of the Indian Penal Code (for short "I.P.C"). Quashing is sought on the premise that the parties have amicably settled their dispute.
6. Facts of the case are summarized as follows :-
7. The petitioner is a partner in a construction company, having

business under the name and style as Armus Galicia at Ulve, Navi Mumbai. The petitioner is married and has two sons. The respondent no.2 is a divorcee with a 5 years old son.

8. There was a vacancy of Sales Manager in the office of the petitioner's company. The respondent no.2 had applied for the said post. The respondent no.2 was interviewed by the petitioner and his brother and was appointed for the said post.

9. The petitioner and the respondent no.2 came in close contact, became intimate and ultimately entered into live-in-relationship since December 2020. The proposal for the said relationship was put-forth by the petitioner, to which the respondent no.2 readily agreed. The petitioner thereafter, promised the respondent no.2 that he would marry her despite he already being married with two sons. They had physical relationship with one another on several occasions during their live-in-relationship. Since the petitioner was not behaving properly with the respondent no.2, she discontinued her relations and, obviously, lost her job also.

10. However, the petitioner reestablished his contact with the

respondent no.2 on 29.01.2021 and requested her to resume relationship and that he would not abandon her. He again promised that he would definitely marry her. The relationship again continued between the petitioner and the respondent no.2, resulting into her pregnancy.

11. It appears that since the petitioner did not want a child from the respondent no.2, he took her to the clinic of one Dr. Priti Chalani at Vardhman Clinic, Babaji Complex Building, Sector 46/A, Seawood, Navi Mumbai on 09.08.2021. After conducting medical examination, sonography etc. she was given some pills by the doctor. On 19.08.2021, while she was admitted at Ashwini Hospital, she had profused bleeding and was quite unwell. The respondent no.2, therefore, called the petitioner but he did not pick up her phone. On the contrary, respondent no.2 received a whatsapp message from the petitioner's wife stating "*mere husband ko mat call karna kabhi*". Thereafter, the petitioner blocked her number.

12. The respondent no.2 was not willing to leave the company of the petitioner. However, the petitioner's friend namely, Dhiraj informed the respondent no.2 that the petitioner cannot accept her

responsibility and he would not be in a position to stay with her. Ultimately, the respondent no.2 approached the N.R.I. Coastal Police Station, Navi Mumbai and lodged an FIR against the petitioner for the alleged offences as above.

13. After registration of the FIR, investigation continued resulting into filing a charge-sheet against the petitioner in the Court of J.M.F.C.-1, Panvel, Dist. Raigad.

14. The parties have now decided to give a quietus to the entire dispute and, therefore, the respondent no.2 has sworn an affidavit, dated 26.10.2021 before the Additional Registrar of this Court. The said affidavit is taken on record.

15. Learned Counsel for the respondent no.2 has tendered photostat copy of her Aadhar Card. The respondent no.2 on being asked states that she had lodged a report against the petitioner due to misunderstanding and in a heat of the moment. According to the respondent no.2, the allegations in the FIR are purely of personal nature and that the respondent no.2 has absolutely no objection if the FIR as well as the charge-sheet arising from the said criminal

proceeding are quashed and set aside as they have amicably settled the dispute.

16. The respondent no.2 maintains that she wants to end all the acrimony, misunderstanding, bitterness, differences *qua* the petitioner and to put an end to all the litigation *qua* the said FIR. The respondent no.2 has been duly identified by her Counsel. Learned APP has verified the original Aadhar Card of the respondent no.2.

17. Learned Counsel for the petitioner has pressed into service a judgment of the Hon'ble Supreme Court in the case of **Madan Mohan Abbot Vs. State of Punjab**¹. It was a case under Section 379, 406, 409, 418, 506 r/w 34 of the IPC. The *ratio decidendi* of the said judgment is that :-

When a question involved is of purely personal in nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings since keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time

¹ (2008) 4 SCC 582

so saved can be utilised in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.

18. In a recent judgment of the Supreme Court in the case of **Shambhu Kharwar Vs. State of Uttar Pradesh & Anr.**², the Hon'ble Supreme Court discussed the scope of Section 482 of the Code of Criminal Procedure as well as the parameters governing the exercise of the jurisdiction by this Court. It is well settled that the test is whether or not the allegations in the FIR disclose the commission of a cognizable offence. The Court is not required to enter into merits of the allegations or trench upon the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence. This is in consonance with the parameters formulated by the Supreme Court in the case of **State of Haryana Vs. Bhajan Lal**,³.

19. In case of **Shambhu Kharwar** (supra), the appellant and the respondent no.2 were also in consensual relationship since 2013 to December, 2017. Both were educated and adults. Respondent no.2

² AIR 2022 (SC), 3901

³ 1992 Supp. (1) SCC, 335

during that period got married with someone else. The marriage ended in a decree of divorce by mutual consent on 17th September, 2017. The allegations made by the respondent no.2 indicated that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent. It is held that allegations in the complaint as they stand in the First Information Report or in the Charge-sheet do not attract the ingredients of Section 376 of the Indian Penal Code.

20. Having regard to the ratio laid down by the aforesaid judgment *vis-a-vis* the facts and the case in hand, we are of the considered view that ingredients of Section 376, 376(2)(h), 376(2)(n) of the I.P.C. are not at all attracted, inasmuch as, the relations between these two adults are clearly consensual.

21. It is apparent from the facts that the petitioner and respondent no.2 were quite aware both of them have already married with children and, therefore, there was no question of giving a promise to marry by the petitioner to the respondent no.2. In light of the affidavit sworn by the respondent no.2 requesting for quashing the entire proceedings, which are out of her free will *sans* any coercion or

undue influence, we deem it necessary to quash the same.

22. Consequently, the writ petition is allowed. The FIR bearing C.R. No. 0204 of 2021 registered with the N.R.I. Coastal Police Station, Navi Mumbai for the offences punishable under Sections 376, 376(2)(h), 376(2)(n) of the IPC is quashed and set aside.

23. The petitioner to deposit a sum of Rs. 50,000/- with the **Jeevan Sandhya Mangalya Sansthan, bearing Account No. 60134381699, IFCS No. MAHB0000189**, as costs. The said costs to be deposited within three weeks from today.

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

25. Stand over to **30th January 2023**, for recording compliance of the said deposit of costs.

26. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]