

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

WRIT PETITION NO.3967 OF 2021

Shahzad Ahmed s/o Badrealam
Age 21 years, Occ:service,
R/o :-Seedha, Sultanpur,
Seemapara, Azamgarh, Uttar Pradesh
(at present at Thane Central Prison,
Thane)

... **Petitioner/org.accused.**

Versus

1. The State of Maharashtra
Through Malwani Police Station,
Shahid Abdul Hamid Marg,
Malad, New Mahakali Nagar,
Mumbai – 400 095.

2. XYZ

Aged:- 18 years, Occ:-Housewife
R/o :- Room No.14, Azminagar, Malwani,
gate No.7, Malad(West), Mumbai

3. Fatima Sayed w/o Salim Sayed
Aged 48 years, Occ:- Housewife,
R/o:-Room No.14, Azminagar,
Malwani, Gate No.7,
Malad(West),Mumbai

.... **Respondents.**

....

Mr Nizamuddin Khan, Advocate with Ms Sheeba Khan for the
Petitioner.

Mr V.B. Konde Deshmukh, APP for the Respondent No.1.

Ms Shaba N. Khan, Advocate with Arshad Qureshi, for
Respondents No.2 and 3.

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

DATE : 19 JANUARY 2023.

Order (Per R.N.Laddha,J.) :-

At the outset, the learned Counsel for the Applicant seeks to leave to amend to delete the name of the victim girl whenever it appears in the Application 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.927 of 2021, registered at Malvani Police Station, Mumbai, alleging the commission of an offence punishable under Sections 363, 366-A, 368 376, 376(2)(n) of the Indian Penal Code, Sections 4, 5 (n), 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 9 and 10 of the Prohibition of the Child Marriage Act.

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 Applicant and Respondents No.2 and 3 that the dispute had been amicably settled. They submitted that Respondents No.2 and 3 and the Petitioner had filed the Consent Terms. They invited the attention of this Court to the Affidavit of Respondent No.2 dated 19 January 2023. They submitted that no

purpose would be served by keeping the prosecution alive, given the settlement between the parties. 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.***¹ ; ***Ashok Dhondiba Kale Vs. State of Maharashtra and Ors.***² ; ***Mohd. Samim Vs. State of Haryana & Ors.***³ They submitted that due to misunderstanding and misconception, the present FIR came to be filed. Respondents No.2 and 3 have no complaints against the Applicant. They submitted that after Respondent No.2 was brought to Mumbai, she disclosed to Respondent No.3 the facts. After that, Respondent No.2 decided to stop the prosecution against the Petitioner and approached the parents of the Petitioner with the proposal of quashing of FIR.

5. They submitted that leaving home was the voluntary act of Respondent No.2. According to them, the word ‘Child’ defined under POCSO Act does not cover a minor wife. They submitted that since the Petitioner and Respondent No.2 are married and living a happy married life, it would be in the interest of justice to quash the FIR. They submitted that Respondent No.2 and the Petitioner had performed the marriage first. Sexual relations, if any, took place only after the wedding was performed.

6. Learned APP for Respondent No.1/State submits that

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.

appropriate orders may be passed.

7. It revealed from the record that on 6.6.2021, the impugned FIR came to be lodged for the offence punishable u/s 363 of the Indian Penal Code, on the complaint of Respondent No.3 alleging therein that on 5.6.2021, at about 8.00 p.m. her daughter-Respondent No.2 left home to meet her friend and did not return. Further, she suspected someone might have enticed her daughter and taken her from her lawful guardianship. Additionally, it revealed from the record that after receiving the information, the police team, along with the victim girl's father, went to Azamgarh, Uttar Pradesh and brought Respondent No.2 and the Petitioner to Mumbai. In the statement before the Investigating Officer, Respondent No.2 had accepted that she had already married Petitioner on 24.6.2021 under Muslim Personal Law.

8. Respondents No.2 and 3 and the Petitioner are personally present before us. We have confirmed from Respondents No.2 and 3 the contents of the Affidavit and the Consent Terms. Respondents No.2 and 3 have reiterated the facts mentioned in the Affidavit and the Consent Terms. Respondent No.3 stated that she lodged the impugned FIR due to misconception and misunderstanding. Both the Respondents have been identified by their Counsel. Learned APP has verified the original Aadhar Cards of Respondents No. 2 and 3. Respondent No.2 explicitly stated

that the Petitioner is looking after her properly. She had left home as she heard the plan of her parents to send her to their native place.

9. We have examined the facts of the present case. Based on the material on record, particularly the affidavit of Respondent No.2, and the Consent Terms of the parties, it is seen that the FIR was lodged due to a misunderstanding between the parties. It is not in dispute that the offence u/s 376 of the Indian Penal Code and under the POCSO Act are serious and can not be quashed by consent. We are also conscious of the fact that merely because the Accused has married the victim, that will not absolve him from criminal liability. However, considering the peculiar facts and circumstances, we are also required to consider the rival submissions of the parties. It is the contention of the learned Counsel for Respondents No.2 and 3 that the Petitioner and Respondent No.2 had performed the marriage first, and after that they were living as legally wedded husband and wife. Admittedly, at the time of the incident, the victim girl was 17 years and 10 months of age. Drawing support from the case of *Narinder Singh Vs. State of Punjab*⁴, the coordinate Bench of this Court in *Suresh Rohidas Lahane Vs. State of Maharashtra & Ors.*⁵ in paragraph 8 observed as under :

4 2014 AIR SCW 2065.

5 WP No.4168 of 2013.

“8. In the instant case, FIR reveals that the Petitioner and Respondent No.2 were in love with each other and physical relationship between them was consensual. However, at the relevant time Respondent No.2 was minor. After she attained majority she got married to the Petitioner. Now, they are living together. Under such circumstances, if prosecution is allowed to be continued against the Petitioner it will bring discord in their matrimonial relationship and they will be unnecessarily required to face the consequences of prosecution, which is not at all likely to end into conviction. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Petitioner.

10. The observations made in *Ashok Kale and Suresh Lahane (supra)*, are equally applicable to this case. Considering the peculiar facts and circumstances of the case and the settlement between the parties, Respondents No.2 and 3 will not support the prosecution case. Allowing criminal prosecution to continue will disrupt the compromise and interfere with the restoration of peace. Nothing fruitful will, therefore, come out of the prosecution in question. Moreover, *prima facie*, no offence as alleged is made out against the Petitioner.

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

“(a) This Hon’ble Court may kindly quash/de-register the FIR No.927 of 2021 registered at Malwani Police Station, for

offences punishable u/s 363, 366-A, 368, 376, 376(2)(n) of Indian Penal Code, Section 4, 5(n), 6, 8, 12 of POCSO Act, 2012 and Section 9 and 10 of Prohibition of Child Marriage Act.”

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

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]