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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1022 OF 2023**

- | | | |
|----|--|----------------|
| 1. | Nitin S. Shinde | |
| 2. | Pranil T. Chavan @
Pramil T. Chavan | |
| 3. | Sunil T. Chavan | ...Applicants |
| | Versus | |
| 1. | XYZ | |
| 2. | The State of Maharashtra | ...Respondents |

Dr. Samarth Karmarkar i/b Karmarkar & Associates for the Applicants.

Ms Gayatri Gokhale a/w. Mr. Akash Desai for Respondent No.1.
Mr. S.V. Gavand, APP for the Respondent/State.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ.
DATE : 25 OCTOBER, 2023.**

PC:-

1. The present Application under Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No.15 of 2013 dated 10 January 2013 registered at Kurar Police Station, Mumbai for the offence punishable under Section 376 and 420 read with 34 of the Indian Penal Code and the sessions case arising out of said FIR being Sessions Case No.151 of 2013 pending before the Sessions Court at Dinodshi, Mumbai.

2. The quashing of FIR and sessions case are sought on the ground that there has been an amicable settlement between the parties and respondent No.1/prosecutrix is no longer desirous of prosecuting the case in question.

3. The learned counsel for the applicants and the learned counsel for the respondent No.1/prosecutrix jointly submit that the applicant No.1 and respondent No.1 were in relationship for about five years. It is submitted that the alleged physical relationship between the applicant No.1 and respondent No.1 was consensual, however, due to some misunderstanding the respondent No.1 was prompted to lodge the report.

4. The respondent No.2, who is identified by her Advocate Ms Gayatri Gokhale, is personally present in the Court. She confirms the contents of the consent affidavit dated 25 October 2023 filed by her, wherein she has stated that she has no objection if the criminal case in question against the applicants is quashed.

5. In ***Kapil Gupta v/s. State of NCT of Delhi and Anr.*¹**, the Apex Court has reiterated that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved, would lead to proving the charge for the offence charged with. The Court has also to take into consideration whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

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6. We have perused the FIR. Perusal of the FIR reveals that applicant No.1 and respondent No.1 both adults were in relationship from the year 2004 to 2010. The allegations made in the FIR even if accepted in their entirety reveals that the physical relationship between applicant No.1 and respondent No.1 was consensual. Considering the overall facts and circumstances, in our view, the Application deserves to be allowed. The Application is thus allowed in terms of prayer clause (a), subject to payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand) by the applicants to the **“Children AID Society bearing Account No.02370100005612, UCO Bank, IFSC Code:UCBA0000237”** within six weeks from today and the receipt of payment of cost shall be produced with the Registry, failing which the order of quashing the criminal proceedings shall stand recalled.

7. The Application is disposed of.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)