

Versus

The State of Maharashtra and another ... Respondents

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Ms. Pooja Agarwal alongwith Mr. Prakash Chavan for Respondent No.2.

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**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 1 DECEMBER 2023

P.C. :

. The Petitioner and Respondent No.2 have jointly prayed for quashing the charge-sheet/criminal proceedings in Sessions Case No.196 of 2023 arising out of First Information Report (FIR) No.554 of 2022 registered with Yerwada Police Station for the offences under Sections 376, 376(2)(n), 377, 328, 504, 506 of Indian Penal Code (IPC).

2. The first informant has alleged that she is a married woman, aged about 50 years. She got acquainted with the accused. There was friendship between them since 2014. The accused was supportive. She joined his office as employee. On 22.03.2019, the first informant accompanied the accused at his request to the premises which was to be

rented out to some other person. She was subjected to sexual assault. From March 2019 onwards, the complainant was taken to hotels and subjected to sexual relationship. Similar incident had occurred at her residence. FIR was registered on 26.11.2022. On completing the investigation, the charge-sheet is filed.

3. The Petitioner/accused and the Respondent/complainant are present in Court.

4. The Respondent No.2 filed an Affidavit dated 27.11.2023. Photocopy of her Aadhar Card is annexed to the Affidavit. She is represented by the Advocate. In the Affidavit, it is stated that the dispute between her and the Petitioner has been amicably settled. She do not wish to pursue the criminal complaint against the Petitioner. She has 25 year old daughter from her second marriage. In order to secure her future and spend life peacefully, she intends to put an end to the proceedings. She has confirmed the contents of the Affidavit and submitted that she has no objection for quashing the proceedings. The Affidavit is taken on record.

5. The learned Advocate for Petitioner and the Respondent No.2 jointly submitted that considering the peculiar facts of the case, the charge-sheet may be quashed. The parties have resolved the dispute and

since the complainant intends to lead peaceful life and considering the future prospectus of her daughter, the proceedings may be quashed.

6. The learned Advocate for Petitioner has relied upon several orders passed by this Court, wherein the proceedings in relation to the offence punishable under Section 376 IPC were quashed on the ground of settlement between parties and the decision of the Supreme Court in the case of ***Criminal Appeal Nos. 394-395 of 2021 dated 12.04.2021***, wherein the FIR was quashed with the consent of parties. It was urged before the Apex Court that the FIR was registered on account of misunderstanding. The allegations in the FIR were that the accused had promised the victim that he would marry her which promise was not kept.

7. In the case of ***Kapil Gupta vs. State of NCT of Delhi and another (SLP (Crl.) No. 5806 of 2022)***, the FIR registered for offence under Section 376 IPC was sought to be quashed, wherein allegations of rape were made by the victim. The complainant consented for quashing FIR voluntarily and without coercion. The FIR was quashed. The Court referred to observations in the case of ***Narender Singh vs. State of Punjab (2014)6 SCC 466***, wherein it was observed that while exercising its powers, the High Court has to examine whether the possibility of

conviction is remote and bleak and continuation of the criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused by not quashing the criminal cases. On the basis of observations in the said decision, the Apex Court observed that the Court has held 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 as to whether the settlement between the parties is going to result into harmony between them.

8. We have perused the FIR and the charge-sheet. The FIR mentions that the complainant and the accused were known to each other. There was friendship between them. The first incident referred to in the FIR had occurred somewhere on 22.03.2019. The FIR further refers to the incidents which had occurred at different places, wherein there was physical relationship between the accused and the victim. FIR was lodged on 05.11.2022. Prima facie, it appears that there was consensual relationship between the parties for a longtime.

9. The Apex Court in case of *Narender Singh (supra)* had referred to approach of Court while dealing with quashing of proceedings relating to heinous and serious offences. It was observed that offence under Section 307 IPC would fall in the category of heinous and serious offences. However, the High Court would not rest its decision merely because there is mention of Section 307 IPC in the FIR. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved would lead to proving the charge under Section 307 IPC. The Court can analyse whether there is strong possibility of conviction or chances of conviction are bleak and remote. If there is possibility of conviction, Court can refuse settlement and if there are no chances of conviction, it would be permissible for the High Court to accept the plea of compounding the offence based on complete settlement between parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

10. In the light of the peculiar factual matrix of this case, we are inclined to exercise powers under Article 226 of the Constitution of India

and inherent powers under Section 482 of Cr.PC. for granting reliefs sought in this petition.

ORDER

- (i) Writ Petition No.3330 of 2023 is allowed.
- (ii) Proceedings in Sessions Case No.196 of 2023 pending on the file of Ad-hoc District Judge and Additional Sessions Judge are quashed and set aside.
- (iii) The Petitioner shall pay cost of Rs.50,000/- to the Central Police Welfare Fund, Director General of Police, Maharashtra State, Mumbai.
- (iv) The details of the bank account for payment of cost are as under :

Bank Name	:	Axis Bank Ltd.
Branch Name	:	Worli, Mumbai [MH], Mumbai – 400 025.
Account Name	:	Central Police Welfare Fund
Account No.	:	914010029005759
IFSC Code	:	UTIB0000060

- (v) Petitioner to deposit the said cost of Rs.50,000/- within a period of two weeks from today and submit the receipt of the same in the Registry of this Court.
- (vi) It is made clear that, if the Petitioner fails to deposit the said cost within stipulated period, the present Petition shall stands dismissed

without further reference to the Court.

(vii) The cell phone and hard-disc of the Petitioner which were seized during the investigation be returned to him and in the event any incriminating material is found in the cell phone and hard-disc, the same shall be destroyed.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)

KANCHAN
PRASHANT
DHURI

Digitally signed
by KANCHAN
PRASHANT
DHURI
Date:
2023.12.02
14:23:10 +0530