

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

CRIMINAL APPLICATION NO. 1408 OF 2019

Sakir Ali Shah

Aged-20 Years, Occupation: Carpenter

Presently add/at, Madina Dairy, Durga Gali,

D. N. Nagar, Andheri (W), Mumbai

Permanent add/at, Sanullah, Sumhee,

Mankapur Gonda, Uttar Pradesh – 271312 ... Applicant.

Versus

1. State of Maharashtra

(At the instance of Sr. P. I.

Bhangur Nagar Police Station)

2. 'XYZ'

Aged-20 Years, Occupation: Housewife

Res/at, Laxmi Nagar, Room No.52, Behind Daab

Company, Opposite Vasu Pooja Industries

Goregaon West, Mumbai – 400104.

Permanent add/at, Neenar Aura Deeh,

Sitarampur Grant, Gonda, Mankapur,

Uttar Pradesh – 271312. ... Respondents

Dr Samarth S. Karmarkar for the Applicant.

Mr S. S. Hulke, APP for the Respondent No.1 -State.

Ms Juhi Mehta i/by Bharati Mishra for the Respondent No.2.

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

DATE : 23 FEBRUARY 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 wherever it appears in the Application and replace it with the alphabet 'XYZ'. Leave granted.

2. Heard learned counsel for the parties.

3. Rule. The Rule is made returnable forthwith, at the request of and with the consent of the learned counsel for the parties. Mr S.S. Hulke, learned Additional Public Prosecutor, waives service of notice on behalf of Respondent No.1- State. Miss Juhi Mehta, the learned Advocate, has entered appearance on behalf of Respondent No.2-original first informant and waives service of notice of rule.

4. This is an Application for quashing FIR No. 203 of 2019, registered at Bangur Nagar Police Station, Mumbai, alleging the commission of offences punishable under Sections 376 (2)(n) and 417 of the Indian Penal Code.

5. The first information report came to be registered against the Applicant with the allegations that from 19 May 2019 onwards till 30 May 2019, the Applicant, on the false promise of marriage, had repeatedly committed forcible sexual intercourse with Respondent No.2.

6. Dr Samarth Karmarkar and Ms Juhi Mehta, in unison, submitted that the Applicant and Respondent No.2 have amicably settled the dispute, and on 17 June 2019, they got married to each other and are leading their married life happily. They submitted that Respondent No.2 has also filed the consent affidavit dated 1 October 2019. They submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. They submitted that the relationship between the parties was strained as their relationship was against the wishes of their respective parents resulting in misunderstandings and filing of the impugned FIR. Further, they relied on the judgments of this Court in *Aditya s/o Hemant Deshmukh v/s State of Maharashtra & Anr.*¹; *Taj @ Arjun s/o Ajay Mishra & Anr. v/s State of Maharashtra*² and *Shambhu Kharwar vs. State of Uttar Pradesh & Anr.*³

7. Learned APP for Respondent No.1-State submits that

1 Criminal Application No. 379 of 2020 (Nagpur Bench) decided on 12.07.2021.

2 Criminal Application No. 988 of 2019 (Nagpur Bench) decided on 22.10.2019.

3 2022 SCC OnLine SC 1032.

appropriate orders may be passed.

8. It reveals from the record that Respondent No.2 had filed the consent affidavit duly affirmed before the Notary and a copy of the Aadhar Card duly attested by her. Respondent No.2 is present before the Court and stated that she has no objection if the impugned FIR is quashed, given the settlement between them. Respondent No.2 reiterated the facts in her affidavit and said that she lodged the impugned FIR due to misconception and misunderstanding and requested to quash the FIR. Respondent No.2 explicitly said that the Applicant got married to her, and they are living their married life happily and peacefully. Respondent No.2 has been identified by her counsel. Learned APP has verified the original Aadhar Card of Respondent No.2. We are informed that the charge sheet is not yet filed.

9. We have examined the facts of the present case. Based on the material on record, 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 is 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 the Petitioner and Respondent No.2 that at the time of the alleged incident, the Petitioner and Respondent No.2 were major, and their alleged sexual relationship was consensual. They performed the marriage and are living as legally married couple.

10. It is a settled principle of law that while exercising the inherent power of quashing under Section 482 IPC, it is for the High Court to take into consideration any unique feature which appears in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. The special feature in such matrimonial matters is evident. It becomes the duty of the Court to encourage genuine settlements of marital disputes. The High Court, while exercising its inherent powers, can quash criminal proceedings or FIR or complaint, and Section 320 Cr.P.C. does not limit or affect the powers u/s 482 of the Code. All these aspects are highlighted in *B.S.Joshi Vs. State of Haryana*⁴.

⁴ 2003 AIR(SC)1386.

11. In ***Suresh Rohidas Lahane Vs. State of Maharashtra & Ors.***⁵, it was observed as under :

“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.”

12. Admittedly, at the time of the alleged incident, Respondent No.2 was aged about 20 years. The allegations do not state that the Applicant had given a promise to Respondent No.2 to marry, which at the inception was false and based on which Respondent No.2 was induced into a sexual relationship. Taking the allegations in the FIR as they stand, the ingredients of the offences under Sections 376 and 417 of the Indian Penal Code are absent. Moreover, the Petitioner and Respondent No.2 happily lead their married life.

5 WP No.4168 of 2013.

13. Considering the peculiar facts and circumstances of the case, allowing criminal prosecution to continue will disrupt the compromise and interfere with restoring peace. The parties have settled their dispute amicably. Nothing fruitful will, therefore, come out of the trial in question. Further continuation of the proceedings/investigation arising out of the impugned FIR would be tantamount to the abuse of the process of law. Apart from this, no offence as alleged is prima facie made out against the Petitioner.

14. In view of above, we see no difficulty in quashing the impugned FIR. Accordingly, the Application is allowed, and the impugned FIR/C.R. No. 203 of 2019, registered at Bangur Nagar Police Station, Mumbai, is quashed and set aside. The Rule is made absolute in the above terms.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

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