

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

CRIMINAL APPLICATION NO. 1751 OF 2019

Akshay Bhoir

Age: 25 Years Occ.: Student

At Post Khandeswar,

Taluka Panvel,

District Raigad – 410206.

... Applicant

Versus

1. State of Maharashtra
(Khandeshwar Police Station)

2. X.Y.Z.

Age: 17 Years, Occ.: Student

Nevaligaon, Taluka Panvel,

District Raigad – 410206.

... Respondents

Mr Gaurav Parkar a/w Priyanka Pandey for the Applicant.

Mrs M. M. Deshmukh, APP for the Respondent No.1-State.

Mr Rohan R. Sonawane for the Respondent No.2.

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

DATE : 15 FEBRUARY 2023

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

A 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 'X.Y.Z.'
Leave granted.

2. Heard learned counsel for the parties.

3. Rule. The Rule is made returnable forthwith, with the request of and with the consent of the learned counsel for the parties. Mrs M. M. Deshmukh, the learned Additional Public Prosecutor, waives service of notice on behalf of respondent no.1-State. Mr Rohan Sonawane, the learned advocate, has entered an appearance on behalf of respondent no.2-first informant and waives service of notice of rule.

4. This is an application for quashing FIR No. I-105 of 2015, registered at Khandeshwar Police Station, Navi Mumbai, at the instance of respondent no.2 for the offences punishable under Section 354 of the Indian Penal Code and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012. Quashing is sought on the premise that the parties have amicably settled their dispute.

5. When this application for quashing the impugned FIR and the proceedings arising from there was placed before us, it was stated by both the learned counsel for the applicant and respondent no.2 that the dispute has been amicably settled. They submitted

that respondent no.2 had filed the consent affidavit and submitted that no purpose would be served by keeping the prosecution alive, given the settlement between the parties. They submitted that due to misunderstanding and misconception, the present FIR came to be filed. Respondent no.2 has no complaint against the applicant. They submitted that at the relevant time, respondent no.2 was completely confused. The intention of the applicant was not sexual but just casual and friendly. They submitted that pursuant to the realisation, respondent no.2 refused to record her statement under Section 164 of the Code of Criminal Procedure. Further, they relied on *Ramesh Nanji Badiya (Maheshwari) v/s. State of Gujarat & Ors.*¹; *Ashok Dondiba Kale v/s. State of Maharashtra & Ors.*²; *Mohd. Samim v/s. State of Haryana & Ors.*³

6. Learned APP for respondent no.1-State submitted that appropriate orders may be passed.

7. It revealed from the record that on 15 July 2015, the impugned FIR came to be lodged for the offences punishable under Section 354 of the Indian Penal Code and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012, on the complaint of respondent no.2 alleging therein that on 15 July 2015 at about 13:10 hrs., in front of rickshaw stand at New Panvel

1 2014 SCC OnLine Guj 15131.

2 Cri. Application No. 7038 of 2016 (Aurangabad Bench), decided on 16.07.2018.

3 Cri. W.P. No. 532 of 2018 (O&M), dated 26.09.2018.

Railway Station, the applicant told respondent no.2 that he will make her famous in college and with sexual intend held her hand. Further, it is alleged that when respondent no.2 tried to resist the applicant, he slapped her. After that, she went home and consumed phenyl.

8. Respondent no.2 is personally present before us. We have confirmed from her the contents of the affidavit. She reiterated the facts mentioned in the affidavit. She stated that she lodged the impugned FIR due to misconception and misunderstanding. She said that at the relevant time, she misunderstood the applicant but when she realised that the intention of the applicant was not sexual but just casual and friendly, she refused to record her statement under Section 164 of the Code of Criminal Procedure. She said her father had also supported her in not recording her statement under Section 164 of the Code of Criminal Procedure. She stated that at present she is 23 years old. She further stated that she has no complaint against the applicant/ accused. Respondent no.2 has been identified by her counsel. Learned APP has verified the original Aadhar Card of respondent no.2.

9. We have examined the facts of the present case. Based on the material on record, particularly, the affidavit of respondent no.2, it is seen that FIR was lodged due to her misunderstanding. It is not

in dispute that the offence under the POCSO Act are serious and cannot be quashed by consent. We are also conscious of the fact that merely because the complainant/victim decided to stop the prosecution, that will not absolve the applicant from criminal liability. However, considering the peculiar facts and circumstances, we are also required to consider the submissions of the parties. It is the contention of the learned counsel for respondent no.2 that the FIR was lodged due to misunderstanding and misconception. Admittedly, at the time of incident, respondent no.2 was 17 years and the applicant was 20 years of age and was studying in XIIth standard.

10. It is a settled principle of law that while exercising the inherent power of quashing under Section 482 of the Code of Criminal Procedure, the High Court can take into consideration the unique feature 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 unique features of the case, also quashed the proceedings. The High Court, while exercising its inherent powers, can quash criminal proceedings or FIR or complaint, and Section

320 of the Code of Criminal Procedure does not limit or affect the powers under Section 482 of the Code of Criminal Procedure.

11. Considering the peculiar facts and circumstances of the case and the settlement between the parties, respondent no.2 will not support 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 trial.

12. Given the above, we see no difficulty in quashing the impugned FIR. Accordingly, the application is allowed, and the impugned FIR/C.R. No. I 105 of 2015, registered at Khandeshwar Police Station, Navi Mumbai, culminating into Special Sessions Case No. 111 of 2019, pending before the learned Sessions Judge at Panvel, is quashed and set aside.

13. The Rule is made absolute in the above terms.

R. N. LADDHA, J.

NITIN W. SAMBRE, J.

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