

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

CRIMINAL APPLICATION NO.1386 OF 2018

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Bhushan Narayan Utekar

..Applicant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Ganesh Gole i/by Ateet Shirodkar, for the Applicant.

Mr. S. V. Gavand, APP for the Respondent/State.

Ms. Shraddha Vavhal, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE : 25th AUGUST, 2023

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1. At the behest of respondent No.2/complainant, Crime No.159 of 2018 punishable under Sections 376 & 506 of IPC came to be registered on 20th September, 2018.

2. The genesis of the offence alleged is reflected in the statement of the complainant, wherein out of old friendship the applicant physically exploited the complainant.

3. Both, the applicant and respondent No.2/complainant are married, the respondent No.2/complainant informed to be blessed with twins and she is happily residing with her family.

4. In this background, while trying to make out a case for

quashing Mr. Ganesh Gole, learned counsel for the applicant would urge that the physical relationship between the applicant and respondent No.2/complainant was consensual and as such, the ingredients of the offence punishable under Sections 376 & 506 of IPC cannot be inferred or said to be satisfied.

5. In response to the above, counsel for the respondent No.2/complainant has placed on record an affidavit duly sworn by respondent No.2/complainant on 4th August, 2023. The respondent No.2/complainant has stated that the complaint came to be lodged out of emotional outbursts, however, there was no issue as to the commission of offence and having regard to present social and family position, she intends to voluntarily extend consent for quashing of the FIR. She has specifically stated so in the affidavit which is filed through her lawyer Ms. Shraddha Vavhal.

6. So as to verify the contents, we have requested learned APP Mr. S. V. Gavand to interact with the respondent No.2/complainant who is connected through virtual mode. The respondent No.2/complainant is identified by her advocate Ms. Shraddha Vavhal.

7. In response to the interaction between learned APP and respondent No.2/complainant, learned APP informs that the respondent No.2/complainant has admitted the contents of the affidavit and has stated that she is voluntarily extending consent for

quashing of offence.

8. We have perused the contents of the affidavit. We are satisfied that the respondent No.2/complainant is voluntarily consenting for quashing of the offence against the applicant, though same is not compoundable.

9. This Court in view of social and family position of both the parties i.e. applicant and respondent No.2/complainant is required to be sensitive to the position of law as reflected in the following judgments of the Apex Court which are as under :-

- i) ***Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr. in Criminal Appeal No.233 of 2021***; and
- ii) ***Pramod Suryabhan Pawar Vs. The State of Maharashtra & Anr. in Criminal Appeal No.1165 of 2019***.

The Apex Court is of the view that in case of sexual relationship, if demonstrated that the relationship was consensual or the offence itself had not taken place, the Court in such an eventuality can accept the consent for quashing.

10. In this background and having regard to the position of law as reflected herein-above, no purpose will be served in keeping the present proceedings pending and making the applicant to face criminal prosecution for an offence punishable under Sections 376 & 506 of IPC. Hence, prosecution cannot be taken to its logical end

having regard to the stand taken by the respondent No.2/complainant. In view of above, the application stands allowed in terms of prayer clause (a) subject to payment of cost of Rs.50,000/- to be paid to The Children AID Society (*UCO Bank, A/c No.02370100005612, IFSC Code No.UCBA0000237*) within four weeks and copy of receipt of same be produced with the Registry within same period, failing which the order of quashing the criminal proceedings shall stand automatically recalled and this Court will be constrained to proceed against the applicant in accordance with law.

11. The application as such stands disposed of.

[RAJESH S. PATIL, J.]

[NITIN W. SAMBRE, J.]