

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

CRIMINAL APPLICATION NO.109 OF 2024

Ankit Ashok Ostwal

...Applicant

Versus

The State of Maharashtra and
Anr.

...Respondents

....

Mr. Shahood Anwar Naqvi for the Applicant.

Mr. Ajay Patil, APP for Respondent No.1-State.

Mr. Gopalkrishna Hegde i/b. Advocate Kriti Samdade for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI &

N.R. BORKAR, JJ.

DATED: 24th JANUARY, 2024.

P.C.:-

1. Learned counsel for the Applicant seeks leave to amend prayer clause (A) as to incorporate the Regular Criminal Case No. 3670 of 2023 pending on the file learned J.M.F.C., Vasai. Leave is granted. Amendment to be carried out forthwith.

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2. By this application, the Applicant seeks to quash FIR No.335 of 2023 registered with Arnala Police Station, Mira Bhayandar, Vasai -Virar District-Palghar, for the offences punishable under Sections 376, 376(2)(n) and 506 of the IPC and R.C.C.

No.3670 of 2023 arising therefrom and pending before learned J.M.F.C., Vasai.

3. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.2. Respondent No.2 has alleged that the Applicant has subjected her to rape since November-2022. On the basis of the said allegations, the aforesaid crime came to be registered and upon completion of the investigation charge-sheet has been filed.

4. Learned counsel for the Applicant and Respondent No.2 state that the parties have settled the dispute amicably. The consent affidavit of Respondent No.2 is placed on record. Respondent No.2, who is present before the Court has been identified by her Advocate. She confirms the contents of the affidavit and reiterates that she does not wish to proceed against the Applicant.

5. We are conscious of the fact that the offence under Section 376 is a serious offence and cannot be quashed with consent. Hence, we have gone through the records. A perusal of the FIR

reveals that the Applicant and Respondent No.2, both adults, have indulged in sexual relationship on multiple occasions at different places. The contents of the FIR reveal that the relationship between the Applicant and Respondent No.2 was consensual. Hence, offence of rape under Section 375 of the IPC is not made out.

6. Considering the above facts and circumstances, we allow the application in terms of prayer clause(A). FIR No.335 of 2023 registered with Arnala Police Station, Mira Bhayandar, Vasai -Virar District-Palghar and R.C.C. No.3670 of 2023 arising therefrom and pending before learned J.M.F.C., Vasai, stand quashed subject to payment of costs of Rs.1,00,000/- to be paid by both the parties to Advocates Association of Western India Generation Next within a period of two weeks from today. The details of the account are as under:-

Name: AAWI Generation Next

Account No.:000110110007807

Bank Name & Branch: Bank of India, Mumbai Main Branch

IFSC Code: BKID0000001

7. The parties are put to notice that in the event the costs are not paid within the stipulated time, the order shall stand recalled without further reference to the Court.

8. Registry to place the matter before the Court after two weeks in the event the parties do not comply with the order.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)