

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1206 OF 2023

Tushar Dilip Mane ... Petitioner

Versus

The State of Maharashtra and anr. ... Respondents

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Mr. Paras Yadav i/b Ravishankar Thombare for the
Petitioner.

Ms. Rutuja Ambekar, APP for the State.

Ms. Gayatri Takalkar for Respondent No. 2 (appointed).

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**CORAM : SMT. ANUJA PRABHUDESSAI &
N.R. BORKAR, JJ.**

DATED : 23 JANUARY 2024

P.C. :-

1. At the outset, learned counsel for the petitioner seeks leave to amend the prayer clause to incorporate Sessions Case No. 16 of 2024. Leave granted. Amendment to be carried out forthwith.

2. The petitioner seeks to quash Crime No. 1069 of 2022 registered with Wakad Police Station for offences under Sections 376, 376(2)n, 323, 504, 506 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the First Information Report lodged by respondent No. 2. Respondent No. 2 had alleged that the petitioner herein had sexual relationship with her under the promise of marriage. Based on the allegations in the FIR, the aforesaid crime came to be registered. Upon completion of investigation, charge-sheet has been filed.

4. Learned counsel for the petitioner and respondent No. 2 state that the parties have settled the dispute and that respondent No.2 does not want to proceed with the case. Respondent No. 2 has filed her affidavit giving her no objection to quash the FIR and the criminal proceedings. Respondent No. 2 has appeared by virtual mode and confirmed the contents of the affidavit.

5. We are conscious of the fact that the offence under Section 376 of IPC is an offence against society and cannot be quashed with consent. Hence, we have perused the records to ascertain whether the facts narrated in the FIR disclose essential ingredient of rape.

6. The FIR reveals that the petitioner and respondent No. 2 were known to each other since the year 2019. The respondent No. 2 was well aware that the petitioner was a married man. They had indulged in sexual relationship on multiple occasions at different places.

7. A perusal of the FIR clearly reveals that the relationship between the petitioner and respondent No. 2, both adults, was consensual. The consent was not vitiated by misconception of fact. In such circumstances, essential ingredient of rape within the meaning of Section 375 of IPC are not made out. Hence, the Petition is allowed.

8. The Crime No. 1069 of 2022 registered with Wakad Police Station for offence under Sections 376, 376(2)n, 323, 504, 506 of the Indian Penal Code and Sessions Case No. 16 of 2024 stand quashed.

(N.R. BORKAR, J.) (SMT. ANUJA PRABHUDESSAI, J.)