

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
APPLICATION NO. 1505 OF 2023**

Akshay G. Rathod ...Applicant  
Versus  
The State of Maharashtra & Anr ...Respondents

Mr. Viral Rathod i/b Mr. Vishwatej Jadhav for the Applicant.  
Ms M.M. Deshmukh, APP for the Respondent/State.  
Mr. Amit Icham a/w. Mr. Asit Chaware for Respondent No.2.  
PSI Pawashe, Kherwadi Police Station present.

**CORAM : SMT ANUJA PRABHUDESSAI &  
N. R. BORKAR, JJ.  
DATED : 5 JANUARY 2024.**

**PC:-**

1. Learned counsel for the applicant states that the charge-sheet was filed before the learned Metropolitan Magistrate, 32<sup>nd</sup> Court, Bandra, Mumbai and the same was registered as Criminal Case No.1769/PW/2023. He states that the case has been committed to the Court of Sessions at Greater Mumbai and that the sessions case is not yet numbered. He seeks leave to amend the prayer clause so as to incorporate the criminal case number. Leave granted. Amendment to be carried out forthwith.

2. By this application under Section 482 of Code of Criminal Procedure, the applicant seeks to quash FIR No.494 of 2023 registered with Kherwadi Police Station, Mumbai for the offences under Sections 376, 376(2)(n) and 417 of the Indian Penal Code as well as the charge-sheet registered as Criminal Case No.1769/PW/2023 before the Metropolitan Magistrate,

32<sup>nd</sup> Court, Bandra, Mumbai and the sessions case arising therefrom, presently, pending before the Court of Sessions at Greater Mumbai.

3. The aforesaid crime was registered pursuant to the FIR lodged by respondent No.2. The facts narrated in the FIR reveal that the applicant and respondent No.2 were known to each other and were in physical relationship since December 2021. Respondent No.2 claims that the applicant had physical relationship with her time and again under promise of marriage. The applicant subsequently refused to marry her, which led to registration of FIR alleging rape and cheating.

4. Respondent No.2 has filed her affidavit stating that she was in love with the applicant and that the FIR was filed due to misunderstanding. She stated that she does not wish to proceed against the applicant and has no objection to quash the FIR.

5. The respondent No.2 is present before the Court. She has been identified by her Advocate. She has confirmed the contents of affidavit and reiterated that she does not want to proceed against the applicant.

6. We are conscious of the fact that rape is an offence against society and the same cannot be quashed with consent. However, having gone through the FIR, we are of the view that the facts narrated in the FIR do not disclose essential

ingredients of the offence. On the contrary, the facts narrated in the FIR reveal that the applicant as well as respondent No.2, both adults, had indulged in consensual sexual relationship. The said relationship was not under any misconception of fact. Under these circumstances, this is a fit case to exercise the discretion under Section 482 of Cr.P.C. and to quash the FIR and further proceedings to secure the ends of justice. Hence, the following order is passed.

(i) Criminal Application is allowed in terms of prayer clause (a);

(ii) FIR No.494 of 2023 registered with Kherwadi Police Station, Mumbai as well as Criminal Case No.1769/PW/2023 filed before the Metropolitan Magistrate, 32<sup>nd</sup> Court, Bandra, Mumbai and consequent sessions case committed to Court of Sessions at Greater Mumbai stand quashed, subject to payment of costs of Rs.40,000/- (Rupees Forth Thousand only) to be paid to the Central Police Welfare Fund, within a period of one week.

(iii) List the matter on 12 January 2024 for compliance.

**(N.R. BORKAR, J.)**

**(SMT. ANUJA PRABHUDESSAI, J.)**