

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

CRIMINAL APPLICATION NO.1664 OF 2023

Kazim Nawab Shaikh

...Applicant

Versus

The State of Maharashtra and
Anr.

...Respondents

....

Mr. A.W. Shaikh i/b. Mr. Mohd. Umar Kazi for the Applicant.

Ms M.M. Deshmukh, APP for Respondent No.1-State.

Mr. Aditya Parmar i/b. Ms Sonia Santis for Respondent No.2.

Mr. M.T. Bandgar, API, Central Police Station, Ulhasnagar.

CORAM: SMT. ANUJA PRABHUDESSAI &

N.R. BORKAR, JJ.

DATED: 31st JANUARY, 2024.

P.C.:-

1. By consent of the parties, heard finally at the stage of admission.

2. This is an application under Section 482 of the Cr.PC. to quash the C.R. No. 539 of 2022 registered with Central Police Station, Thane, for the offences punishable under Sections 323, 376 and 504 of the IPC and Sessions Case No.96 of 2023 arising therefrom and pending on the file of learned Sessions Court, Kalyan.

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3. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.2. The case of the prosecution in brief is that from August-2019 till October-2022 the Applicant herein had sexually exploited Respondent No.2 under the promise of marriage.

4. Learned counsel for the Applicant and Respondent No.2 state that the parties have settled the dispute amicably and that Respondent No.2 does not wish to proceed with the matter. Affidavit of Respondent No.2 has been placed on record. Respondent No.2 is present before us. She confirms the contents of the affidavit.

5. We are conscious of the fact that offence under Section 376 of the IPC is a serious offence against the society and cannot be quashed with consent. Hence, we have gone through the FIR and other material placed before us.

6. A perusal of the FIR reveals that Respondent No.2 is a married woman with children. Her previous marriage has been dissolved. She claims that she got acquainted with the Applicant in the year 2019. She claims that since August-2019, the Applicant had

sexual relationship with her on multiple occasions under the promise of marriage. The FIR reveals that Respondent No.2 was well aware that the Applicant was a married man, despite which she continued relationship with the Applicant. The records indicate that relationship of the Applicant and Respondent No.2, both adults, was consensual and the consent was not vitiated by misconception of fact. Offence of 'rape' within the meaning of Section 375 of the IPC is not made out.

7. Under such circumstances, compelling the Applicant to face trial in such a serious matter will be an abuse of process of law. Hence, the application is allowed. C.R. No. 539 of 2022 registered with Central Police Station, Thane, for the offences punishable under Sections 323, 376 and 504 of the IPC and Sessions Case No.96 of 2023 arising therefrom and pending on the file of learned Sessions Court, Kalyan, stand quashed.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)