

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL WRIT PETITION NO. NO. 53 OF 2024
WITH
INTERIM APPLICATION (ST) NO.136 OF 2024**

Rajiv S-o Vedprakash Sabrawal

...Petitioner

Versus

The State Of Maharashtra And Anr

...Respondents

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Mr. Aabad Ponda Senior Advocate a/w Ms.Aruna Pai, Kavita Gandhi, Amit Dubey, Sushil Upadhyay i/by Mr.Ashok M Saraogi, Advocate for the Petitioner.

Mr. Y. M. Nakhwa, APP for the Respondent No.2 – State.

Adv. Bindu Dubey a/w Mr. Vijay Agale for Respondent No.2.

PSI Kanadkhedkar, Parksite police station is present.

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**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 19th APRIL 2024

P.C.:-

1. Petitioner is challenging the charge-sheet arising out of FIR dated 30th July 2023 registered with Park Site Police Station, Mumbai vide C.R. No. 482 of 2023, for offences under Sections 498-A, 377, 323, 504, 506 of Indian Penal Code, 1860.

2. The petitioner and respondent No.2 are the husband and wife. Marriage was solemnized on 21st October 2018. According to petitioner,

the respondent/wife had left the matrimonial home in March 2019 and the FIR was registered on 30th July 2023.

3. Learned Advocate for petitioner submitted that, prior to registration of FIR, the complainant had moved petition for maintenance which does not refer to the allegations spelt out in the FIR. The allegations are afterthought. The entire FIR does not make out any offences. The question whether the wife can lodge the FIR against husband under Section 377 of IPC, is required to be considered. The complainant was in the company of the petitioner at matrimonial home for short span of time.

4. Learned APP submitted that, the allegations are reflected in the FIR. The medical examination of the complainant was conducted. She had provided history of alleged sexual acts supporting charge under Section 377 of IPC.

5. Learned Advocate for respondent/complainant submitted that, the allegations in the FIR are sufficient to invoke penal provision as spelt out in the FIR. Petition contains the averments contrary to evidence on record. FIR makes out prima facie case against petitioner. This Court shall not entertain the petition based on disputed questions of facts.

6. Reliance is placed on order dated 3rd April 2023 passed by this Court in Criminal Writ Petition No.3175 of 2018 and various other decisions in

support of her contention that, the proceedings may not be quashed in exercise of powers under Article 226 of Constitution of India.

6. In the light of submissions advanced by both the sides and factual matrix of this case, we pass the following order:-

ORDER

- (i) Rule
- (ii) Ad-interim relief in terms of prayer clause (b) till final disposal of the petition.
- (iii) Hearing expedited.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)