

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.1896 OF 2024**

Mobashir Manjur Mustafa,
Aged 36 years, Occupation-Service,
Permanent residing at 303, a Block,
Mak Castle Apts, Upperpally Attapur,
K.V.Rangareddy, Telengana,
Mobile No.9667392920
Aadhar Card No.7319 0253 5227.

.....Petitioner

Vs.

1. The State of Maharashtra,
Oshivara Police Station,
Mumbai, C.R.No.613 of 2022.

2. XYZ

.....Respondents

Mr. Pradeep H. Sawant, for the Petitioner.
Smt. Madhavi H. Mhatre, APP, for Respondent No.1-State.
Mr. Arif Shaikh, i/b. Mr. Pranav Patil, for Respondent No.2.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**

DATE : 30th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J) :-

1) Petitioner seeks quashing of C.R.No.1258 of 2023 dated 21st December 2023 registered with the Oshiwara Police Station, Mumbai, for offences punishable under Sections 376(2)(n), 417 and 506 of the Indian Penal Code, 1860.

2) Advocate Mr. Pradip Sawant appears for the Petitioner and Mr. Pranav Patil appears for the Respondent No.2. Ms. Madhavi Mhatre, learned APP represents the State.

3) The Advocates for the Petitioner and Respondent No.2 stated that, the Respondent No. 2 has no objection to quash the FIR impugned herein and therefore it be quashed. Except repeatedly stating that, the parties herein have settled the matter amicably, the Advocate for the Petitioner did not advance any arguments to justify quashing of the said crime even by consent of the Respondent No.2. However, perusal of the contents of the FIR reveals an offence of grave and serious nature.

3.1) The Respondent No. 2 has alleged that, Petitioner established sexual relations with her forcibly. Petitioner promised to marry her and on this assurance Respondent No. 2 decided to indulge in sexual relations with Petitioner. However in September 2022, informant/victim learnt that, Petitioner was already married and had two children. In December 2022, even when she was unwell, he forced her to have sexual relations with him. On 25th January 2023, Petitioner left for Bangalore on the pretext of a job interview. Respondent No. 2 tried to get in touch with him, but his phone was unreachable. Thereafter, he called her and told her that, he was unable to marry her.

3.2) The Respondent No. 2 stated that, the parties again started living-in together in Delhi. Whenever he was out for work, he used to demand that, the Respondent No. 2 should send him her nude photographs on the mobile and when she refused, the Petitioner abused her in filthy language. Thus, the Respondent No. 2 was compelled to send her such

photographs to him against her wishes. She contends that, he refused to marry her and she has now learnt that, the Petitioner has four children and not two as disclosed by him earlier. When she confronted him, he threatened to commit suicide and leave a suicide note blaming her for the same. In these circumstances, it is the Respondent No. 2's case that, the Petitioner has raped her and cheated her. Hence, she has lodged the present crime.

4) When we asked the Advocate for Petitioner, as to the reason for Respondent No.2 to consent to the quashing of FIR initially he stated that, the parties were living in together and hence they wished to quash the FIR. Since the entire FIR was based on the breach of promise to marry, we further inquired with both Advocates as to whether the parties intended to marry each other. In reply, the Advocate for the Petitioner stated that, they were already married. When he was confronted with his earlier statement to the contrary, he got flustered and said that, they were both married to different partners but yet living in together with each other. Thus the statements of the Advocate made absolutely no sense and were incoherent. Upon a query by the Court, as to whether the case of Petitioner qualifies the test and/or principles of law enunciated by the Hon'ble Supreme Court in the case of *Gian Singh v. State of Punjab*¹, total ignorance is feigned by the Advocate for Petitioner to it.

¹ (2012) 10 SCC 303

5) Mr. Patil claimed to have been instructed by the Advocate on Record to represent the Respondent No.2. When we asked him about the consent Affidavit of the Respondent No.2, he was totally unaware of the same. He then stated that, he was not aware of the facts in the case and was merely asked to stand in before the Court, for Advocate on Record. Both the Advocates were totally unaware of the provisions of law applicable to their case. They were also blissfully unaware of the ratio laid down by the Apex Court in the decision of *Gian Singh (supra)*.

6) The statements and the conduct of the Advocates appearing in the matter do not evince our confidence that, the Respondent No.2 has willingly consented to the quashing of the FIR. We find that, it will be contrary to the ends of justice to direct quashing of the FIR by the purported consent of the complainant. Moreover, the case involves the serious offence against society and the plain reading of the FIR *prima facie* discloses a cognizable offence.

7) In its landmark decision in the case of *Gian Singh (Supra)* the Supreme Court citing an earlier decision delivered by a Five Judge Bench of the Punjab and Haryana High Court in the case of *Kulwinder Singh & Ors. v. State of Punjab & Anr*² has framed certain guidelines. The relevant guidelines are as under:

“ [...]”

² (2007) 4 CTC 769.

(f) That as a broad guideline the offences against human body other than murder and culpable homicide may be permitted to be compounded when the Court is in the position to record a finding that the settlement between the parties is voluntary and fair.

While parting with this part, it appears necessary to add that the settlement or the compromise must satisfy the conscious of the Court. The settlement must be just and fair beside being free from the undue pressure, the Court must examine the cases of weaker and vulnerable victim with necessary caution.”

8) The Supreme Court in *Gian Singh’s* case (*supra*) also concluded that, it can safely be said that there can never be any hard and fast category which can be prescribed to enable the Court to exercise its power under Section 482 of the Cr.P.C. The only principle that can be laid down is the one which has been incorporated in the Section itself, i.e., ‘to prevent abuse of the process of any Court’ or ‘to secure the ends of justice’. The relevant paragraph in the *Gian Singh* (*supra*) decision reads as thus:

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline

engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of

the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

9) The facts in the present case do not inspire any confidence that, directing quashing of the FIR will subserve the interest of justice. Hence, we have no hesitation in refusing to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India.

10) As regards the submission made by Advocate regarding the complainant/victim giving consent for quashing of the FIR, we were inclined to direct action against her for maliciously setting the criminal law in motion and abusing the process of law. Mr. Patil in fact, made a statement that, he is instructed to state that the FIR was filed by the

complainant by mistake. This makes matters worse. Be that as it may, we leave the matter here.

11) The Petition is accordingly dismissed.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)

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signed by
SHAMBHAVI
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