

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

**CRIMINAL APPLICATION NO.119 OF 2024**

Varun Kumar Keshri .. Applicant

vs.

1. State of Maharashtra & Anr. .. Respondents

Mr. M. D. Pandey with Mr. Ramlal Singh Kushwaha for the Applicant.

Mr. Ajay Patil APP for the Respondent-State.

Mr. Gurubala Birajdar i/b Jyoti Korade for the Respondent No.2.

**CORAM : A. S. GADKARI AND  
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 8<sup>th</sup> May 2024  
PRONOUNCED ON : 10<sup>th</sup> May 2024**

**JUDGMENT: [PER- SHYAM C. CHANDAK, J.]**

1) The Petitioner is accused in F.I.R. bearing Crime No.19 of 2021, dated 26<sup>th</sup> January 2021, registered with Sahar Police Station, Mumbai for offences punishable under Sections 376, 376 (2) (n) and 420 of the Indian Penal Code. The said F.I.R. was lodged by Respondent No.2. As alleged in the F.I.R., from the year 2016 to 16<sup>th</sup> August 2020, the Applicant called Respondent No.2 at various places and, giving a false promise of marriage, had physical relations with her. Consequently, Respondent No.2 conceived a child from the Applicant. However, the Applicant did not marry Respondent No.2 and thus, cheated her. On completion of the

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investigation, the Investigating Officer filed the charge sheet against the Applicant for the charge of the offences as stated above, before the Metropolitan Magistrate, 63<sup>rd</sup> Court, Andheri, Mumbai, which has been subsequently registered as C.C.No.PW/6303448/2022.

2.           Thereafter, the parties agreed to settle the matter amicably and accordingly, they decided that the said prosecution *i.e.*, F.I.R. bearing 19 of 2021 along with the C.C.No.PW/6303448/2022 be quashed. It is stated that, the F.I.R. was a result of misunderstanding between the parties.

3.           Learned Advocate for the Petitioner submitted that, the Petitioner and Respondent No.2 have amicably settled the disputes and differences. The Respondent No.2 has given her consent to quash the present crime. He, therefore, prayed that, accordingly, the crime may be quashed.

4.           To substantiate the above, Respondent No.2 has submitted her Affidavit dated 6<sup>th</sup> May 2024. In the said Affidavit, Respondent No.2 has clearly mentioned that, she is well conversant with the facts of the present case. She is the first informant, who had lodged the F.I.R. No.19 of 2021, against the Applicant for committing the offences as stated above. However, the said F.I.R. was due to a misunderstanding. Now, the said misunderstanding has

been settled between them, and she has resolved all the doubts through mutual consent and family intervention. She has no disputes, complaints or grievances against the Applicant. She will not make any claim, dispute, complaint and grievances against the Applicant or any other person in connection with the present crime. In the future, there will be no such misunderstanding between the parties. She does not wish to continue any dispute with the Applicant. Therefore, she has no objection if this Court quashes the said F.I.R. bearing No.19 of 2021 and the pending C.C.No.PW/6303448/2022. She filed the said Affidavit without any pressure, fear and undue influence.

5. In view of the above, during deliberation, we noticed that, the parties could not foresee the future requirements of the child born on 7<sup>th</sup> May 2021, as noted above. To Court, Respondent No.2 informed that, presently the child is in her custody and she is looking after him. Considering the circumstances through which Respondent No.2 passed on account of the alleged crime and the fact that, now she is single parent of the child, certainly she would need some constant pecuniary support for maintenance of the child.

6. It is common philosophy that, “the life of an individual human being begins with conception and ends with death”.

Therefore, if the heart starts beating of that little creature inside the womb of the mother, then it signifies that the child in the prenatal chamber of the mother has got a life and he or she should not be deprived of his life. A child is considered to be a gift sent by *Almighty* to human beings. The *Preamble* of the Constitution of India does not discriminate between the rights of the legitimate of illegitimate child, in so far as such development is concerned.

7. The Applicant has sufficient and substantial means for his livelihood. Applicant, however, has not made any provision of maintenance for the child. This, we think, is an innocent neglect by the Applicant towards the maintenance of the said child. We can see that, while settling this matter with the Applicant, Respondent No.2 was not struck with a thought that, she has been shouldering a great responsibility of raising her child on her own. However, this Court cannot turn a blind eye towards such a significant issue, where the child was not at fault for his existence. Therefore, the learned Advocate for the Applicant, showing concern for the child and on instructions, suggested that, the Applicant is ready to deposit Rs.7,50,000/- in the name of the child, with the Registry of this Court till the said child attains the age of 21 years. That the said amount along with interest accrued thereon thereafter can be

handed over to the said child for its benefit in the future. The suggestion seems voluntary and genuine, hence accepted.

8. Considering the approach of the Applicant we suggest that, whenever in such a crime of rape, a victim begets a child as a consequence thereof and subsequently, such victim consents to quash the prosecution arose out of that crime, better counsel prevail upon the concerned parties to conceive a plan for maintenance of such child and come prepared to execute it in the interest of justice. This way they can safeguard the basic human rights of their innocent child.

9. In view thereof, the following Order is passed:-

(i) Application is allowed.

(ii) The F.I.R. bearing Crime No.19 of 2021, registered with Sahar Police Station, Mumbai and C.C.No.PW/6303448/2022 pending before the Metropolitan Magistrate, 63<sup>rd</sup> Court, Andheri, Mumbai are quashed and set aside.

(iii) Applicant is directed to deposit Rs.7,50,000/- with the registry of this Court within a period of two weeks from the date of uploading of the Order on the official website of this Court.

(iv) On deposit of the aforesaid amount, the Registry is directed to invest the said amount in a fixed deposit in a

Nationalised bank in the name of Master 'D' initially for a period of five years and hereafter renew the same from time to time till Master 'D' attains the age of 21 years.

(v) The said amount be paid to Master 'D' on his attaining the age of 21 years, on his application to this Court.

(vi) Any application seeking withdrawal of the said amount be placed before the concerned Court along with the proof of identity.

(vii) Respondent No.2 shall give her contact number and address to the Registry of this Court and update the Registry whenever there is change in her contact No. and address, so that, once Master 'D' attains the age of 21 years, they both can be contacted for payment of the aforestaed amount.

(viii) Application is disposed of in the aforesaid terms.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)