

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

CRIMINAL WRIT PETITION NO. 127 OF 2025

Huzaifa Jive Ambaliyasana	...Petitioner
Versus	
State Of Maharashtra & Ors	...Respondents

Mr. Shadab Khopekar, Advocate for the Petitioner.

Mr. A. A. Palkar, APP for the State.

Mr. Jahagir Iqbal, Advocate for Respondent No.2.

**CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.**

DATE : 21st JANUARY, 2025

JUDGMENT (Per Ravindra V Ghuge, J)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner Accused has put forthwith prayer clause

(a) as under :

“(a) This Honorable court is kindly requested to call for the record and proceedings in FIR No.350/2024 of Goregaon Police Station and Charge Sheet Filed Before Ld. JMFC Court, Borivali Bearing Case No.4879/PW/2024. After perusing the same, please set aside and quash CR no.350/2024 of Goregaon Police Station Charge Sheet Filed Before Ld. JMFC Court, Borivali Bearing Case

No.4879/PW/2024, which was registered for the offence punishable under Sections 376(2)(n),506 of the Indian Penal Code (IPC)."

3. The learned Advocate representing the Complainant-Respondent No.2 herein, submits that she was around 29 years of age when she developed a friendship with the Accused. This friendship eventually progressed into a physical relationship for some time, on the promise of marriage. She had consented to the physical relationship only because the Accused had expressed his willingness to marry her. Subsequently, the Accused declined to enter into a marriage with her.

4. The Complainant is before the Court seeking quashing of the F.I.R. by consent and the disposal of the pending case before the Trial Court. The reason for consenting for the quashing is that she is now scheduled to get married in Uttar Pradesh and she does not desire that this case be taken further, since it could ruin her future married life.

5. In view of the above, we have referred to the recent judgment delivered by the Hon'ble Supreme Court in *Kapil Gupta*

V/s. State of NCT of Delhi in Criminal Appeal No.1217 of 2022. It would be apposite to reproduce paragraph Nos. 12 and 13 as under :

“12. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.”

13. The Court has further held that it is also relevant to consider as to what is the stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

6. There can be no debate that an offence punishable under Section 376 is a grave and a serious offence which needs to be tried and is not compoundable. It is in peculiar circumstances that this Court could exercise its jurisdiction under Section 482 of the Cr.P.C. read with Article 226 of the Constitution of India, if it appears that the said offence would not stand the test of law since it was a voluntarily consensual relationship between two adult persons. If the physical relations were by consent, mainly because the accused later declined to marry the Complainant, would not

amount to an offence in the light of **Uday V/s. State of Karnataka, (2003) 4 SCC 46.**

7. The Petitioner has tendered an original affidavit dated 24th December, 2024 from page 111 to 114, indicating therein that he has amicably settled the matter with the Complainant. The Complainant has also entered an original affidavit dated 21st December, 2024 from page 115 to 118, wherein it is stated that she does not intend to proceed with her Complaint. Though the said affidavit does not contain a statement that she is consenting to settle the matter since she is getting married to a different person in Uttar Pradesh, she submits that she would tender such an affidavit to the Court, upon a pass over.

8. After lunch recess, the learned Advocate representing Respondent No.2 Complainant, has filed an original affidavit (4 pages). It is specifically stated that the Complainant is getting married and would be shifting to the State of Uttar Pradesh. Therefore, she prays that the F.I.R. be quashed by consent, or else she is likely to face a serious turmoil in her life. She further submits that besides the turmoil, her marriage would also be in danger and,

she desires that the F.I.R. be quashed by consent. The said original affidavit is taken on record and marked as 'X' for identification.

9. In the light of the law laid down in *Kapil Gupta V/s. State of NCT of Delhi (Supra)*, this Petition is allowed in terms of prayer clause (a), which reads as under :-

“(a) This Honorable court is kindly requested to call for the record and proceedings in FIR No.350/2024 of Goregaon Police Station and Charge Sheet Filed Before Ld. JMFC Court, Borivali Bearing Case No.4879/PW/2024. After perusing the same, please set aside and quash CR no.350/2024 of Goregaon Police Station Charge Sheet Filed Before Ld. JMFC Court, Borivali Bearing Case No.4879/PW/2024, which was registered for the offence punishable under Sections 376(2)(n),506 of the Indian Penal Code (IPC).”

10. Rule is made absolute in the above terms.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)