

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 272 OF 2022

Ganesh Shankar Pilane,
Age : 20 years, Occ: Student,
R/o. Sr. No. 20/1, Punyayi Nagar,
Warna Building, Flat No. 7/6,
Dhaneshwar Colony, Opp. K.K. Market,
Dhankawadi, Pune
(Now present at Yerwada Central
Prison)

} ...Petitioner

Versus

1. The State of Maharashtra
Through Police Station Officer
Bharati Vidyapeeth Police
Station, Pune City, Dist. Pune

2. A B C (Victim)
Under guardianship of
Nagnath Kaddas,
Age : 39 years, Occ : Self-
employed, R/o. Sr. No. 20/1/2,
House No. 67, Punyayi Nagar,
Opp. K.K. Market, Dhankawadi,
Pune

} ...Respondents

Mr. Nitin Gaware Patil for Petitioner.

Mr. Rokade Narayan Gopinath for Respondent No. 2.

Mrs. A.S. Pai, PP for Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : MARCH 11, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective

parties, matter is taken up for hearing and disposal, at admission stage.

2. The Petitioner is before this Court seeking quashment of the first information report bearing Crime No. 701/2019 registered with Bharati Vidyapith Police Station, Pune on 23.11.2019 for the offences punishable under Sections 376, 377, 506 of IPC and well as under Sections 4 & 5 of Protection of Children from Sexual Offences Act, 2012.

3. Perusal of the copy of the first information report lodged at the instance of Respondent No. 2, who was a minor at the time of lodgment of report, shows that the victim was prosecuting her studies in class 12 in private college whereas the Petitioner was also prosecuting his study for the first year of degree course as an external student. As the Petitioner was residing in the same area of Respondent No. 2, they initially had an casual acquaintance and the same subsequently, turned into a friendship. They have exchanged their phone numbers and then there was a virtual contact between them on social media platform. The friendship subsequently resulted in close

relationship and the Petitioner in the month of November, 2019 called the Respondent No. 2 to meet him. It may not be necessary for us to refer to allegations in detail, suffice it to say that, as per the allegation, the Petitioner laid Respondent No. 2 to some unknown place and even though the Respondent No. 2 resisted, the Petitioner by overpowering, exploited Respondent No. 2 physically and sexually. It is further alleged in the report that the Petitioner by giving threats of disclosure of the incident compelled the Respondent No. 2 to keep mum and Respondent No. 2 due to apprehension of defamation in the society and family avoided even to disclose incident to her parents. After sometime because of mental trauma suffered by Respondent No 2, she disclosed the incident to her grandfather. The grandfather then took the parents of Respondent No. 2 in confident and then victim and her family members approached the Bharosa Cell, Pune and subsequently the report was lodged.

4. The investigation agency completed the exercise of investigation and filed the charge-sheet bearing no. 77/2020 before the Special Court, Pune. As

per the charge-sheet as many as statement of 13 witnesses are recorded including the panch witness and the medical officer.

5. An affidavit-in-reply is filed on behalf of Respondent No. 2 i.e., victim herself. Perusal of the affidavit-in-reply shows that at the time of filing of the reply i.e. on 27.01.2022 the Respondent No. 2 had attained the majority and she is of 20 years of age. It would be useful to refer to the statements appearing on the affidavit-in-reply and they read thus:

2. I say that, we are residing in same vicinity and on account of intervention of close friends, respectable persons from the society and elder ones, we have resolved the dispute, to live with peace and amity.
I say that, the deponent want to lead peaceful life and further concentrate on education and career.

3. I say that the deponent and his father on 14.10.2021 have filed affidavits at Exh 35 & 36 respectively, before the learned special court, Pune stating that, they are not interested in prosecuting the present petitioner and so also in prosecuting the trial further. It has been further stated that, the father as well as

deponent have no grievance against the present petitioner. I also reaffirm contents of the said affidavit.

4. I say that, myself and my parents have also been apprised of the actual scenario and neither me nor my parents are interested in prosecuting the petitioner. On account of pending criminal prosecution already damage has been caused to the reputation and educational career of the deponent. I say that, the protracted trial would result into hardships to the deponent and so also to my family and thus the parties have mutually agreed to file instant petition seeking quashment of impugned FIR and pending criminal prosecution.

6. Copies of the affidavit-in-replies filed by the Respondent No. 2 before District and Sessions Judge in Special Case No. 45/2020 are also annexed to the affidavit-in-reply.

7. In view of the above referred affidavits as well as in view of the statements made in the Petition, it can safely be said that quashing of the FIR and proceedings is sought for by consent of the parties.

8. Mr. Gaware, learned Counsel appearing for the Petitioner submitted that though the offences attracted against the Petitioner are serious, considering the will and wish expressed by Respondent No. 2 namely, to lead a peaceful life and concentrate on their academic career leaving behind past, this Court by exercising its powers under Sections 482 of Code of Criminal Procedure can certainly allow the Petition so as to secure the ends of justice. Mr. Gaware further submitted that it is also a consistent view of the Hon'ble the Apex Court and this Court that while exercising the powers under Section 482 of Code of Criminal Procedure the Court will have to consider all the necessary factors and the seriousness of the offences is one of the consideration and cannot be a sole criteria so as to reject the prayer for quashment.

Mr. Gaware then placed heavy reliance on the judgment oftenly quoted the judgment of the Apex Court in the matter of Narinder Singh & Ors Vs. State of Punjab & Anr¹. Mr. Gaware also placed reliance in the matter of Taj @ Arjun S/o. Ajay Mishra and Anr Vs. State of Maharashtra². Thus, learned Counsel prayed for allowing

1 2014 DGLS (SC) 285

2 CRIMINAL APPLICATION (APL) NO. 988 OF 2019

the Petition.

9. Learned APP appearing for the Respondent – State opposing the Petition vehemently submitted that even though the parties might have arrived at a settlement and are seeking quashment by consent, considering the nature of offences particularly offences punishable under Sections 376 and 377 of IPC being attracted along with the provisions of Section 4 & 5 of Protection of Children from Sexual Offences Act, 2012 are attracted, the Petition may not be allowed. It is also the submission of learned APP that the Petitioner had committed a serious offence and admittedly at the time of the incident the Respondent No. 2 was a minor as such, the Petitioner had sexually exploited a minor girl. Thus, learned APP prayed that Petition may be dismissed.

10. On considering the rival submissions of learned Counsel appearing for respective parties as well going through the judgments relied on, in our opinion, the Counsel for Petitioner made out a case for allowing the Petition.

11. True it is that, bare perusal of the first

information report and the material reflected in the charge-sheet show that a serious offence is committed by the Petitioner. The statement of witnesses and medical officer also supports the case of Respondent No. 2, at the same time, this Court cannot loose sight of the fact that the victim had reiterated her free will and prosecuting her academic career and concentrate her studies. It is stated in the affidavit of Respondent No. 2 that in her desire to prosecute the academic course and further studies, the pendency of the criminal proceedings and trial would be an hurdle. It seems that the Respondent No. 2 is adopting an approach of leaving behind her baggage of past and proceeding further in the life concentrating on the positive side for better future. In view of no objection for quashing of the report and proceedings by Respondent No. 2, it can safely be said that in the prosecution if permitted to continue there is hardly any chance of conviction being recorded against the Petitioner and the continuity of such prosecution would be nothing but futile exercise.

12. Mr. Gaware was justified in placing reliance

on the recent judgment of the Division bench of this Court in the matter of Taj @ Arjun Mishra (*supra*). In the said judgment various judgments of the Apex Court including Narinder Singh's judgment is also considered.

13. It may not be out of place to refer to observations of the Apex Court in the matter of State of Madhya Pradesh Vs. Laxmi Narayan and Others³ and Prabatbhai Aahir Vs. The State of Gujarat⁴ which are reproduced in the judgment. For ready reference, we may refer to those observations as under:

9. ...
...
...

15.5 While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had

3 (2019) 5 SCC 688

4 (2018) SCC (Cri) 1

managed with the complainant to enter into a compromise etc.

10. ...

...

...

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3 In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction

under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5 The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.10 There is yet an exception to the principle set out in propositions 16.8 and 16.9 above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

(*Emphasis supplied*).

14. Perusal of the judgment of the Division bench of this Court show that a reliance was also placed on the judgment in the matter of Meghnath Pandurang Divakar Vs. State of Goa and Others⁵.

15. It is also important to note here that in the matter of Taj @ Arjun Mishra (*supra*) the victim also wanted to prosecute her studies. We may refer to those observations as under:

16. ...

...

...

Further, Applicant no. 2 is a very bright student in academics and there lies a bright future for he life ahead and therefore, both the Applicants have arrived at the compromise.

16. Considering all these aspects, in our opinion, learned Counsel for Petitioner made out a case for allowing the Petition. Accordingly, the Writ Petition is allowed in terms of prayer clause 'B'. Rule made absolute in above terms.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)