

(2021) 04 BOM CK 0006

In the Bombay High Court

Case No : Criminal Writ Petition No. 1399 Of 2021

ABC

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 313, 376, 406
Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2021) 04 BOM CK 0006

Hon'ble Judges : S.S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : Dilip B. Shinde, R.M. Haridas, S.D. Shinde

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. At the outset it is required to be noted that since the allegations against the petitioner are in respect of the alleged sexual assault and 2nd respondent is victim, the identity of the petitioner and Respondent No. 2 needs to be concealed, therefore, the petitioner is referred to as "ABC" and Respondent No. 2 as "XYZ". The Registry is directed to maintain the record accordingly.
2. This petition is filed praying therein to quash the FIR No. I-0616 of 2019, registered with Ambarnath Police Station under sections 376, 313 and 406 of Indian Penal Code.
3. Learned counsel for the petitioner and 2nd respondent submits that the parties have amicably settled the dispute and therefore, the FIR I-0616 of 2019, registered with Ambarnath Police Station under sections 376, 313 and 406 of Indian Penal Code may be quashed.
4. The 2nd respondent has filed affidavit. She is present in the Court. She stated that, it is her voluntary act to enter into the settlement and therefore, the

impugned FIR may be quashed.

5. On the other hand, learned APP invites our attention to the allegations in the FIR and submits that there are serious allegations made against the petitioner in the FIR. The petitioner has not only committed offence punishable under Section 376 but even under Section 313 of the IPC. It is submitted that outcome of the impugned FIR has great impact upon the society, therefore, keeping in view the exposition of law by the Hon'ble Supreme Court in the case of Gian Singh Vs. State of Punjab (2012) 10 SCC 303 , Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur And Ors Versus State of Gujarat And Anr (2017) 9 SCC 641 and State of M.P. Vs. Laxmi Narayan and Ors (2019) 5 SCC 688 , the prayer for quashing FIR may not be entertained.

6. We have given careful consideration to the rival contentions. With the able assistance of learned counsel appearing for the parties, we have carefully perused the allegations in the FIR and original record pertaining to the aforesaid FIR.

7. At the outset, it would be apt to reproduce herein below the law laid down by the Hon'ble Supreme Court in the case of Gian Singh (supra):-

57. 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 F.I.R may be exercised where the offender and 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 victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise

between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

[Underlines added]

8. The law laid down in the case of Gian Singh (supra) has been further reiterated in the case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur (supra) and State of M.P. Vs. Laxmi Narayan and Ors (supra).

9. In State of M.P. Vs. Laxmi Narayan and Ors (supra), the Supreme Court has observed as under:

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1 That the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offence of mental depravity or offence like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences under the Special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;"

(emphasis added)

10. So far as allegations which would attract Section 313 of IPC are concerned, it is alleged by the prosecutrix that the petitioner-accused on disclosure by her that she is pregnant, the Petitioner took her to the doctor and said doctor prescribed pills which would facilitate termination of pregnancy. It is alleged that the said act of the accused was against her wish. It is further stated that due to consumption of those pills pregnancy got automatically terminated. Thereafter,

again the petitioner had sexual intercourse with the victim and she became pregnant. The Petitioner took her to one hospital to terminate her pregnancy and accordingly, pregnancy was terminated against her wish. Thereafter, the petitioner again promised her that he will marry with her, however, the petitioner decided to marry with some other woman. It appears from the allegations in the FIR that since inception the petitioner gave promise of marriage to the victim and had sexual intercourse and twice forcefully terminated the pregnancy.

11. The Hon'ble Supreme Court in the case of Anurag Soni Vs. The State of Chattisgarh (Criminal Appeal No. 629 of 2019), decided on 9th April 2019, in para 15 observed thus:-

"15. Now, so far as the submission on behalf of the accused-appellant that the accused had marriage with Priyanka Soni on 10.06.2013 and even the prosecutrix has also married and, therefore, the accused may not be convicted is concerned, the same cannot be accepted. The prosecution has been successful by leading cogent evidence that from the very inspection the accused had no intention to marry the victim and that he had mala fide motives and had made false promise only to satisfy the lust. But for the false promise by the accused to marry the prosecutrix, the prosecutrix would not have given the consent to have the physical relationship. It was clear case of cheating and deception.

As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of helpless female. Rape reduced a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity. Therefore, merely because the accused had married with another lady and/or even the prosecutrix has subsequently married, is no ground not to convict the appellant-accused for the offence punishable under Section 376 of the IPC. The appellant-accused must face the consequences of the crime committed by him."

12. In the light of discussion in foregoing paragraphs, an irresistible prima facie conclusion is that there is clear involvement of the petitioner in alleged offences. The learned counsel appearing for the Petitioner has placed reliance on the following judgments, in support of his contention that if there is consensual sex, in that case, offence under Section 376 of IPC cannot be alleged.

1. Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Anr (Criminal Appeal No. 233 of 2021).

2. Pramod Suryabhan Pawar Vs. State of Maharashtra & Another (2019) 9 Supreme Court Cases 608.

3. Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & Others (2019) 18 Supreme Court Cases 191

4. K.P. Thimmappa Gowda Vs. State of Karnataka. (2011) 14 Supreme Court Cases 475.

5. Uday Vs. State of Karnataka (2003) 4 Supreme Court Cases 46.

13. The facts of the present case and facts of the aforesaid judgments of the Hon'ble Supreme Court are distinguishable inasmuch as, in the present case, the petitioner cheated the victim since inception by giving false promise of marriage and not fulfilling the said promise. Secondly, apart from the offence under Section 376 of IPC, the petitioner has committed serious offence under Section 313 of IPC by forcing the victim for terminating her pregnancy on two occasions. The allegations in the FIR not only disclose the offence punishable under Section 376 of IPC, but also punishable under Section 313 of IPC. The offences are very serious and heinous in nature. Therefore, the FIR cannot be quashed on the basis of amicable settlement or on merits. Hence, the writ petition stands rejected.

14 . The observations made herein above are prima facie in nature and confined to the adjudication of the present petition only.