

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

CRIMINAL APPLICATION NO. 862 OF 2022

Faraz Perwez Alam

...Applicant

Versus

1. The State of Maharashtra

2. `X`

...Respondents

Mr. Ganesh Gupta a/w Ms. Reshma Kakade i/b G. G. Associates for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent No.1-State

Ms. Noori Khan for the Respondent No. 2

API Mr. R. B. Phad from Kasarvadavali Police Station, Thane, is present.

CORAM : REVATI MOHITE DERE &

S. M. MODAK, JJ.

WEDNESDAY, 28th SEPTEMBER 2022

P.C :

1 At the outset, learned counsel for the applicant seek leave to amend to substitute the name of the respondent No.2 by `X`.

Leave granted. Amendment to be carried out forthwith.

2 Heard learned counsel for the parties.

3 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Ms. Khan waives notice on behalf of the respondent No.2.

4 By this application, the applicant seeks quashing of the FIR, which was registered vide C.R. No. I-101/2021 registered with the Kasarvadavali Police Station, Thane, for the alleged offence punishable under Sections 376, 354, 504, 506, of the Indian Penal Code and under Section 66(C) and (D) of the Information Technology Act. Quashing is sought on the premise that the applicant and the respondent No. 2 have amicably settled their dispute.

5 Perused the papers. According to the respondent No.2/original complainant, aged 30 years, she was married to one Vilas in 2009 and from the said wedlock, she has a 11 year old child.

According to the respondent No.2, after a few years of marriage, Vilas started quarreling with her, pursuant to which, she lodged a complaint/FIR against Vilas with the Bhandup Police Station and started residing separately from Vilas. She has stated that she had kept her 11 years old son with her mother. She has further stated that in 2019, she applied for divorce from Vilas and that the said case is pending. She has stated that in the interregnum, in 2017, when she was working as a Manager in a Banquet Hall, she met the applicant and got acquainted with him. She has stated that initially, the relations were cordial and thereafter, they were in constant touch with each other through WhatsApp messages, video calls and phone calls. According to the respondent No.2, on the pretext of marriage, the applicant had physical relations with her.

6 Learned counsel for the applicant relied on the WhatsApp chats/messages and the photographs annexed to the application to show that the relations between the parties were consensual. After investigation, charge-sheet was filed as against the applicant. It

appears that post filing of charge-sheet, the parties amicably settled their dispute and accordingly, the aforesaid application has been filed.

7 The respondent No. 2 has filed her affidavit. The same is at page 318 of the application. In the said affidavit, she has stated that she met the applicant and their relations were friendly and cordial. She has further stated that she is now married to one Rohit and that she is living a happy and peaceful married life. She has further states that she is expecting and is 12 weeks pregnant and as such, does not wish to proceed with the case. She has given her no objection to the quashing of the said proceedings initiated at her behest.

8 The respondent No. 2 is present in Court. Learned counsel for the respondent No. 2 has tendered a self attested xerox copy of the Aadhar Card of the respondent No. 2. The same is taken on record. Learned counsel for the respondent No.2 has identified her. Learned A.P.P has verified the original Aadhar Card of the respondent No.2. When questioned, respondent No. 2 reiterates

what is stated by her in the affidavit.

9 We have perused the papers. Although, in the complaint/FIR, the respondent No. 2 has alleged that the applicant had physical relations with her, without her consent, a perusal of the photographs as well as the WhatsApp messages annexed to the application, which are not disputed by the respondent No. 2, show that the relationship was consensual in nature. The respondent No. 2 was about 30 years of age at the relevant time and the applicant about 33 years of age. A perusal of the papers i.e. the charge-sheet reveals consensual nature of their relationship and hence, the offence of Section 376 is not made out. Even otherwise, the respondent No. 2 has filed her affidavit stating therein, that she has no objection to the quashing of the case. She has stated that she has moved on and she is now married and is 12 weeks pregnant.

10 As far as the provisions of the Information Technology Act are concerned, it appears that the prosecution has not collected any

material with respect to the same and therefore, the said provisions alleged under the Information Technology Act, would not apply.

11 Considering what is observed hereinabove, the affidavit of the respondent No.2 and the amicable settlement between the parties, no useful purpose would be served if the trial is to continue.

12 The application is accordingly allowed. The FIR bearing C.R. No. I-101/2021 registered with the Kasarvadavali Police Station, Thane, and consequently, the proceedings, if any, arising therefrom, are quashed and set-aside.

13 Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

14 All concerned to act on the authenticated copy of this order.

S. M. MODAK, J.

REVATI MOHITE DERE, J.