

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3980 OF 2016

Chirag Sundarlal Gupta
Occ.Business, residing at
57/58, Gupta Sadan, Station Road,
Kurla (West), Mumbai 400070. .. Petitioner

Versus

- 1) The State of Maharashtra
(through Kurar Village Police Stn)
- 2)

.. Respondent

...
Mr. Vishal Kanade with Mr.Satyaprakash Sharma i/b
Ms.Shakuntala Sharma for the Petitioner.

Mr. Abhinav Chandrachud i/b Mr.Prem Kumar R. Pandey for
Respondent no.2.

Mr.S.D. Shinde, APP for the State.

CORAM : S.S. SHINDE AND
V.G. BISHT, JJ

DATED : 13th MARCH 2020

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JUDGMENT : (Per S.S. SHINDE, J)

1 Rule. Rule made returnable forthwith. With consent of the learned counsel for the parties, heard finally.

2 This petition takes an exception to the impugned FIR No. 117 of 2016 registered with Kurar Village Police Station, charge-sheet and criminal proceedings being Sessions Case No.92 of 2017 pending before the City Sessions Court, Dindoshi, Mumbai.

3 We have carefully perused the allegations in the FIR which relates to an alleged sexual assault and exploitation of the 2nd respondent by the petitioner. In the facts and circumstances of this case, we deem it appropriate to conceal the identity of the petitioner and 2nd respondent and prefer to refer them as 'Petitioner' and 'Respondent' respectively.

4 In a nutshell, the allegations made in the First Information Report are as under:-

It is the case of the petitioner that 2nd respondent was called by the Sr. Police Inspector, Shri Ladge of Kurar Village Police Station for inquiry, therefore she has personally appeared before the said Inspector on 20/4/2016 to give her statement. In the said statement, it is stated by the informant i.e. 2nd

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respondent, that since August 2015 she works as an actress in TV serials and makes her livelihood out of the income derived from the same. She has resided at

years are staying. Her start of acting in TV serials came at Delhi. In the meanwhile, she had prepared her profile and gave her personal details on the website

5 It is alleged by the informant that one day in the month of January 2015, from mobile no. she got a call on her old mobile no. At that time, the mobile caller told that he is Chirag Gupta calling from Mumbai, he has a restaurant, he is seeking a suitable girl for marriage, he has seen the profile of the complainant on shaadi.com, he liked her profile, he wants to meet her. Thereafter he started to contact her. After a few days he contacted her and asked her whether she is working as an artiste in TV serials to which she answered affirmatively. Thereafter, he always used to contact her and chat with her. In this way, she got acquainted with him. During mid January 2015, he contacted her and told her that he is unmarried and expressed his wish to marry her. In that regard, the complainant told him that she will ask her parents and then inform him about marriage. She then informed her parents about the matter. Then her

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parents asked her to call him over to Delhi. Accordingly, on 27th January 2015, petitioner herein came to Delhi to meet the informant and her family. At that time, she met the petitioner at Pacific Mall at Delhi. At the time of meeting, the petitioner told the informant that he liked her a lot and he wants to marry her. During the meeting, when the informant asked him to come to her house, meet her parents to discuss, the petitioner refused to come to her house and said that he will meet her parents when next time he visits Delhi. That time, the informant informed her parents about the discussion she had with the petitioner. Thereafter, there always used to be contact between the petitioner and the complainant via phone calls as well as Whatsapp and Text messages. Thereafter, in March 2015, the petitioner again came to Delhi and met the parents of informant and expressed desire to marry the informant. That time, her parents expressed their liking for the marriage.

6 It is alleged by the informant that in July 2015, the petitioner called the Complainant and said that they should marry in Mumbai and also he will get work for her in Mumbai. Saying this, he asked her to come to Mumbai. As in the meanwhile, the complainant used to work outdoor for shooting in TV serials she agreed, and on 17th July 2015, she came to Mumbai by the Rajdhani Express. At that time, the applicant send his Manager Pranav to pick up the informant at Mumbai Central

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Railway Station. Pranav took her from Mumbai Central Railway Station to

After she reached there, on the same evening he arranged for her a paying guest accommodation at the house of his acquaintance Mrs.D'Souza. After about 10 days the applicant arranged a rented flat for her in the same building complex at

She started residing in the flat. He used to come some times and showing illusion of marriage he had physical intercourse with her without her consent regularly. She frequently asked about marriage but he used to reply that he will get work for her in the film line and avoided the issue of marriage. She used to ask him for the work, but he did not get work for her in the film line. Therefore, with the help of her friends at Delhi, she gave an audition at Andheri, Mumbai. That time she got work in TV serials

7 It is alleged by the complainant that when the applicant used to stay at Ridhi Garden room, the informant asked about marriage, but he evaded giving excuses. When she started asking frequently, he took her to Goa on 22nd November 2016 saying that he had a house there and he will perform marriage with her there. But he stayed with her for 3 to 4 days in
and there also, he maintained physical relations

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with her against her wish and then said that one of his relations has expired therefore, they should marry on a later date and brought her back again to Mumbai. In January 2016, the informant came to know that she is pregnant as a result of the physical relations. She told about this to the petitioner and in turn he asked her to go for abortion. That time, she asked him to marry her and refused for abortion. When she refused for abortion he abused her and started forcing her to get abortion else he will throw her out from the Ridhi Garden house and he said he has her nude photo on his mobile phone and can post it over social sites and will malign the informant.

8 It is alleged by the informant that when again informant refused for abortion, he took out his revolver pointed it at her ear and threatened to blow her brains out if she does not have an abortion. Due to receiving such threats and as she had no one in Mumbai, she consented for abortion. On 17/3/2016, the complainant went to

Mumbai along with the applicant and got an abortion. That time for four to five days, the applicant had kept the complainant at

9 It is alleged by the informant that after abortion, the visit of the petitioner to the flat of the informant at Ridhi Garden became less. Whenever informant tried to contact the applicant

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to meet him he was not available.

10 It is alleged by the informant that when the informant went to meet the petitioner at his Kurla address, she found that the room there was locked. Also when she inquired at his office address at Kurla she came to know that the applicant is married earlier. Hence, she approached the police station and lodged a complaint.

11 The petitioner had filed complaint against the respondent addressed to the Police Commissioner, Mumbai Police Commissionerate, Mumbai. A copy of the said complaint is part of the compilation of the Writ Petition from pages 39 to 52. The relevant portion from the said complaint from paragraphs 3 to 10 would be referred hereinafter as and when necessary.

12 The 2nd respondent has filed a detailed affidavit in reply on 3rd October 2018 reiterating the allegations made in the First Information Report and denying the contentions raised by the petitioner in the petition.

The informant has filed further affidavit on 7th February 2020. In the said affidavit in paragraph no. 4, it is stated that the petitioner and 2nd respondent as per advise of their elders have decided to amicably settle the dispute between them and move on in their lives for the better future and career.

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Accordingly, the affidavit stating therein in consent terms duly signed and executed by the petitioner, his wife and 2nd respondent is separately filed.

13 On the basis of averments in affidavit dated 3rd October 2018 and in particular, statement made in paragraph no.4 thereof, learned counsel appearing for the petitioner and second respondent jointly submitted that the First Information Report and also the charge-sheet impugned in the present petition may be quashed.

14 The learned counsel appearing for the petitioner in support of pleadings and grounds raised in the petition places reliance upon the following judgments:-

- 1) State of M.P. vs. Dhruv Gurjar¹
- 2) State of M.P. vs. Kalyan Singh²
- 3) State of M.P. vs. Narendra Singh Rajput³
- 4) Narendra Singh Rajput vs. State of M.P.⁴
- 5) State of M.P. vs. Laxmi Narayan⁵
- 6) State of M.P. Vs. Rajveer Singh⁶
- 7) J.Ramesh Kamath Vs. Mohana Kurup⁷

1[(2019) 5 SCC 570]

2 (2019) 4 SCC 268]

3 2018 SCC Online SC 3204

4 2018 SCC Online MP 1150 Reversed

5 2017 SCC Online SC 1799

6 (2016) 12 SCC 4711

7 (2016) 12 SCC 179

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- 8) State of M.P. vs. Manish⁸
- 9) State of Maharashtra Vs. Vikram Anantrai Doshi⁹
- 10) State of M.P. Vs. Deepak¹⁰
- 11) State of Rajasthan Vs. Shambhu Kewat¹¹
- 12) Laxmi Narayan vs. State of M.P.¹²
- 13) Shiji Vs. Radhika¹³
- 14) Pankaj Rajesh Bansode Vs. State of Maharashtra¹⁴
- 15) State of M.P Vs. Laxman Narayan¹⁵ [(2019) 5 SCC 688]
- 16) Parbatbhai Aahir Vs. State of Punjab¹⁶
- 17) Narinder Singh vs. State of Punjab¹⁷
- 18) Gian Singh Vs. State of Punjab¹⁸

15 The learned Addl. Public Prosecutor appearing for the respondent State vehemently opposed the prayer for quashing of the First Information Report and charge-sheet on the basis of alleged settlement between the petitioner and 2nd respondent on the ground that the alleged offences are serious and heinous in nature. It is submitted that the alleged offences are not restricted to the individuals but those have impact upon Society and

8 (2015) 8 SCC 307
9 (2014) 15 SCC 29
10 (2014) 10 SCC 285
11 (2014) 4 SCC 149
12 2013 SCC Online MP 7987 Reversed
13 (2011) 10 SCC 705
14 2015 SCC Online Bom 4119
15 (2019) 5 SCC 688
16 (2017) 9 SCC 641
17 (2014) 6 SCC 466
18 (2012) 10 SCC 303

therefore, in view of the exposition of law in the case of **Gian Singh vs. State of Punjab** reported in (2012) 10 SCC 303, the prayer for quashing on the basis of settlement may be rejected.

16 We have considered the submissions of the learned counsel appearing for the petitioner, learned APP for the State and learned counsel appearing for the 2nd respondent and we are of the opinion that, the impugned FIR and charge-sheet cannot be quashed on the basis of alleged settlement and consent terms arrived at between the parties for following reasons.

Firstly, the alleged offences are serious in nature and in particular, offence punishable under Section 376 of the IPC is heinous. The Supreme Court in the case of **Giansingh** (supra), held that heinous and serious offences of mental depravity, murder, rape, dacoity etc. or under special statutes like Prevention of Corruption Act or the offences committed by public servants like working in their capacity as public servants cannot be quashed even though victim or victim's family and offender have settled the dispute. Such offences are not private in nature and have a serious impact on society.

The same view, as aforementioned, in the case of Gian Singh (supra) has been reiterated/confirmed by the Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Laxmi Narayan and ors, 2019 (5) SCC 688**, wherein it is held that

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“6 In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”

17 Secondly, it appears from the allegations made in the FIR that petitioner did not disclose the 2nd respondent in his initial interaction that petitioner is already married. On the contrary, as alleged in the First Information Report, the petitioner told the 2nd respondent that he is unmarried and wish to marry with the 2nd respondent. In fact, the petitioner was already married. Thirdly, the petitioner sexually abused the 2nd respondent by promising her that he will give her job in the film industry. Fourthly, there is a serious allegation in the First Information Report that the 2nd respondent conceived from the petitioner and at the gun point, petitioner compelled her for

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abortion. Therefore, the prayer of the petitioner to quash the impugned FIR, charge-sheet and pending proceedings before the concerned Court on the basis of the alleged settlement, stands rejected.

18 Since this Court has rejected the prayer of the petitioner to quash the impugned FIR, charge-sheet and proceedings pending before the Trial Court, Mr.Vishal Kanade, learned counsel appearing for the petitioner advanced the arguments on merits. He submits that there was inordinate delay in lodging the FIR. It is clear from reading the allegations in the First Information Report that the 2nd respondent was consenting party and therefore, the ingredients of Section 375 of IPC are not attracted.

19 It is submitted that the allegations of forcible sexual intercourse are false. In fact, the petitioner and 2nd respondent have stayed together and spent many nights and many hours together in flat as well as different hotels. Moreover, if petitioner used to neglect 2nd respondent by not visiting her house or not staying with her or by not spending good quality time with her, in that case, 2nd respondent used to send messages on Whatsapp or on the mobile of petitioner. The petitioner has annexed copy of such Whatsapp and mobile messages along with petition. It is submitted that petitioner was trapped by 2nd respondent, who

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unlike her other targets and preys has attempted to hatch a conspiracy against him by luring him to indulge in sexual activities with her and demanding ransom for the same, on non-fulfillment of her illegal demands files a false case against him as she has done with her other targets like Mr.Vishal Fogat and Mr.Vidyanand Dahiya, who have refused to bow down to her illegal demands.

20 Learned counsel invites attention of this Court to the contents of the letter/complaint written by him to the Commissioner of Police, Mumbai and also the pleadings and grounds taken in the petition and submits that the petition deserves to be allowed.

21 Learned APP appearing for the State invites attention of this Court to the allegations made in the First Information Report, charge-sheet and its accompaniments and submits that the offences alleged against the petitioner are serious in nature. The prosecutrix must get opportunity to step into the witness box before the trial Court to prove her allegations. The prosecution agency has collected sufficient material and on the basis of said material, the trial can proceed and therefore, this Court may reject the prayer of the petitioner to quash the impugned FIR and charge-sheet.

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22 Learned counsel appearing for the second respondent submits that, in view of the settlement arrived between the parties and consent terms, petition deserves to be allowed. He submits that even otherwise the ingredients of Section 375 of the Indian Penal Code are not attracted.

23 We have appreciated the rival contentions and also perused the allegations made in the First Information Report, charge-sheet and its accompaniments, reply filed by the 2nd respondent and copies of other documents placed on record, and we are of the considered view that the prayer of the petitioner to quash the FIR on merits cannot be acceded to, for the following reasons:

Firstly, as it is alleged in the FIR, the petitioner was already married before when he called first time to the 2nd respondent. However, petitioner told the 2nd respondent that he is unmarried and wish to marry 2nd respondent. Secondly, it appears from the allegations made in the FIR that, the petitioner promised the 2nd respondent that he will marry with her and under the said pretext, without the consent of the 2nd respondent has committed sexual assault on various occasions. Thirdly, there is a serious allegation made in the First Information Report that there was forceful abortion at the gun point by the petitioner. It appears that the Investigating Officer during the course of investigation has recorded the statement of the Medical Officer

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and the medical report is also collected. Whether such abortion was at the gun point or otherwise, is a matter for trial and such allegations made in the FIR and material collected in relation to such allegations cannot be dealt with in a summary manner while considering the prayer for quashing the FIR while exercising a writ jurisdiction and inherent powers under Section 482 of the Cr.P.C by the High Court.

Fourthly, it appears that the petitioner by promising the employment to the 2nd respondent in the film industry has taken undue advantage of weakness of the 2nd respondent and committed the alleged offences. It *prima facie* appears that the consent given by the 2nd respondent for quashing the FIR and charge-sheet is not free from coercion, inasmuch as, it is stated in the said affidavit filed by the 2nd respondent that the petitioner's wife also filed complaint against the 2nd respondent for the offence punishable under Section 452 of the Indian Penal Code. In our considered opinion, the allegations made by the 2nd respondent in the FIR will have to be tested during the trial and it is not possible to accede to the prayer of the petitioner to quash the impugned FIR and charge-sheet. The alleged offences are not individual in nature and quashing of the impugned FIR, charge-sheet and pending proceedings on the basis of alleged settlement or on merits is not possible since the alleged offences are not individual in nature and outcome of present proceedings will have impact on Society. The contention of the counsel appearing

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for the petitioner that there is inordinate delay in lodging the First Information Report, will have to be appreciated during the course of trial. An adjudication of issue of delay is a mixed question of fact and law and therefore, that will have to be considered by the trial Court during the trial.

Upon perusal of the averments in the affidavit in reply filed by the 2nd respondent and in particular paragraph 8 thereof, we have no doubt in our mind that the allegations made in the FIR, so also the charge-sheet and its accompaniments and material collected by the Investigating Officer during the investigation, needs to be tested during the course of trial.

24 In the light of discussion hereinabove, we are not inclined to accede to the prayer of the petitioner to quash the impugned FIR and proceedings in Sessions Case No.92 of 2017 pending before the Hon'ble City Sessions Court, Dindoshi, Mumbai.

25 Hence, Petition stands rejected. Rule stands discharged.

(V.G. BISHT, J)

(S.S. SHINDE, J)

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