

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**WRIT PETITION NO.4289 of 2018**

Machhindra Appaji Patil and ors. ....Petitioners  
versus  
The State of Maharashtra and anr. ....Respondents

Mr. Ashok P. Mundargi, Senior Advocate with Mr. Sanjeev Kadam,  
Advocate for the Petitioners.  
Ms. Aruna S. Pai, APP for the State.  
Mr. P. D. Dalvi, Advocate for Respondent No.2.

**CORAM : RANJIT MORE &  
SMT. BHARATI H. DANGRE, JJ.**

**DATE : 2<sup>nd</sup> May, 2019.**

**P. C. :**

Heard Mr. Mundargi, learned senior counsel for the petitioners, Mr. Dalvi, learned counsel for respondent No.2 and Mrs. Pai, learned APP for the State.

2. The age of the petitioner No.1 is 56 years and age of respondent No.2 is above 18 years. Petitioner No.1 was already married and he lost his wife in the year 2014. Thereafter, petitioner No.1 got married to respondent No.2 on 21<sup>st</sup> April, 2015. The age of respondent No.2 at the time of marriage was 14 years and 7 months.

3. On 13<sup>th</sup> February, 2017, respondent No.2 registered FIR bearing CR No. 317 of 2017 with Kalachowki Police Station at Mumbai. So far as petitioner No.1 is concerned, allegations are made under Sections 376(2)(i)(n), 323 and 496 of Indian Penal Code 1860 (for short "the IPC"), Sections 6 and 10 of the Protection of Children from Sexual Offences Act 2012 (for short "the POCSO) and Sections 9, 10 and 11 of Prohibition of Child Marriage Act, 2006. Petitioner Nos.2 and 3 are the grand parents of respondent No.2 and petitioner Nos. 4 and 5 are the uncles of respondent No.2. The allegations against these persons are made under Sections 9, 10 and 11 of Prohibition of Child Marriage Act, 2006. Petitioner Nos 1 to 3 were arrested. Petitioner No.1 was in custody for nearly about 10 months and petitioner Nos.2 and 3 were in custody for 1 month.

4. The parties, thereafter, settled their dispute amicably and have approached this Court invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 read with Sections 226 and 227 of the Constitution of India for quashing the subject crime by consent.

5. Mr. Mundargi, learned senior counsel for the petitioners, submitted that marriage of petitioner No.1 with respondent No.2 is voidable marriage under the provisions of Prohibition of Child Marriage

Act, 2006. He submitted that respondent No.2 is now ready and willing to cohabit with petitioner No.1. He further submitted that it would be in the interest of the parties including respondent No.2 to quash the subject FIR.

6. Mrs. Pai, learned APP, vehemently opposed the petition. She submitted that the petitioners are charged with serious offences under the IPC and POCSO. She also submitted that quashing the subject FIR by consent would send wrong signal to the public at large and, therefore, same should not be quashed.

7. Respondent No.2 is personally present before the Court. She has also filed an affidavit dated 30<sup>th</sup> April, 2019. In paragraph 3, she has stated that the dispute between herself and the petitioner has been settled and, therefore, she is giving no objection to quash the subject FIR. We have interacted with respondent No.2 who is present before us. She submitted that she was not aware that the case will take such a serious turn. She further submitted that she is now ready and willing to cohabit with petitioner No.1.

8. We are concerned about the welfare of respondent No.2. Respondent No.2 undisputedly was a minor at the time of her marriage with petitioner No.1. But now, she has become major and has expressed

here willingness to cohabit with petitioner No.1. Since respondent No.2 is ready to cohabit with petitioner No.1 as his legally wedded wife, the marriage which otherwise is voidable, becomes valid. We are also of the opinion that ultimately respondent No.2 will suffer if the subject case is allowed to go on as she is now married and no one in the society would accept her as a wife and we think at this stage securing her future is of prime importance.

9. Mr. Mundargi, learned senior counsel, having taken instructions from his client, makes a statement that already 6 Acres of land is transferred in the name of respondent No.2 by petitioner No.1. In addition to this, land admeasuring 5 Acres would be further transferred in the name of respondent No.2 by executing legal documents and giving effect to the same in 7/12 Extract within a period of 3 months from today. In addition to above, Mr. Mundargi submitted that an amount of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand Only) would be invested in Fixed Deposit in the name of respondent No.2 in any Nationalised Bank. So far as this amount is concerned, an amount of Rs.5,00,000/- (Rupees Five Lakh Only) would be invested in Fixed Deposit within a period of 1 month from today and the balance amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) would be invested in FDR within three months from today. Mr. Mundargi submitted that the monthly

interest on the aforesaid amount invested in Fixed Deposit Receipts would be paid to respondent No.2.

Mr. Mundargi, learned senior counsel on behalf of his client, also assured this Court that petitioner No.1 will take proper care of respondent No.2. He also stated that respondent No.2 has passed 11<sup>th</sup> Standard Exams and will be pursuing further education.

All the above statements made on behalf of petitioner No.1 are accepted as undertaking to this Court.

10. We make it clear that the land which is already transferred in the name of respondent No.2 and which would be further transferred in pursuance of this order in favour of respondent No.2 shall not be transferred to any other person during the pendency of this petition.

11. In order to enable us to observe the conduct and behaviour of the petitioner No.1 towards respondent No.2, we defer the hearing of this petition till 10<sup>th</sup> February, 2020.

12. However, for compliance of the undertaking/assurances given to this Court by petitioner No.1, we will keep this matter on board on 20<sup>th</sup> August, 2019.

13. In the peculiar facts and circumstances of the case, during the pendency and final disposal of the petition, further proceedings of C.R. No.317 of 2017 registered with Kalachowki Police Station, Mumbai and POCSO Special Case No.119 of 2018 and 472 of 2018 pending on the file of learned Sessions Court at Mumbai shall remain stayed.

14. It is specifically made clear that this order is passed in the peculiar facts and circumstances of the present case and the same shall not be treated as precedent.

**[SMT. BHARATI H. DANGRE, J.]**

**[RANJIT MORE, J.]**