

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

CRI. WRIT PETITION NO. 4516 OF 2015

Devidas Krishna Gaikwad

... Petitioner.

V/s.

The State of Maharashtra & Anr.

... Respondents.

Ms. Anjali Patil, Advocate for the Petitioner.

Mr. K. V. Saste, APP for Respondent No.1-State.

Mr. Arun Rajput, Advocate for Respondent No.2.

CORAM : RANJIT MORE & A.V.NIRGUDE,JJ.

DATED : 26th NOVEMBER, 2015.

P.C. :

1 Not on board. Mentioned. Taken on production board in view of urgency.

2 Heard the learned counsel appearing for the petitioner and the learned APP for the State.

3 This petition is filed under Article 226 of the Constitution of India read with the provisions of section 482 of the Criminal Procedure Code, 1973, for quashing and setting aside the FIR, bearing CR No. 87 of 2015 registered with the Salgerwasti Police Station, Solapur at the instance of

Respondent No. 2 for the offences punishable under Sections 307, 394, 342, 323, 504 and 506 read with section 34 of the Indian Penal Code.

4 Pending investigation of the subject FIR, the parties settled their dispute amicably and, pursuant to the understanding arrived at between them, they have approached this court for quashing the subject FIR by consent. Respondent No.2-complainant accordingly filed an affidavit dated 20th November, 2015, giving no objection for quashing the subject FIR. Respondent No.2 is also personally present before this court and has given no objection for quashing of the subject FIR. On being questioned, she specifically stated that she has gone through the affidavit and has fully understood the contents thereof and that, as stated above, she has no objection for quashing the subject FIR.

5 The Apex Court in the case of **Narinder Singh vs. State of Punjab**, reported in **2014 CRI.L.J. 2436**, held that the offence under section 307 of the Indian Penal Code would fall in the category of heinous and serious offences and, therefore, it is generally to be treated as crime against society. In para 28, the Apex Court however made following observations :

28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another

person/ victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc.. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307, IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

6 The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the

settlement and quash the FIR/Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

7 This petition appeared on board on 24th November, 2015. That day we adjourned it for today with direction to the learned APP to produce investigation papers and keep the investigation officer present. Learned APP - Mr. Saste, accordingly produced the investigation papers. Perusal of the FIR reveals that Petitioner and Respondent No.2 are husband and wife and that the petitioner had attempted to throttle Respondent No.2. After registration of FIR, Respondent No.2 was examined by medical officer-Mr. R.M. Raut attached to Shri Chattrapati Shivaji Maharaj, General Hospital, Solapur and accordingly, the medical certificate is given on 4th November, 2015. Perusal of the medical certificate shows that respondent no.2 sustained contusion and this injury is shown to be simple. The certificate, however, shows that there is no other internal injury sustained by the respondent no.2. In these circumstances, we are of the considered opinion that offence under section 307 of the Indian Penal Code is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

8 The petitioner and respondent no.2 are husband and wife. They have settled their dispute amicably and that

they are residing together alongwith their two children. In the circumstances, we are of the opinion that quashing of the subject FIR will be in the interest of respondent no.2. It is accordingly quashed.

9 In the result, the petition is allowed in terms of prayer clause (i).

10 The criminal writ petition stands disposed of accordingly.

(A.V.NIRGUDE,J.)

(RANJIT MORE,J.)

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