

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 262 OF 2015

Arshad Afroz Qureshi.

..Applicant.

Versus

Niyati Ashok Waghmare
and Another.

..Respondents.

Mr. S. A. Shaikh for the Applicant.

Mr. M. R. Khan i/b Havelikar Seema Chandrakant for Respondent
No. 1.

Mrs. S. V. Sonawane, learned APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **April 28, 2015.**

P. C. :

1. This application is filed under section 482 of the Code of Criminal Procedure, 1973 seeking to quash the FIR / CR. No.I-305/2014 registered with Mira Road Police Station against the Applicant for the offence punishable under section 376 and 366 of the Indian Penal Code, 1860 and sections 3 and 4 of the Protection of Children Against Sexual Harassments Act, 2012. The said FIR is registered at the instance of Respondent No. 1.

2. the learned Counsel appearing for the respective parties submitted that pending investigation parties have settled

their disputes amicably. The Applicant and Respondent No. 1 have come together and sorted out their differences and in view of the understanding arrived at, the Applicant has filed present application for quashing the above FIR, by consent of Respondent No. 1 original complainant.

3. Before this Court, Respondent No.2 has filed an affidavit, wherein in paragraph 5 she has stated that at the time of filing of FIR, by mistake she had stated her age to be 17 years but in fact her age was 21 years. The learned Counsel appearing for Respondent No.1 has placed on record copy of 1st Respondent's pan card and Aadhar card which supports the averment made by Respondent No.2 in her affidavit.

4. In paragraph 7 of her affidavit, Respondent No.2 has stated that she got married to the Applicant on 1st August 2014 and has been residing with him and leading a happy married life with him and has no complaint against him. She has further affirmed that she does not want to proceed with the matter against the Applicant and that she has no objection for quashing

the FIR filed by her against the Applicant.

5. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the FIR in question filed by her against the Applicant.

6. It is true that the offence under section 376 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to Paragraph 28 of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065], wherein the Apex Court has held as under :

“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.”

. 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. In the instant case, the supplementary statement of Respondent No.1 reveals that physical relationships between the

Applicant and Respondent No.1 were consensual. That apart, the Applicant and Respondent No.1 have now got married to each other. Certificate to that effect is placed on record [page-19 of the application]. In this fact situation, the possibility of conviction is very bleak. The record also indicates that at the time of commission of alleged offence, Respondent No.1 was 21 years old. Therefore provisions of the Protection of Children Against Sexual Harassments Act, 2012 are not applicable.

8. In these circumstances, we find that no purpose would be served by keeping the FIR and criminal proceedings against the Applicant pending except burdening the Criminal Courts which are already overburdened. Not only that, it would hamper the healthy relationship between the Applicant and Respondent No.1 and they would be put to unnecessary hardship of attending the police and Court. We find that quashing the FIR would be in the best interest of Respondent No.1 herself as now she is married to the Applicant.

9. In the light of principles laid down by the Apex Court

in Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the FIR in question. Accordingly, application is allowed in terms of prayer clause (a).

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]