

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 297 OF 2015

Piyush Suresh Patel @
Mitesh Kumar Suresh Barot. ..Applicant.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Rajendra J. Rathod for the Applicant.
Mr. Rahul Dangle for Respondent No. 2.
Mrs. M. H. Mhatre, learned APP for the State.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **April 16, 2015.**

P. C. :

1. Heard. This is application under section 482 of the Code of Criminal Procedure, 1973, to quash the FIR bearing CR No. 56 of 2015 registered at Malwani Police Station. The said FIR is registered at the instance of Respondent No.2 for the offence punishable under sections 417, 376 and 376N of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that during the course of the investigation, the parties have settled their disputes amicably and in pursuance of the understanding arrived at between them, the Applicant has

filed the instant application for quashing the said FIR, by consent.

3. Parties have placed on record the consent terms arrived at between them. In the said consent terms, Respondent No.2 has agreed to give no objection for quashing the subject FIR. Respondent No.2 has also filed an affidavit wherein she has stated that she has amicably settled the matter with the Applicant and has no grievance against the Applicant and has withdrawn all the complaints and allegations made against the Applicant in CR No.56 of 2015. She has further stated that she is not interested in continuing with said complaint. She has solemnly affirmed that she has no objection for quashing the FIR dated 25/01/2015 bearing No. 56 of 2013 registered with Malwani Police Station.

4. 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 lodged by her against the Applicant for the offence punishable under sections 417, 376 and 376(n) of the Indian Penal Code, 1860.

5. 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."

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. In the instant case, the FIR reveals that the Complainant – Respondent No.2 herein is a 28 year old lady. She was friendly with the Petitioner since 2012. She had physical relationship with the Petitioner for the first time in the year 2012. Though she had stated that the Petitioner had compelled her to enter into such a relationship under the pretext of marriage, she had not lodged any complaints but had accompanied the Petitioner at several places during the period 2012 to 2014 and had continued to have physical relationship with the Petitioner without there being any misconception of fact, force, pressure or coercion. The FIR therefore reveals that the relationship between

the Petitioner and Respondent No. 2 was consensual. Hence, the offence under section 375 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

8. Under the circumstances and in the light of the principles laid down by the Apex Court as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings.

9. Accordingly, application is allowed in terms of prayer clause (a). As the police machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the Applicant with the cost of Rs.5,000/-, which shall be paid to the **“Shanti Avedna Sadan”** an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Applicant shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed

automatically, without further reference to the Court and order quashing the FIR shall be treated as *non-est*.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]