

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1446 OF 2015

Shashikant Uttam Nikam.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. N. S. Satpute for the Petitioner.

Mr. Vinod K. Raman Thekkara for Respondent No. 2.

Mr. J. P. Yagnik, learned APP for the State.

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

Date : **April 16, 2015.**

P. C. :

1. This is a petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR No.395/2014 dated 31st December 2014 registered with N.M.Joshi Marg Police Station against the Petitioner for the offence punishable under sections 376, 313, 417 and 506 of the Indian Penal Code, 1860. FIR is registered at the instance of the Respondent No.1.

2. The learned Counsel appearing for the respective parties submitted that during the course of investigation, the Petitioner and Respondent No. 1 have settled their disputes amicably and in pursuance of the understanding arrived at

between them, the Petitioner has approached this Court for quashing the said FIR, by the consent of complainant – Respondent No. 2 herein.

3. Respondent No.2 has filed an affidavit dated 24th February 2015. In paragraph 6, of the said affidavit, she has stated that she is not willing to proceed with the case pending against the Petitioner. She has solemnly affirmed that that she has no objection for quashing the FIR 395 of 2015 dated 31st December 2012 recorded at N.M.Joshi Marg 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 the Petitioner.

5. It can, thus, be seen that the matter has been amicably settled between the parties. It is true that the offence under section 376 of IPC is of serious nature and is an offence against the society. Consequently, such offences 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. It is thus clear that the Court cannot decline to quash the FIR merely because the FIR incorporates the provision of section 376 of IPC. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of the offence.

7. In the instant case, the FIR reveals that the Petitioner and Respondent No.2 were friendly with each other. They were engaged in physical relations from 2012 to 2013. The relationship was consensual and the complaint came to be filed only when the Petitioner refused to marry Respondent No.2. In our considered view, the FIR does not disclose ingredients of offence under section 375 of the Indian Penal Code, 1860.

8. Be that as it may, subsequently, the Petitioner and Respondent No. 2 have got married and continuation of the criminal proceedings will jeopardize their marital life.

7. Under these circumstances we are of the considered view that there is no impediment in quashing the criminal proceedings. In the circumstances, petition is absolute in terms of prayer clause (b).

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]