

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 425 OF 2015

Manas Satish Mishra.

..Applicant.

Versus

State of Maharashtra & Another.

..Respondents.

Mallika A. Ingale for the Applicant.

Mrs. M. H. Mhatre, learned APP for the State.

Mrs. Sylvia Devraj Shetty, Respondent No. 2 in person.

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

Date : **April 28, 2015.**

P. C. :

1. The learned Counsel appearing for the Applicant at the outset seeks oral leave to amend the prayer clause. Leave granted. Necessary amendment be carried out forthwith.

2. By this application under section 482 of the Code of Criminal Procedure, 1973 , the Applicant is seeking to quash the FIR bearing No.I-83 of 2015 registered against him at Vashi Police Station for the offence punishable under sections 376, 417 and 496 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No.2.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into above FIR, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the same, present application is filed for quashing the above FIR, by consent of Respondent No.2

4. In the present application filed under section 482 of the Code of Criminal Procedure, 1973, Respondent No.2 has sworn an affidavit dated 27th April 2015, wherein she has stated that she is not interested in continuing with the criminal prosecution of the Applicant in the subject FIR. She has solemnly affirmed that she has no objection for quashing the said FIR.

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 filed by her against the Applicant for the offence punishable under sections 376, 417 and 496 of the Indian Penal Code, 1860.

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 FIR reveals that the Complainant – Respondent No.2 herein is a 48 years old lady. The FIR reveals that the relationship between the Petitioner and Respondent No.2 was consensual. Hence, the offence under section 375 is not made out. Consequently, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

8. In the light of the 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

13(i). In the circumstances of the case, we find it would be appropriate to saddle the Applicant with the cost of Rs.10,000/-, 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 proceedings/FIR shall be treated as *non-est*.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]