

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

CRIMINAL WRIT PETITION NO. 1782 OF 2015

Mr.Ashish Chandrashekhar Gupta

..Petitioner

v/s.

State of Maharashtra & Anr.

..Respondents

Mr. A.A.Gore for the Petitioner.

Mr. M.G.Shukla for the Respondent No.2

Mrs.PH.Kantharia, APP for the Respondent/State.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI,JJ.

DATED : APRIL 30, 2015.

P.C.

1. This petition is filed invoking the jurisdiction of this court under Article 226 of the Constitution of India r/w. with the provisions of Section 482 of Cr.P.C. for quashing the proceeding of Sessions Case No. 118 of 2014 pending on the file of the Sessions Court for Gr. Mumbai at Dindoshi. The said case arises out of registration of FIR No.133 of 2014 by Goregaon Police Station, at the instance of the respondent no.2 for offence punishable under Section 417, 376 of IPC.

2. Pending trial, parties settled their dispute amicably and in pursuance of the understanding arrived at between them, approached this Court for quashing the proceeding of the subject criminal case by consent. The respondent no.2 accordingly has filed affidavit dated 30.4.2015. In paragraph 6 and 7 of the said affidavit, she has given no objection for quashing the proceeding of the Sessions Case No.118 of 2014.

3. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said statement in the 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 criminal proceedings in question initiated by her against the Petitioner .

4. We have also perused the FIR of the respondent. Perusal of the same discloses that the petitioner as well as the respondent no.2 victim were major and were having live-in-relationship from 2010-2014 and during this period they had physical relationship. The FIR indicates that the relationship between the petitioner and the respondent no.2 was consensual. The offence under Section 375

IPC, therefore, is not made out.

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 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/Chargesheet incorporates the provisions 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 the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the 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 chargesheet, 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 provisions which is a serious offence or an offence against the society. The court has to endeavour to find out whether the FIR indeed discloses ingredient of such offence and that the court can accept the settlement and quash the FIR/Chargesheet if the court is of the opinion that such an offence is unnecessarily incorporated in the chargesheet.

7. In the instant case, the FIR of respondent no.2 reveals that the physical relationships between the petitioner and the respondent no.2 were consensual. In the circumstances we find no purpose would be served by keeping the FIR and criminal proceeding against the petitioner 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.

9. Accordingly, petition is allowed in terms of prayer clause (c). The Sessions Case No. 118 of 2014 pending against the petitioner before the Sessions Court for Gr. Mumbai, at Dindoshi is quashed and set aside.

10. As a condition precedent for this order to take effect, the petitioner shall pay costs of Rs.10000/- (Rupees Ten Thousand Only) to the Kirtikar Law Library and produce a copy of the receipt on the file of this petition within a period of three weeks from receipt of copy of this order. If the cost is not paid within the stipulated time, the petition shall stand dismissed without further reference to the court.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)