

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2399 OF 2015

Babu Hasan Shaikh.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Ram Mani Upadhyay for the Petitioner.

Mrs. M. M. Deshmukh, learned APP for the State.

Mr. S. V. Marwadi i/b D. T. Tiwari for Respondent No.3.

Coram : RANJIT MORE &
R. G. KETKAR, JJ.

Date : **October 30, 2015.**

P. C. :

1. Heard learned Counsel appearing for the Petitioner and learned APP for the State. By this petition, the Petitioner is seeking to quash FIR bearing CR No. I-146 of 2015 registered with Koparkhairane Police Station at the instance of Respondent No.3. The allegations levelled against the Petitioner in the said FIR are concerning the offence punishable under sections 376, 420 and 506 of the Indian Penal Code, 1860.

2. 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 understanding arrived at

between them, the instant petition is filed for quashing the above FIR, by consent of Respondent No.3.

3. Affidavit dated 28th October 2015 has been filed by Respondent No.3 wherein she has solemnly affirmed that she is withdrawing all the allegations made against the Petitioner in the said FIR and that she has no objection for quashing the FIR in question.

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 criminal proceedings in question initiated by her against the Petitioner.

5. It is true that offence punishable under section 376 of the Indian Penal Code, 1860 is a serious and heinous offence and such an offence cannot be quashed even with the consent of parties.

6. The Apex Court, however, in Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] considered the scope of inherent powers of the High Court under section 482 of the Code of Criminal Procedure, 1973 vis-a-vis the provisions of section 320 of the Code of Criminal Procedure, 1973. After examining the scheme of the Code, the Apex Court has laid down certain principles by which the high

Court will be guided in giving adequate to the settlement between the parties and exercising its power under section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with a direction to continue with the criminal prosecution.

7. In paragraph 28 of the said judgment, the Apex Court has made observations that merely because FIR / charge-sheet contains a charge for the offence punishable under section 307 of the Indian Penal Code, 1860 that itself cannot be made a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. The Apex Court further observed that High Court should go by the nature of injury sustained, the portion of the body where the injuries were inflicted and the nature of the weapon etc., For ready reference, paragraph 28 from Narinder Singh's case is reproduced here :

“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.”

8. The above proposition of law laid down by the Apex Court makes it clear that High Court cannot quash the criminal case where the offence alleged is heinous or serious, however, the High Court in its discretion is expected to go through the FIR / Charge-sheet and find out whether the case as alleged is made out. By applying the analogy as has been applied by the Apex Court in above case in respect of section 307 of IPC, in the present case qua section 376, we are of the opinion, that proceedings can be quashed.

9. We have gone through the FIR in present case. The admitted facts are that the Petitioner is 56 years old. Respondent No.2–prosecutrix is 32 years old and is a divorcee. The FIR itself discloses that it is a case of consensual physical relationship and when the relationship have gone soar, Respondent No.3 lodged FIR with the police. The FIR itself discloses that Respondent No.3 at her own

accord accompanied the Applicant to various places. Respondent No.3 has stated on affidavit as well as she personally has submitted before us that she was in love affair with the Petitioner and FIR is lodged by her as the Petitioner was not providing her flat nor was returning her money and not responding to her calls, and she was therefore unhappy with him. Respondent No.3 is having a son, aged 12 years. She wants to start a new life.

10. In the light of above facts and circumstances, we are of the opinion that the quashing of the FIR in question would be in the interests of Respondent No.3-prosecutrix also. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the FIR alive except ultimately burdening the Criminal Courts which are already overburdened. In the light of the principles laid down by the Apex Court in the aforesaid decision 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 FIR in question. Accordingly, petition is made absolute in terms of prayer clause (a). However, we find it would be appropriate to saddle the

Petitioner with the cost of Rs.25,000/-, 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 Petitioner 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, the petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

[R. G. KETKAR, J.]

[RANJIT MORE, J.]