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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 792 OF 2015

Jitesh Bhagwanbhai KazavadraApplicant
versus
1.State of MaharashtraRespondents
2.Miss Ayushi @Alka Rambahadur Tiwari
Ms. Mallika A. Ingale, advocate for the applicant.
Mrs. U. V. Kejriwal, APP for the State.
Respondent No.2 in person.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATED : 12th AUGUST, 2015.

P.C.:

Heard learned counsel for the applicant, learned APP for the State and respondent No.2 in person.

2. The application is filed under the provisions of Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting-aside the proceedings of C.C. No.1765/PW/2015 pending on the file of learned Magistrate, 24th Court, Borivali, Mumbai. The said criminal case arises out of FIR No.256 of 2015 registered with Malad Police Station, at the instance of respondent No.2, for offences punishable under Sections 376, 420, 323 and 504 of the Indian Penal Code, 1860.

3. Learned counsel for the applicant submits that though the committal order is passed, the papers are still lying in the concerned Magistrate's Court. Pending trial of the said case, the parties settled their

dispute amicably and have approached this Court for quashing the proceedings of the subject criminal case by consent. Respondent No.2 has filed an affidavit dated 7th August, 2015. In paragraph 4, she has given her no objection for quashing the proceedings of the subject criminal case. Respondent No.2 is personally present before the Court. On being questioned, she specifically stated that she has gone through the contents of the application and affidavit and has understood the same. She further submitted that she has no objection if the proceedings of the subject criminal case are quashed and set-aside. She also stated that she is giving no objection for quashing the said proceedings out of free will and without there being any pressure or coercion.

4. 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.”

5. 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.

6. We have gone through the charge-sheet and especially the statement of the victim/respondent No.2. The FIR reveals that the victim was major on the date of the incident and she was aware that the applicant is a married man having children. She also was aware that the applicant had not filed any divorce petition. Respondent No.2's statement further discloses that the relationship between her and the applicant was consensual. Respondent No.2's statement further reveals that she has undergone abortion. In these circumstances, we are of the considered opinion that offence under Section 376 of the Indian Penal Code is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

7. It can, thus, be seen that the dispute was totally personal in nature, which has now been settled amicably. In these circumstances and especially in view of law laid down by the Apex Court in the case of **Narinder Singh (supra)**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the

parties for using the police and judicial mechanism for settling their personal disputes.

8. Accordingly, the proceedings of C.C. No.1765/PW/2015 pending on the file of learned Magistrate, 24th Court, Borivali, Mumbai, and arising out of FIR No.256 of 2015 registered with Malad Police Station, Mumbai are quashed and set-aside subject to payment of costs of Rs.50,000/- by the applicant. The applicant shall deposit the costs with Central Police Welfare Fund, A/C.914010029005759 AXIS Bank, IFS Code-UTI B0000060 and thereafter produce the receipt thereof on the file of this application within a period of two weeks from today, failing which, the criminal application shall stand dismissed automatically without further reference to the Court.

9. Subject to above, the criminal application stands disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)