

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4168 OF 2013

Suresh Rohidas Lahane.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. N. S. Satpute for the Petitioner.

Mr. Vinod K. Raman Thakkara 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. By this writ petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioner is seeking to quash the proceedings of Sessions Case No. 672 of 2013 pending on the file of Sessions Judge for Greater Bombay, Mumbai. The said proceeding has arisen from the FIR No.102 of 2013 dated 21st March 2013 registered at Shivaji Nagar Police Station, Govandi, Mumbai against the Petitioner for the offence punishable under sections 376 and 452 of the Indian Penal Code, 1860 read with section 4 of the Protection of Children from Sexual Offences Act, 2013.

2. The learned Counsel appearing for the respective parties submitted that during the pendency of trial, the Petitioner has got married with Respondent No.2 on 20th October 2014. The marriage is registered with the Marriage Sub-Registrar, Mumbai on 2nd December 2014. Copy of the certificate is placed on record. The learned Counsel submitted that now the Petitioner and victim are leading happy married life, they are residing together and therefore if the criminal proceedings are allowed to be continued it would hamper their marital life and therefore the aforesaid criminal proceedings deserve to be quashed.

3. The Complainant-mother of the Respondent No.2 (victim) has filed an affidavit before this Court. 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 she has no objection for quashing the proceedings of Sessions Case No. 672 of 2013 pending on the file of Sessions Judge for Greater Bombay, Mumbai.

4. The complainant – mother of 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 the Petitioner.

5. The victim - Respondent No.2 herein has also filed an affidavit, wherein she has stated that she is married to the Petitioner and she is leading happy married life with him and she has no grievance against him. She also has given no objection for quashing the aforesaid criminal proceedings against the Petitioner. 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 against the Petitioner.

6. It is true that the offence under section 376 of IPC and section 4 of the POSCO Act are of serious nature and are the offences 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."

7. 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 and 4 of the POSCO Act. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of the offence.

8. In the instant case, the FIR reveals that the Petitioner and Respondent No.2 were in love with each other and physical relationship between them was consensual. However, at the relevant time Respondent No.2 was minor. After she attained majority, she got married to the Petitioner. Now, they are living together. Under such circumstances, if prosecution is allowed to be continued against the Petitioner it will bring discord in their matrimonial relationship and they will be unnecessarily required to face the consequences of prosecution, which is not at all likely to end into conviction. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Petitioner.

9. Under the circumstances and in the light of 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 criminal proceedings. Accordingly, petition is made absolute in terms of prayer clause (a).

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]