

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

CRIMINAL WRIT PETITION NO. 4785 OF 2014

Dhanashree Vinod Khade

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Mahesh Vaswani i/b. Adv. Dharini Nagda and Adv. Anushree Kulkarni for the Petitioner.

Mr.Niranjan Mundargi for the Respondent nos.5 and 6.

Mr.J. P. Yagnik, APP for the Respondent/State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : JANUARY 06, 2015.**

P.C.

1. At the outset, learned Counsel for the petitioner seeks leave to amend the prayer clause. Leave granted. Necessary amendment to be carried out forthwith.

2. By this petition filed under Article 226 of the Constitution of India and Section 482 of Cr.P.C. the petitioner has sought to quash the FIR dated 2.6.2014 registered vide C.R. No.103 of 2014 at BKC

Police Station, Mumbai, against respondent no.6 for offence under Section 354, 323, 504 of Indian Penal Code and further to quash the FIR dated 22.07.2014 being C.R.No.125 of 2014 registered against the respondent no.6 for offence under Section 376(C), 420, 323, 504, 506(ii) of I.P.C. and Section 66(e) of Information Technology Act. The petitioner has also sought to quash the FIR dated 21.6.2014 registered against her as C.R.No. 54 of 2014 at Malabar Hill Police Station on the basis of the report lodged by the respondent no.5 for offence under Section 452, 504, 506, 507, 364, 511 of Indian Penal Code.

3. The petitioner who is the first informant in C.R.Nos.103 of 2014 and 125 of 2014 and the accused in C.R.No.54 of 2014 has stated that their dispute is amicably resolved and that she is not interested in proceeding with the criminal proceeding arising from FIR No.103 of 2014 and 125 of 2014 lodged against respondent no.6. The respondent no.5 who is the first informant in C.R.No.54 of 2014 has also filed her affidavit wherein she has stated that she is not interested in pursuing the C.R. registered against the petitioner under C.R.No.54 of 2014. The petitioner as well as the respondent no.5

have therefore sought to quash the said criminal proceeding.

4. We have heard learned Counsel for the petitioner as well as learned Counsel for the respondent nos.5 and 6. We have also perused the records. The records indicate that Crime No. 103 of 2014 under Section 354, 323 and 504 of IPC which was registered against respondent no.6 pursuant to the report lodged by the petitioner, as well as Crime No.54 of 2014 under Section 452, 504, 506, 507, 364, 511 of IPC which was registered against the petitioner pursuant to the report lodged by the respondent no.5, do not involve any heinous or serious offences and are in fact crimes against an individual and not against the society at large. Since the parties have arrived at a settlement and the first informant in the respective crimes have no objection for quashing the said crimes, in our considered view no purpose will be served in keeping these files pending and burdening the criminal courts which are otherwise overburdened. Hence, in our view, there is no impediment in quashing these two crimes being Crime No.103 of 2014 and 54 of 2014.

5. Crime No.125 of 2014 which was registered pursuant to the

first information report lodged by the petitioner involves offence under Section 376(C) of the IPC. Undisputedly, offence under Section 376 of IPC falls under the category of serious offences, which is a crime against the society and if such offence were indeed disclosed, it would not be permissible to quash the proceeding even under the plea of amicable settlement. Nevertheless, the Court cannot decline such prayer merely because there is mention of Section 376 of the IPC in the FIR or in the chargesheet. While considering such request the court is required to analyse the material and ascertain whether the allegations in the FIR and the other material relied upon by the prosecution *prima facie* discloses essential ingredients of the offence alleged. Upon such analysis, the Court would be justified in refusing to quash the offence even by consent, if the FIR and other material on record *prima facie* discloses essential ingredients of the offence. However, if the allegations in the FIR do not justify registration of crime under Section 376 of the IPC and the chances of conviction are remote and bleak, it would be permissible for the Court to accept the plea of settlement and quash the

proceedings in exercise of powers under Section 482 of the Cr.P.C.

6. At this juncture we would like to refer to the decision of the Apex Court in the case of ***Narinder Singh & Ors. V/s. State of Punjab & Anr. 2014 AIR SCW 2065***, wherein the Apex Court, while considering the powers of the High Court to quash the offence punishable under Section 307 of the IPC in exercise of powers under Section 482 of the Cr.P.C. has held that :-

31. (vi) Offences under Section 307 IPC would fall in the category of heinous and serious offence and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapon used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of the prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case, it can refuse to accept the settlement and quash the criminal proceedings

whereas in the later case, it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties.”

7. Relying upon the said judgment and applying the same analogy, we proceed to analyse whether the FIR and the other material collected by the Investigating agency, *prima facie*, discloses commission of offence under Section 376(C) of the IPC.

8. A perusal of the report lodged by the petitioner reveals that she was an employee of the respondent no.6. The petitioner was aware that the respondent no.6 was married and had two children. In June 2013 the petitioner had accompanied the respondent no.6 to Goa. They had stayed in a single room and had indulged in sexual activity. The FIR further indicates that the petitioner and the respondent no.6 were engaged in sex activities on several such occasions. The petitioner has stated that she was in love with the respondent no.6. The petitioner has alleged that the respondent no.6 had told her that he would marry her after divorcing his wife. The respondent no.6

subsequently, refused to marry her and also dismissed her from service.

9. The petitioner is an adult and was well aware that the respondent no.6 is a married man. Despite knowing the fact this fact the petitioner had accompanied the respondent no.6 at several places and had sexual intercourse with him without there being any misconception of any fact. In our considered view, the FIR does not *prima facie* disclose that the respondent no.6 had made false promise of marriage solely with an intention of satisfying his lust or that he had cheated or deceived the petitioner. The material on record, therefore, indicates that this was a case of consensual sex, which does not constitute offence under Section 375 of IPC. Consequently, on the basis of this *prima facie* analysis, we are of a view that the allegations in the FIR even if proved would not sustain the charge and the chances of conviction are therefore remote and bleak. It was only after the respondent no.6 had refused to marry her and had dismissed her from service, the petitioner had lodged the report dated 22.7.2014 pursuant to which Crime No.125 of 2014 for offence

under Section 376(C), 420, 323, 504, 506 came to be registered.

10. Hence, in our considered view the report dated 22.7.2014 does not disclose offence under Section 376 (C) of IPC. Besides, the petitioner, who is the first informant and the alleged victim has herself filed this petition for quashing the said crime. Under the circumstances, in our considered view, there is no impediment in quashing the said FIR.

11. In the result, petition is allowed in terms of prayer clauses (a) and (b).

12. As a condition precedent for this order to take effect, the petitioner, the respondent no.5 and respondent no.6, shall pay costs of Rs.5000/- each (Rupees Five Thousand Only each) to the Tata Memorial Cancer Hospital, Mumbai and produce a copy of the receipts on the file of this petition within a period of two weeks from today.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)