

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4606 OF 2015

Manish M. Bhosale and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mrs. T. S. Chavan i/b Pradip Chavan & Associates for the Petitioners.

Mrs. S. V. Sonawane, learned APP for the State.

Mr. S. H. Chari for Respondent No. 2.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.

Date : **December 10, 2015.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. By this writ petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioners are seeking to quash the proceedings of Sessions Case No. 561 of 2012 pending on the file of the learned Sessions Judge for Greater Mumbai. The said proceeding is the offshoot of an FIR bearing CR. No. 49 of 2012 registered with Kanjurmarg Police Station, Mumbai against the Petitioners.

2. Initially, the FIR was registered for the offence punishable under sections 498A and 406 read with 34 of the Indian Penal Code, 1860. After completion of investigation the charge-sheet,

however, is filed wherein the additionally section 307 and 341 of the Indian Penal Code, 1860 are also added by the police.

3. Petitioner No. 1 and Respondent No. 2 are husband wife. Rest of the Petitioners are the family members of Petitioner No. 1. Matrimonial disputes between the parties gave rise to the filing of civil as well as criminal proceedings by the parties against one another and the subject matter of present petition is one of them.

4. The learned Counsel appearing for the respective parties submitted that during the pendency of above criminal proceedings, 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 criminal proceedings, by consent of Respondent No. 2.

5. An affidavit dated 9th December 2015 has been filed before us by Respondent No.2 wherein she has stated that she is not interested in continuing with the criminal prosecution of the Petitioners as disputes between herself and the Petitioners have been

amicably settled. She has further stated that the Petitioner has deposited in the Family Court at Bandra an amount of Rs.5 lacs towards the settlement of her claims for permanent alimony and that they have agreed to obtain divorce by mutual consent. She has solemnly affirmed that she has no objection for quashing the proceedings of the Sessions Case No. 561 of 2012.

6. 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 Petitioners for the offence punishable under sections 307, 341, 406 and 498A read with 34 of the Indian Penal Code, 1860.

7. In the backdrop of these facts and circumstances, the learned Counsel appearing for the respective parties submitted that the proceedings of sessions case can be quashed by this Court in view of the law laid down by the Apex Court of in B. S. Joshi vs. State of Haryana reported [AIR 2003 SC 1386] and Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] and accordingly prayed for allowing the

petition.

8. Though this Court is bestowed with very wide and plenary inherent powers to make appropriate orders to secure the ends of justice and to prevent the abuse of the process of any Court, yet it will have to be ascertained in the instant case whether we can quash the proceedings in question on the touchstone of the law laid down by the Apex Court in Narinder Singh's case supra.

. It is true that the offence under section 307 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."

. The above observations of the Apex Court, thus, make it clear that this Court cannot decline to quash the proceedings merely because the proceedings 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 proceedings indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the proceedings if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet. The Court has to examine whether incorporation of section 307 is there for the sake of it or prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. The Apex Court has further observed that for this purpose, it is 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 weapons used etc. The Court has also observed that Medical report in respect of injuries suffered by the victim can generally be the guiding factor and on the basis of this *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 and 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. The Apex Court has also laid down that, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship .

9. Now, in the light of above observations of the Apex Court let us consider whether charge-sheet discloses the commission of an offence under section 307. As stated above, on the basis of the statement of Respondent No.2, FIR was registered for the offence punishable under sections 498A and 406 only. Sections 341 and 307 came to be added subsequently. In the FIR, there are no allegations against the Petitioners so as to attract section 307. Considering these facts and also taking into consideration the fact that the parties have

now decided to put an end to their all relationships, we are of the opinion that this is a fit case where this Court, as laid down by the Apex Court in Narinder Singh's case (supra) shall exercise its jurisdiction to quash the subject proceedings. We also 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, petition is made absolute in terms of prayer clause (a).

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]