

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.232 OF 2016

Ms. Varsha Bhagwani ...Petitioner
V/s.
The State of Maharashtra & Anr.Respondents.
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Mr. A.P.Mundargi, Senior Advocate with Mr. S.G.Deshpande i/by Ms. Rita Yadav, Advocates for the Petitioner.
Mrs. S.V.Sonawane, APP for the State
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**CORAM : RANJIT MORE &
A. K. MENON, JJ.**

DATE : 19TH JANUARY, 2016.

P.C.:
Heard Mr. Mundargi the learned Senior Counsel for the
Petitioner and Mrs. Sonawane, the learned APP for the State.

2 The Complainant herself has approached this Court invoking Article 226 of the Constitution of India read with the provisions of Section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the F.I.R. bearing C.R.No.1 of 2016 registered with Versova Police Station, Bombay against one Mrunal Jain for the offences punishable under Sections 376, 354, 506 and 509 of the Indian Penal Code, 1860.

3 The Petition is affirmed by the Petitioner. The Petitioner is personally present before this Court. On specific query, she states that she has filed this Petition voluntarily without there being coercion or force. She also stated that the subject F.I.R. came to be filed out of miscommunication and, therefore, she has approached this Court for quashment of the same.

4 The Hon'ble Apex Court in **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]** in paragraph 31(VI) held in as follows:

“31(VI) Offences under Section 307 of the Indian Penal Code, 1860 would fall in the category of heinous and serious offences 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 weapons used etc. Medical report in respect of injuries

suffered by the victim can generally be the guiding factor. 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. 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.”

5 The offence under Section 376 of the Indian Penal Code, 1860 is also heinous and serious offence and, therefore, analogy applied by the Apex Court in offence under Section 307 of the Indian Penal Code, 1860 can be made applicable to the offence under Section 376 of the Indian Penal Code, 1860. In order to satisfy ourselves whether the case under Section 376 of the Indian Penal Code, 1860 is made out, we have gone through the Petition and annexures annexed thereto. Incident in question is alleged to have occurred on 23.12.2015. The Petitioner is 20 years old. The Accused is married and 30 years old. F.I.R. discloses that the Petitioner and the Accused got acquainted with each other through face-book. It further discloses that the Accused had forcible sexual intercourse with the Petitioner on 23.12.2015. The F.I.R. is filed on 2.1.2016 that is after about seven days of the incident in question. What is important to note is that on 25.12.2015 immediately after two days of the alleged incident, the Petitioner registered N.C. with Oshivara Police Station. In this N.C. the Petitioner has alleged that she has friendly relations with the Accused, Accused, however, has friendly relations with the other girls also. The Petitioner

did not like the same. She asked the Accused to desist from having friendship with the other girls. The Accused did not accede to her request and, therefore, the Petitioner gave information of her relations with the Accused to the wife of the Accused. The Accused thereafter abused the Petitioner on phone. N.C. does not make any reference to the incident dated 23.12.2015. The N.C. also does not make any allegation of rape against the Accused. Be that as it may, on 8.1.2016, the Petitioner gave letter to the Senior Inspector of Police, Versova Police Station. In this letter, she has stated that she filed the F.I.R. out of miscommunication and anger and, therefore, she wants to sort out the issue mutually. On 11.1.2016, the Petitioner again wrote letter to the Senior Inspector, Versova Police Station. In this letter, she has stated that her supplementary statement was recorded on 9.1.2016 in which she has withdrawn allegations against the Accused.

6 In the above circumstances, we are of the opinion that no offence is made out under Section 376 of the Indian Penal Code, 1860 against the Accused. Since we have come to conclusion that the F.I.R. does not make out any offence under Section 376 of the Indian Penal Code, 1860 coupled with the fact that the Petitioner herself wants to quash the said F.I.R., we allow this Petition. Accordingly, the Petition is made absolute in terms of prayer clause (a).

(A. K. MENON, J.)

(RANJIT MORE, J.)

