

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.791 OF 2017

Hasibur Rahaman @ Asif Motiar		
Rahaman Shaikh	...	Petitioner
Vs.		
State of Maharashtra & Ors.	...	Respondents

Mr. S.H. Deokar for the Petitioner.

Mrs. V.S. Mhaispurkar, A.P.P., for the Respondent-State.

Mr. M.K. Pahadi, a/w. Mr. V.B. Koshe, for Respondent No.3.

CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 29TH NOVEMBER 2017.

P.C. :

1. Leave to amend, prayer clause to add Sessions Case number, is granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the Petitioner, learned counsel for Respondent No.3 and learned A.P.P. for the Respondent-State.

3. This Petition is filed for quashing and setting aside proceedings in Sessions Case No.26 of 2017, pending on the file

of the learned Sessions Court at Vasai. The said Special Case arises out of registration of FIR bearing C.R. No.I-06 of 2016 with the Manikpur Police Station, District Palghar, at the instance of Respondent No.3, for an offence punishable under Sections 376, 377, 313, 328, 420 and 406 of IPC.

4. Pending trial, parties have settled their dispute amicably and in terms of the understanding arrived at between the parties, they have approached this Court for quashing the subject Sessions Case by consent. Respondent No.3 has, accordingly, filed an affidavit dated 2nd March 2017. In paragraph No.5 of the said affidavit, she has given her no objection to quash the proceedings of the Sessions Case. Respondent No.3 is personally present before the Court. She has reiterated whatever is stated by her in the said affidavit. On being questioned, she specifically stated that she has gone through the the Petition and the affidavit as well and she has fully understood the contents thereof. She also confirmed that she has given no objection for quashing the proceedings of the subject Special Case out of her free will and without there being any pressure or coercion.

5. It is true, that the offences under Sections 376 and 377 of IPC are of serious nature and are against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph No.28 of the Judgment in the case 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 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 provisions 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 the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the 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.”

6. 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 if the Court is of the opinion that such an offence is unnecessarily incorporated in the Charge-Sheet.

7. So far as the present case is concerned, the FIR describes that the parties are Muslim and in the year 2014, they got married according to Muslim religion. The alleged offences, under Sections 376 and 377 of IPC, were in respect of the period prior to their marriage. The allegations made under Sections 328 and 313 of IPC were for a period subsequent to the marriage.

8. Both the learned counsel appearing for their respective parties state that, parties have now obtained customary divorce and Respondent No.3 wants to settle abroad.

9. In the facts and circumstances of the case, we are of the opinion that, it would be in the interest of Respondent No.3- Original Complainant to quash the said proceedings.

10. Accordingly, the Writ Petition is allowed in terms of prayer clause (B). The proceedings of Sessions Case No.26 of 2017, pending on the file of the learned Sessions Court at Vasai, are hereby quashed and set aside.

11. Writ Petition is disposed of in the aforesaid terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]