

CRIMINAL WRIT PETITION.907 OF 2016

- Mr. Shaikh Mohd. Imran, Advocate for the Petitioners.
- Mr. K.V. Saste, APP for the State/Respondents.
- Mr. D.K. Ali i/b. A.A. Siddiqui & Associates, Advocate for Respondent No.2.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.**
DATE : 24th JULY, 2017.

P.C. :

1. Heard the learned counsel for the petitioners, respondent No.2 and learned APP.
2. The petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside proceedings in the Sessions Case No.639/14 pending on the file of learned Additional Sessions Judge, at Mumbai. The said case

arises out of C.R.No.426/13, registered with Shivaji Nagar Police Station, Mumbai at the instance of respondent No.2 for the offences punishable u/s 326, 324, 504, 506-II r/w 34 of the Indian Penal Code.

3. After investigation charge-sheet was filed and section 307 was added and therefore the case was committed before the Sessions Court which was numbered as above.
4. Pending trial of the subject case, the parties to the petition have settled their dispute amicably and in pursuance of an understanding arrived at between them, have approached this Court for quashing the criminal proceedings by consent. The respondent No.2 as well as injured have filed a common affidavit dated 12/07/2017. In paragraph No.6 they have given no objection to quash the proceedings of the subject criminal case. The Respondent No.2 is personally present in the Court. On specific query made by this Court, he has stated that he has made the said affidavit on his own and without there being any pressure or coercion. He has further confirmed that he has no

objection for quashing criminal proceeding against the petitioner in Sessions Case No.639/14 pending on the file of learned Additional Sessions Judge, at Mumbai arising out of FIR bearing C.R.No.426/13, registered with Shivaji Nagar Police Station, Mumbai at the instance of respondent No.2 for the offences punishable u/s 326, 324, 504, 506-II r/w 34 of the Indian Penal Code.

5. It is true that the offence u/s 307 of the Indian Penal Code is the Act against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph No.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 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/Chargesheet 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 chargesheet, 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 ingredient of such offence and that the Court can accept the settlement and quash the FIR/Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

7. In so far as the present case is concerned, the petitioners have annexed the injury certificate at page Nos.8, 10 and 11. The injury certificates reveal that the injuries they received were simple in nature. We are therefore of the view that the offence u/s 307 of the Indian Penal Code is not made out.

8. In the light of the principles laid down by the Apex Court in Narinder Singh (supra), we are of the considered view

that there is no impediment in quashing the criminal case in question.

9. Accordingly, the application is allowed in terms of prayer clause (a), subject to payment of costs of Rs.10,000/- by each of the petitioner to **“Maharashtra State Legal Aid Services Authority”**. The petitioners shall pay the said costs and produce the receipt thereof on the file of this Court within a period of four weeks from today, failing which, the petition shall stand dismissed automatically, without further reference to the Court.

10. Subject to above, the petition stands disposed off.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)