

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.320 OF 2017**

Shri Pradeep Dhondiram Thorwat	..Applicant
Versus	
The State of Maharashtra and anr.	..Respondents

Mr. S. S. Karmarkar, advocate for the applicant.
Mr. V. B. Konde-Deshmukh, APP for the State.
Ms. Rushita Jain, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
PRAKASH D. NAIK, JJ.**

DATE : 5th OCTOBER, 2017.

P. C. :

Heard Mr. Karmakrar, learned counsel for the applicant,
Ms.Rushita Jain, advocate for the respondent No.2 and Mr. Konde-
Deshmukh, learned APP for the State.

2. The application is filed resorting to the provisions of Section 482 of the Code of Criminal Procedure, 1973, for quashing and setting-aside the proceedings of the Sessions Case No.219 of 2015 pending on the file of Sessions Court for Borivali Division at Dindoshi-Goregaon, Mumbai. The said case arises out of registration of FIR bearing CR No. 248 of 2015 with Dindoshi Police Station at the instance of respondent No.2, for the offences punishable under Sections 376 and 420 of the Indian Penal Code, 1860 (for short "the IPC") read with

Sections 3(1)(x) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Atrocities Act”).

3. Pending trial, the parties settled their dispute amicably and in pursuance of an understanding arrived at between them, they have approached this Court for quashing the proceedings of the subject sessions case by consent. The respondent No.2 accordingly filed an affidavit dated 16th March, 2017. In paragraph 3 of the affidavit, she has stated that taking into consideration her future as well as that of applicant's, she has resolved the dispute amicably with the applicant. In paragraph 5, she has stated that she has no objection for quashing the proceedings of the subject sessions case. In paragraph 6, she has stated that she has filed the affidavit without any force or coercion at the hands of the applicant or any other person. The respondent No.2 is personally present before the Court. On being queried, she specifically stated that she has gone through the application and the affidavit as well and has fully understood the contents thereof. She further confirmed that she is giving no objection for quashing the proceedings of the subject criminal case out of free will and without there being any pressure or coercion.

4. It is true that the offence under section 376 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 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 / Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

5. We have gone through the subject FIR. The FIR revealed that the complainant is 27 year old and the applicant is 30 year old. It also revealed that both the complainant and applicant were friendly with each other and the physical relationship between them was consensual, and the FIR came to be filed because the applicant refused to marry respondent No.2/complainant. In these circumstances, we are of the considered opinion that offence under Section 376 of the IPC or any other offence under the Atrocities Act is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

6. In the backdrop of above facts and circumstances and especially in view of law laid down by the Apex Court in the case of **Narinder Singh (supra)**, we 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 and

in the interests of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

7. Accordingly, the proceedings of the Sessions Case No.219 of 2015 pending on the file of Sessions Court for Borivali Division at Dindoshi-Goregaon, Mumbai, and arising out of registration of FIR bearing CR No. 248 of 2015 with Dindoshi Police Station, Mumbai, are quashed and set-aside subject to payment of costs of Rs.25,000/- by the applicant to NAAM Foundation which works for the betterment of farmers in drought-stricken areas of Maharashtra. The applicant 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 criminal application shall stand dismissed automatically without further reference to the Court.

8. Subject to above, the criminal application stands disposed off.

(PRAKASH D. NAIK, J.)

[RANJIT MORE, J.]