

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1185 OF 2017

Sumit Madhukar Darandale

.. Petitioner

VS

1.State of Maharashtra

2.Kishor Sakharam Malusare

.. Respondents

Ms.Anjali Patil for Petitioner.

Ms.M.H.Mhatre, APP for State.

Ms.Prachita Rathod, advocate for the Respondent no.2.

Mr.Kishor Sakharam Malusare- Respondent no.2 and his daughter

Ms. Siddhi Sumit Darandale present in Court.

Mr.Madhukar Darandale, Father of Petitioner, present in Court.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.**

DATE : 20th JUNE, 2017.

P. C. :

1. Heard the learned counsel for the Petitioner, learned counsel for the Respondent no.2 and learned APP for the State.

2. The Petition is filed for quashing the proceedings of Sessions case No.308/2016 pending on the file of the Sessions Court, Mumbai. The said Sessions Case arises out of FIR being C.R.No.697 of 2015 is registered with Saki Naka Police Station at the instance of the Respondent no.2. Initially, the FIR was registered for the offence under Section 363 of the Indian Penal Code, 1860 (for short "the IPC"). However, during investigation, offences under Section 376 of the IPC read with Sections 4,8 and 12 of the Protection of Children from Sexual

Offences Act, 2012 (for short "POCSO Act") were added. After completion of the investigation, the charge sheet is filed for the offences punishable under the aforesaid sections.

3. The learned counsel appearing for the respective parties submitted that during the pendency of the trial with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences and have approached this Court for quashing the proceeding of the subject criminal case by consent.

4. The Respondent no.2/Original Complainant) has filed an affidavit dated 20.6.2017. In paragraph 3, he has given his no objection for quashing the subject criminal case arising out of the aforesaid FIR. The Respondent no.2/Original Complainant is personally present before the Court. On being questioned, he specifically stated that he has gone through the petition and the affidavit as well and has understood the contents thereof. He has further confirmed that he 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.

5. It is true that the offence under Section 376 of the IPC as well as offences under POCSO Act are of serious nature and are offences against the society. Consequently, such offences 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 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 the instant case, we have gone through the Charge sheet especially the statement of the victim - the daughter of the Respondent no.2. The statement of the victim shows that she on her own had accompanied the Petitioner.

8. We are inclined to quash the criminal proceedings in as much as the Petitioner and the victim girl are already married on 14.10.2016. The Marriage Certificate to that effect from the Registrar of Marriage is obtained and is annexed at Exhibit B to the Petition. The victim girl is

present before this Court. On being questioned, she specifically stated that she is married with the Petitioner and now happily residing with him. The Petitioner's father is also present in Court. He has also reiterated that the Petitioner and the victim girl are married and he has accepted the victim girl as his daughter-in-law. Both, the Petitioner and his father, stated that they will not ill-treat the victim girl and will give all due respect, love and affection to her.

9. The Respondent no.2 who is present in the Court also states that he has accepted the Petitioner as his son-in-law and does not want to proceed with the subject criminal case.

10. 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 proceedings of the subject criminal case.

11. Accordingly, the petition is allowed in terms of prayer clause (i) and is disposed off as such.

(SARANG V. KOTWAL, J.)

[RANJIT MORE, J.]