

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 360 OF 2017

Mehul Bipin Sagar. ..Applicant.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. S. V. Marwadi i/b Ms. T. M. Khamkar for the Applicant.

Ms. S. V. Sonawane, APP for the State.

Ms. Mallika Ingale for Respondent No. 2.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.

Date : **July 7, 2017.**

P. C. :

1. At the outset, Mr. Marwadi, the learned Counsel appearing for the Applicant seeks leave to amend so as to give particulars of the criminal case. Leave granted. Necessary amendment be carried out forthwith.

2. The application is filed for quashing the proceedings of criminal case bearing No. 1650/PW/2017 pending on the file of learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai. The said case has arisen from the FIR bearing CR. No. 37 of 2016 registered with Gorai Police Station at the instance of Respondent No. 2 for the offence punishable under sections 376 and 417 of the Indian Penal Code, 1860. The learned APP reported that after completion of investigation into the said CR, charge-sheet was filed in the Court of

learned Metropolitan Magistrate, 26th Court, Borivali and proceedings are numbered as CC No.1650/PW/2017. The learned APP also made a statement that case is not yet committed to the Sessions Court.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of criminal proceedings, with the help and intervention of family members, friends and well-wishers, the parties amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present application is filed for quashing the above criminal proceedings, by consent of Respondent No. 2.

4. Respondent No. 2 has filed an affidavit dated 17th June 2017. In paragraph 2, she has stated that she and the Petitioner were good friends and after their initial acquaintance, she was perturbed and therefore lodged the subject FIR. The averment is also made that now she has realised that she and the Petitioner are from different religions and it is not possible for them to stay together after marriage. In paragraph 2 she has stated that she does not want to continue with the proceedings of the subject criminal case and that she has no objection for quashing the same.

5. Respondent No.2 is personally present before the Court.

On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the criminal proceedings in question initiated by her against the Applicant for the offence punishable under sections 376 and 417 of the Indian Penal Code, 1860.

6. 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.

7. We have gone through the FIR. The FIR discloses that the Respondent and the Petitioner are adults and their relationship was consensual. Therefore, the offence punishable under section 376 of IPC is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal

proceedings pending except burdening the Criminal Courts which are already overburdened.

8. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings. Application is accordingly allowed in terms of prayer clause (b).

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]