

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1318 OF 2017

1. Mr. Sagar Gangaram Malgunde,	]	
2. Ms. Nazmin D/o. Abdul Shaikh.	]	... Petitioners

Versus

1. The State of Maharashtra,	]	
2. Mrs. Fatima Abdul Shaikh.	]	... Respondents

Mr. Rajesh Singh for Petitioners.
 Mrs. M. H. Mhatre, APP for State.
 Mrs. Sheena C. Patil for Respondent No.2.

CORAM :- RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE :- 03 AUGUST, 2017

P. C. :-

1. Heard the learned Advocate for petitioners, the learned Advocate for respondent no.2 and the learned APP.

2. The petition is filed for quashing and setting aside Sessions Case No.176 of 2015 pending in the Sessions Court for Greater Mumbai. The said case arises out of registration of FIR bearing C.R.No.46 of 2016 registered at the instance of respondent no.2 with Sion Police Station, Mumbai, for the offences punishable

under Sections 363 and 376 of the IPC; so also under Sections 4, 8 and 12 of the POCSO Act, 2012. After completion of investigation, charge-sheet was filed under Sections 363 and 376 of the IPC; so also under Sections 4, 8 and 12 of the POCSO Act, 2012 and the case was committed to the Sessions Court / Special Court for trial.

3. The respondent no.2 – complainant filed the above-referred FIR. The respondent no.2 and the petitioner no.2 are the mother and daughter respectively. The FIR was filed as the petitioner no.2 eloped with the petitioner no.1. Pending trial, the parties settled their dispute amicably. Accordingly, the petitioner nos.1 and 2 were married on 03/04/2016. The marriage certificate ('*Nikahnama*') is annexed at Exh.'C', page 120. It is the case of the petitioners that they are staying together and therefore, they have come before this Court for quashing and setting aside the subject Sessions Case by consent.

3. The respondent no.2, accordingly, has filed an affidavit dated 17th April 2017. She has reiterated whatever stated hereinabove. In para 5, she has given no objection for quashing the proceedings of the subject Sessions Case.

5. The respondent no.2 as well as both the petitioners are present in the Court. The respondent no.2, on a specific query, states that she has gone through the affidavit as well as the contents of the petition. In the above circumstances, she has no objection to quash proceedings of the subject Sessions Case. She has also stated

that she has given no objection out of her free will and without any force or coercion. The petitioner nos.1 and 2 also state that they are married and they are staying together happily. The petitioner no.2 also states that the present proceedings of the subject Sessions Case be quashed and set aside.

6. It is true that the offence under section 376 of IPC is of a 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**¹, 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,

¹ 2014 AIR SCW 2065

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. However, in the present case, the charge-sheet reveals that the petitioners were in love relationship. The petitioner no.2 eloped on her own along with the petitioner no.1 and they are happily living together. The charge-sheet further reveals that the relationship between the petitioner no.1 and the petitioner no.2 was consensual. Hence, the offence under section 375 is not made out. In such circumstances, quashing and setting aside the proceedings in the subject Sessions Case would be in the interest of the petitioner nos.1 and 2 and the respondent no.2. If the proceedings of the subject Sessions Case are not quashed, the same will result in grave hardship to the parties. Consequently, we find that no purpose would be

served by keeping the proceedings of the subject Sessions Case pending except burdening the Criminal Courts which are already overburdened.

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 proceedings of the subject Sessions Case in question. Accordingly, the petition is allowed in terms of prayer clause (a).

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)