

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1566 OF 2017

Ravi Tarachand Sarsar.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Fakhruddin Khan for the Petitioner.

Mr. K. V. Saste, APP for the State.

Mr. Abdul H. Y. Kotwal for Respondent Nos. 2 and 3.

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

Date : **July 3, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for Respondent Nos. 2 and 3 and the learned APP for the State. The petition is filed seeking quashment of the proceedings of Special Case No.115 of 2015 pending on the file of Additional Sessions Judge for Greater Mumbai. The said case has arisen from FIR No. 426 of 2014 registered with Amboli Police Station at the instance of Respondent No. 2 for the offence punishable under sections 363 and 376 of the Indian Penal Code, 1860 and sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The learned Counsel appearing for the respective parties submitted that pending trial of the subject sessions case, parties

settled their disputes amicably and have approached this Court for quashing the said case by consent. Accordingly, Respondent No.2 (complainant) as well as Respondent No.3 (victim girl) have filed individual affidavits dated 5th April 2017. Both of them have stated that they have no grievance against the Petitioner; that the Petitioner and Respondent No.2 since married and blessed with a child, they do not want to proceed with the subject sessions case. In their affidavits, both of them have prayed for quashing of the subject sessions case.

3. Respondent Nos. 2 and 3 are personally present before the Court. They submitted that contents of the affidavit have been explained to them in vernacular. On specific query made by us, they submitted that they have made the said affidavits on their own free will, without there being any pressure or undue influence. They further submitted that the Petitioner and Respondent No. 3 are married and blessed with a child and residing together. They further confirmed that they have no objection for quashing the criminal proceedings in question against the Petitioner.

4. It is true that the offence under section 376 of IPC as well as offences under POCSO Act are of serious nature and are the

offences against the society and therefore cannot be quashed even 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.”

5. 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.

6. In the instant case, the FIR reveals that the Petitioner and Respondent No. 3 were in love relationship. On 30th November 2014 there was quarrel between Respondent No. 2 and Respondent No. 3 and thereafter Respondent No. 3 left the house. Respondent No. 2 enquired with the friends of Respondent No.3 but could not get any information. On 4th December 2014, friend of Respondent No.3 by name Anjali, informed Respondent No.2 that Respondent No.3 has got married with the Petitioner. Respondent No.2 thereafter got worried whether the Petitioner would properly maintain her daughter (Respondent No. 3) and therefore approached police and filed subject FIR on 5th December 2014. Despite FIR, the Petitioner and Respondent No.3 were staying together and they are blessed with a child who is now 9 months old.

7. The discussion stated hereinabove shows that the Petitioner and Respondent No.3 are staying together happily and they have no complaint against each other. Respondent No.2 also has no complaint either against the Petitioner or Respondent No.3. On the contrary, she submitted that since they are staying together happily, she does not want to proceed further with the criminal prosecution of the Petitioner and she also prayed for quashing of the subject proceedings.

8. In the aforestated peculiar facts of the present case and in the interests of justice especially looking into the future of the child coupled with the fact that the Petitioner and Respondent No.3 are happily married and residing together, we are of the opinion that no purpose would be served by keeping the subject proceeding pending. In that view of the matter, petition is made absolute in terms of prayer clause (i).

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]