

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.493 OF 2017

Sarwanan Kashi Arundudhiyar Applicant

versus

State of Maharashtra & Anr. ... Respondents

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- Ms.Prachita P. Vare i/b. Prakash Vare, Advocate for the Applicant.
- Mrs.M.M. Deshmukh, APP for the State/Respondent.
- Mr.S.D. Tandel, Advocate for respondent No.2.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE : 19th JUNE, 2017.**

P.C. :

1. Heard the learned counsel for the applicant, respondent No.2 and learned APP.

2. The criminal application is filed under section 482 of the Code of Criminal Procedure, 1973, for quashing the proceedings of Sessions Case No.222 of 2015 pending on the file of learned Sessions Court, Mumbai. The said case arises out of

FIR bearing C.R.No.52/15, registered with Trombay Police Station, Mumbai, at the instance of respondent No.2 for the offences punishable u/s 363, 376 of the Indian Penal Code, and sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3. Pending trial of the subject case, the parties to the application have settled their dispute amicably and in pursuance of an understanding arrived at between them, have approached this Court for quashing proceedings of subject sessions case by consent. Respondent No.2 as well as victim girl have filed separate affidavits dated 17/04/2017, wherein they have stated that they are not interested in continuing with the criminal prosecution of the applicant in subject criminal case. They have similarly affirmed that they have no objection to quash the proceedings of the subject criminal case. The Respondent No.2 as well as victim girl are personally present in the Court. On specific query made by this Court, they have stated that they have made said affidavits on their own and without there being

any pressure or coercion. They have further confirmed that they have no objection for quashing criminal proceeding against the applicant in Sessions Case No.222/15, arising out of FIR bearing C.R.No.52/15, registered with Trombay Police Station, Mumbai, at the instance of respondent No.2 for the offences punishable u/s 363, 376 of the Indian Penal Code, and sections 4 and 8 of The Protection of Children from Sexual Offences Act, 2012.

4. It is true that the offence u/s 376 of the Indian Penal Code as well as the offence under POCSO Act are 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 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.”

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 provisions 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.

6. In the instant case, the FIR is filed by the respondent No.2 who is the mother of the victim. The FIR reveals that the applicant and the victim girl were in love relationship. On 23/01/2015 the victim girl eloped with the applicant in order to get married. On 26/01/2015 at about 09.00 a.m. victim girl came back. Upon query by the respondent No.2, she told that she was in love relations with the applicant and she was back after solemnization of marriage. Subsequently, the FIR is registered on 28/02/2015.

7. The counsel appearing for the respective parties states that the applicant and the victim girl are married. They have produced marriage certificate at Ex.B at page No.30 to the petition. The marriage certificate does reveal that applicant and victim girl got married on 27/12/2016. The certificate is issued by the competent authority i.e. The Registrar of Marriage, Mumbai.

8. Though technically the offence alleged is made out, purely in the interest of the married couple and looking at their future, we are inclined to quash the proceedings. We are satisfied that no purpose will be served by continuing the prosecution against the applicant. 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 FIR in question.

9. Accordingly, the application is allowed in terms of

prayer clause (a). The criminal proceeding of Sessions Case No.222 of 2015 pending on the file of learned Sessions Court, Mumbai, is set aside. No order as to costs.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)