

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2248 OF 2016

Abulaas Abulaais Khan alias Abulaas Azami.] ... Petitioner

Versus

1. The State of Maharashtra,	]	
2. The Sr. Inspector of Police,	]	
Trombay Police Station, Mumbai,	]	
3. Fatima Azim Khan.	]	... Respondents

Mr. A. A. Siddiqui i/b A. A. Siddiqui & Associates for Petitioner.

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

Mr. M. M. Kale for Respondent No.3.

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

DATE :- 12 JULY, 2017

P. C. :-

1. Heard the learned Advocate for petitioner, the learned Advocate for respondent no.3 and the learned APP.

2. The petition is filed for quashing the FIR bearing C.R.No.88 of 2016 registered at the instance of the respondent no.3 with Trombay Police Station, Mumbai, for the offences punishable under Sections 376 and 313 of the IPC.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into the above FIR, with the help and intervention of family members, friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the same, present petition is filed for quashing the above FIR, by consent of the respondent no.3.

4. The respondent no.3 accordingly filed an affidavit-in-reply dated 12/07/2017. In para 5, she has given irrevocable free consent for quashing of the subject FIR.

5. The respondent no.3 is personally present before the Court. On a specific query, she 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 the subject FIR. She has also stated that he has given no objection out of her free will and without any force or coercion.

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**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

¹ 2014 AIR SCW 2065

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. In the instant case, the petitioner and the respondent no.3 both are adults. The FIR further reveals that the relationship between the petitioner and the Respondent No.3 was consensual. Hence, the offence under section 375 is not made out. Consequently, we find that no purpose would be served by keeping the subject FIR 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 FIR in question. Accordingly, petition is allowed in terms of prayer clause (a). In the circumstances of the case, we find it would be appropriate to saddle the petitioner with the costs of Rs.10,000/-, which shall be deposited in the Tata Memorial Cancer Hospital. For the quashment to take effect, the petitioner shall pay the said costs and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay costs and produce receipt within the stipulated time, the petition shall stand dismissed automatically without further reference to the Court and order quashing the subject FIR shall be treated as non-est.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)