

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

CRIMINAL WRIT PETITION NO.2774 OF 2017

Farukh Nawad Abdul Rehman
Shaikh @ Sameer

.... Petitioner

versus

The State of Maharashtra & Anr.

... Respondents

.....

- Mr.Aniket Vagal, Advocate for the Petitioner.
- Ms.S.D. Shinde, APP for the State/Respondents.
- Mr.Ashish Shatri, Advocate for Respondent No.2.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE : 24th JULY, 2017.**

P.C. :

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

2. The petition is filed under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, for quashing and setting aside FIR bearing C.R.No.169/15, registered with Deonar Police Station,

Mumbai. The said FIR is registered against the petitioner at the instance of one Nazma Shaikh, mother of the victim i.e. respondent No.2, for the offences punishable u/s 376 of the Indian Penal Code and 4, 6, 8 and 10 of The Protection of Children From Sexual Offences Act, 2012.

3. Pending investigation, the parties to the petition have settled their dispute amicably and in pursuance of an understanding arrived at between them, have approached this Court for quashing the FIR by consent. The respondent No.2 has filed an affidavit dated 14/07/2017, in which she has given no objection for quashing and setting aside the subject FIR.

4. The respondent No.2 as well as her mother, the complainant, are personally present before the Court. On being questioned, they both specifically stated that they have gone through the affidavit and have fully understood the contents thereof and have no objection, if the subject FIR is quashed and set aside. They also stated that they are giving no objection for

quashing the subject FIR out of free will and without there being any pressure or coercion.

5. It is true that the offence u/s 376 of the Indian Penal Code is the Act against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph No.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.”

6. 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.

7. In the present case, the petitioners as well as the respondent No.2 are of the same age and the FIR discloses that they were in love relationship. The elders in the family of petitioner and the respondent No.2 had fixed their marriage. Subsequent to the registration of FIR, the petitioner and the respondent No.2 got married in accordance with the Muslim rituals. Out of this wedlock the petitioner and the respondent No.2 have one child born on 18/09/2016.

8. The complainant, the mother of the respondent No.2, specifically stated before us that the petitioner and the respondent No.2 are happily staying together and therefore she does not want to proceed with the subject FIR. The respondent No.2 has also stated that she is happily residing with the

petitioner alongwith her child and she has no complaint against the petitioner. The petitioner is also present before the Court. He has stated that he will look after and take care of the respondent No.2 i.e. his wife and their child properly.

9. In the backdrop of above facts and circumstances, continuation of the criminal proceedings against the petitioner is not in the interest of the respondent No.2. Continuation of the proceedings will disturb the family peace and may hamper their relations. Parties are leading happy married life and in such situation making them face Court proceedings may destroy the fabric of their marital life too. Viewed from the angle of welfare of the parties and minor child, putting an end to the criminal prosecution of the petitioner is in the best interest of all of them. In that view of the matter, petition deserves to be allowed. Petition is, therefore, made absolute in terms of prayer clause (a).

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)