

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2821 OF 2017

Mohd. Bablu Kasiruddin Shaikh. ..Petitioner.
Versus
State of Maharashtra & Another. ..Respondents.

Mr. K. S. Patil for the Petitioner.
Mr. N. B. Patil, APP for the State.
Mr. Ranjeet H. Patil i/b Megha Bajarla for Respondent No. 2.

Coram : RANJIT MORE &
SARANG V. KOTWAL, JJ.
Date : **July 19, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the Respondent No. 2 and the learned APP for the State. Petition is filed for quashing FIR bearing CR. No. 445 of 2017 registered with Dindoshi Police Station at the instance of Respondent No. 2 for the offence punishable under section 376(2) (n) of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR the parties amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present petition is filed for quashing the above FIR, by consent of Respondent No. 2.

3. Mr. Patil, the learned APP opposed this petition on the ground that offence alleged against the Petitioner is a serious one and it is an offence against society.

4. Respondent No. 2 – original complainant has filed an affidavit dated 17th July 2017. In paragraph 3 she has stated that the subject FIR was lodged out of misunderstanding. She has also stated that she does not desire to prosecute the Petitioner in the subject FIR. She has solemnly affirmed that she has no objection if the subject FIR is quashed and set aside. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing FIR in question initiated by her against the Petitioner for the offence punishable under section 376(2) (n) of IPC.

5. 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 [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."

. 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. So far as the instant case is concerned, we have gone through the FIR. We have also gone through the earlier complaint filed by Respondent No. 2, namely, the complaint dated 22nd August 2016 made to the Senior Inspector of Police, Dindoshi Police Station. Reading of the FIR and this earlier complaint of Respondent No.2, makes it abundantly clear that the Petitioner as well as Respondent No.2 are adult and their relationship was consensual. In fact, it is a dispute between private parties. Thus offence under section 375 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

7. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

8. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject FIR. In that view of the matter, writ petition is made absolute in terms of prayer clause

(a). As the police machinery and the Court machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the Petitioner with the cost of Rs.50,000/-, which shall be paid to the “**Tata Memorial Hospital**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioner shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

9. It is reported that the Petitioner is in custody in the subject FIR. Since we have quashed the subject FIR, the Petitioner is directed to be released forthwith if not required in any other case.

[SARANG V. KOTWAL, J.]

[RANJIT MORE, J.]