

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3133 OF 2017

Ashok Baburao Patil

....Petitioner

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * * *

Mr. Rahul S. Kate, Advocate for the petitioner.

Mr. K.V. Saste, Additional Public Prosecutor, for
respondent no.1, State.

Ms. Pradnya R. Bansode, Advocate for respondent no.2.

Respondent no.2, Madhuri Prakash Sontakke, present in
person.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

8TH AUGUST, 2017.

P.C. :-

1. Rule. By consent of the Learned Counsel for
the parties, Rule is made returnable forthwith.

2. Heard Learned Counsel for the parties.

3. The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked for quashing and setting aside the FIR being C.R. No. 363 of 2017 registered with Karad City Police Station on 2nd June, 2017, for the offences punishable under Sections 323, 376, 406, 417, 420, 504 and 506 of the Indian Penal Code, Sections 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act and Sections 8 and 10 of the Protection of Civil Rights Act.

4. The gravamen of the allegations in the said F.I.R. against the accused i.e. the petitioner herein is that, he had sexual intercourse with respondent no.2 on the promise that, he would be marrying her. The FIR sets out the details in respect of the commission of the offences alleged against the petitioner. The parties have settled the matter and as a consequence of which, respondent no.2 has filed her Affidavit. The respondent no.2 is

personally present in Court. She is identified by the Learned Counsel appearing for her and she is also identified by her Pan Card bearing No. FQBPS9242C. When put in the box and queried, she states that, what has been stated in the said Affidavit is correct and that she has signed the said Affidavit of her own free Will and volition. She also identifies her signature on the said Affidavit.

5. In para-4 of the said Affidavit, she has stated to the following effect :

“4. I say that since the offence punishable u/s. 376, of IPC and Section 3, 4 Schedule Caste and Schedule Tribes (Prevention of Atrocity) Act, and Section 8 and 10 of Protection of Civil Rights Act is applied and the same is non compoundable, hence we are approaching this Hon'ble Court for quashing of the FIR by consent.”

5. The facts disclose, that the petitioner and respondent no.2 had entered into a relationship and

therefore the sexual relations between the two were consensual. Though the offences under Section 376 Indian Penal Code, as also, the offences under Sections 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act are non-compoundable, in the said context, a useful reference would be made to the judgment of the Apex Court in the case of **Narinder Singh and Others V/s. The State of Punjab, (2014) AIR SCC page 2065**. Para-28 of the said judgment, is relevant and is reproduced hereinabove.

“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 Apex Court, therefore in *Narendra Singh's* case (supra) has opined 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 parameters laid down by the Apex Court are that, 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. In the instant case, we have perused the FIR and the FIR discloses that the dispute has arisen because of a misunderstanding on the part of the respondent no.2. The facts clearly disclose that, the petitioner and respondent no.2 had entered into a consensual relationship. Hence, the offence under Section 376 of the Indian Penal Code has not been made out. Insofar as, Sections 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act are concerned, they can be said to be founded on the offences alleged against the accused under the Indian Penal Code. Since we have reached the conclusion that the offence under Section 376

has not been made out, the same would obviously impact the offence alleged under Sections 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. In the light of the judgment of the Apex Court in *Narinder Singh's* case (supra) we are of the view that, the FIR in question is required to be quashed and set aside and the petition is required to be allowed. The FIR in question is accordingly quashed and set aside and the petition is accordingly made absolute in terms of prayer clause (b). In the facts and circumstances of the case, wherein the machinery of this Court is used to settle their disputes, it would be appropriate to direct the petitioner to pay cost of Rs.25,000/- (Rs. Twenty Five Thousand only) to the National Association of Blind, Worli. The same to be paid within four weeks from today. The petition is accordingly allowed to the aforesaid extent. Rule is accordingly made absolute.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)