

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

CRIMINAL APPLICATION NO.1056 OF 2016

Mayuri Ganesh Pawar

.... Applicant

versus

The State of Maharashtra & Anr.

... Respondents

.....

- Mr.Kapil Dave i/b. Mr.Paresh More, Advocate for the Applicant.
- Mr.A.S. Tripathi i/b. S.U. Pandey, Advocate for Respondent No.2.
- Mrs.M.M. Deshmukh, APP for the State/Respondent.

**CORAM : RANJIT MORE &
SARANG V. KOTWAL, JJ.**
DATE : 11th JULY, 2017.

P.C. :

1. Heard the learned counsel for the applicant, respondent No.2 and learned APP.
2. The complainant herself has filed this criminal application under section 482 of the Code of Criminal Procedure, 1973, for quashing the FIR bearing C.R.No.227/15, registered with Juhu Police Station, Mumbai, at the instance of respondent No.2 for the offences punishable u/s 376 of the Indian Penal Code.

3. Pending investigation of the said FIR, with the intervention of well-wishers, relatives and friends, parties have settled their dispute amicably; and in pursuance of the understanding arrived at between them, have approached this Court for quashing the subject FIR by consent.

4. The parties have accordingly filed consent terms dated 10/07/2017 in these proceedings. The consent terms are signed by the applicant, respondent No.2 and their respective counsels. The paragraph No.2 of the consent terms states that the applicant and the respondent No.2 have settled their dispute and the applicant does not want to proceed with the subject FIR. In paragraph No.3 it is mentioned that the applicant and the respondent No.2 got married on 07/07/2017 in accordance with Hindu Customs at Shree Vishweshwar Mandir, Nirmal Nagar, Bandra (East), Mumbai. They have also annexed the copy of receipt of temple dated 07/07/2017 supporting their contention. The photographs of parties garlanding each other in marriage are also annexed. In addition to this, the Marriage Performance Certificate by Priest is also annexed to support

their contention. The parties have also produced on record the deed of declaration of marriage, signed by the applicant and the respondent No.2. They have declared that they have got married on 07/07/2017. The respondent No.2 has also undertaken that he will properly, look after the applicant and will lead happy married life with her.

5. The applicant as well as the respondent No.2 are present in the Court. On specific query they stated that they have gone through the affidavit as well as the consent terms and the declaration of marriage and that they have understood the contents of the affidavit and that they had no complaint against each other. The applicant also states that in these circumstances, the subject FIR be quashed.

6. It is true that the offence u/s 376 of the Indian Penal Code is 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.”

7. 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.

8. In the instant case, the FIR reveals that the applicant and the respondent No.2 were in love relations for more than 7 years. The applicant had undergone abortion in the year 2012. Thereafter also they continued with their relationship. The parties are major. It is clear from the FIR that the relationship

between the parties was consensual. In that view of the matter, we find that the offence u/s 376 of the Indian Penal Code is not made out. Consequently, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. 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 (b). The FIR bearing C.R.No.227/15, registered with Juhu Police Station, Mumbai, is quashed and set aside.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)