

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1144 OF 2016

Mrs. Sunita Shukla nee Tiwari and anr.	Applicants
versus	
The State of Maharashtra and ors.	Respondents

Mr. Milan Desai i/b. M. I. Charolia, advocate for the applicants.
Mrs. Aruna S. Pai, APP for the State.
Mr. R. K. Singh, advocate for the respondent Nos. 2 to 4.

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

DATE : 15th JUNE, 2017.

P. C. :

Heard learned counsel for the applicants, learned counsel for the respondent Nos. 2 to 4 and learned APP for the State.

2. The complainant and accused have jointly approached this Court for quashing the proceedings of the CC No.680/PW/2013 pending on the file of Metropolitan Magistrate, 49th Court at Vikhroli, Mumbai. The said criminal case arises out of registration of FIR bearing CR No. 309 of 2012 with Ghatkopar Police Station, at the instance of the applicant No.1, against the respondent Nos. 2 to 4 for the offences punishable under Sections 498-A, 406, 377 and 384 read with Section 34 of the Indian Penal Code, 1860.

3. The applicant No.1 and applicant No.2 got married on 27th May, 2011. The respondent Nos. 2 and 3 are the parents of the applicant No.2 and respondent No.4 is alleged to be a friend of the applicant No.2. Matrimonial discord between the parties gave rise to filing of civil as well as criminal proceedings and the subject matter of the present application is one of them.

4. Pending trial of the subject criminal case, the parties settled their dispute amicably and filed consent terms before the Family Court at Bandra in a petition under Section 13(B) of the Hindu Marriage Act, 1955, for divorce by mutual consent and in pursuance of an understanding arrived at between them, they have approached this Court for quashing the subject criminal case by consent. The applicant No.1 is present before this Court. On being questioned, she specifically stated that she has gone through the contents of the application and she has understood the same. She also stated that since the dispute between herself and the applicant No.2 is settled and they have agreed to obtain divorce by mutual consent, she does not wish to proceed further with the subject criminal case. She stated that she has "No Objection" if the proceedings of the subject criminal case are quashed and set-aside against the applicant No.2 and rest of the respondents.

5. It is true that the offence under Section 377 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 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 instant case, the FIR filed by the applicant No.1 reveals that on 10th June, 2011 during 6.00 pm to 6.30 pm, the respondent No.4 came to the house of the applicant No.2. The applicant No.2 introduced

her to the applicant No.1 as his friend. The allegations in the FIR further proceeds that the applicant No.2, in the presence of the respondent No.4, had unnatural sex with the applicant No.1. It is alleged that the respondent No.4 has video recorded this incident on her mobile phone.

8. During investigation, the investigating agency found that the allegations against the respondent No.4 are false. It was found that there is no material to support the applicant No.1's allegations made in the complaint against the respondent No.4 and consequently the respondent No.4 was discharged under Section 169 of the Code of the Criminal Procedure, 1973. The discharge report is accepted by the learned Metropolitan Magistrate, 49th Court at Vikhroli, by his order dated 24th January, 2017. In the light of this report, in our opinion, the allegations made by the applicant No.1 against the applicant No.2 under Section 377 of the Indian Penal Code, 1860, cannot be sustained and no case is made out so far as the offence under this Section is concerned. 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 criminal application is allowed in terms of prayer clause (a). As a condition precedent for this order to take effect,

the applicant No.2 shall pay costs of Rs.25,000/-(Rupees Twenty-Five Thousand Only) to Tata Memorial Cancer Hospital, Mumbai, for the use of its philanthropic purposes and produce a copy of the receipt on the file of this application within a period of four weeks from today, failing which, the criminal application shall stand dismissed automatically without further reference to the Court.

(SARANG V. KOTWAL, J.)

[RANJIT MORE, J.]