

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1206 OF 2016

Vicky Ramphal Tusamad,
R/o.Chakala Cigarette Factory, J.B.Nagar,
Andheri (East), Mumbai

Applicant

versus

1. The State of Maharashtra
2. Anjali Joseph Haldar, Occ.Service,
R/o.A/07, Suryanagar, Sunderbaugh,
Behind Nurani Mashjid, Kurla (W),
Mumbai.

Respondents

Mr.S.S.Karmarkar for applicant.
Mr.K.V.Saste, APP, for State.
Ms.Rushita Jain for Respondent no.2.

CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.

DATE : 6th October 2017

PC :

1. Heard learned counsel for applicant, respondent no.2 and learned APP for State. The petition is filed invoking jurisdiction of this court under Article 226 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973, to quash and set aside the proceedings of Sessions Case No.237 of 2007 pending on the file of Sessions Court for Greater Bombay. The said case arises out of registration of first information report being CR No.483 of 2016 registered with Ghatkopar Police Station, Mumbai, at the instance of respondent no.2 for offences punishable under Section 376(1), (2) (N), 420 of Indian Penal Code.

2. Learned counsel for respective parties submitted that during pendency of the trial, the petitioner and respondent no.2 have settled their dispute amicably and pursuant to the understanding arrived at between them, the petitioner has approached this Court seeking quashing of the criminal proceedings initiated by respondent no.2. Respondent no.2 has filed an affidavit dated 23rd March 2017. In paragraph 7, she has given no objection to quash the criminal proceedings pending before the Sessions Court. In paragraph 8, she has stated that she has filed the affidavit without any force, fraud or coercion and she has sworn the affidavit at her free will.

3. The applicant as well as Respondent No.2 is personally present before the Court. On a 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 the subject criminal proceedings being Sessions Case No.237 of 2007 initiated by her against the Applicant.

4. It can, thus, be seen that the matter has been amicably settled between the parties. It is true that the offence under Section 376 of IPC is a serious offence and is against the society. Consequently, such an offence cannot be quashed by consent. However, it would be appropriate to refer to paragraph 26 of the decision in Narinder Singh and others vs. State of Punjab and another (2014)-6-SCC-466 of Supreme Court, which read thus :

“26. 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 of 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 unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

5. It is thus clear that the Court cannot decline to entertain an application under Section 482 of Cr.PC because the FIR incorporates offence under Section 376 of IPC. The Court has to endeavour to find out whether the FIR contains ingredients of the offence. We have perused the FIR in the instant case. The same reveals that the applicant and respondent no.2 were friends. They were engaged in physical relationship. The relationship was of consensual in nature and complaint came to be filed when the applicant refused to marry

respondent no.2. In our considered view, the FIR does not disclose ingredients of Section 376 of IPC. Be that as it may, subsequently respondent no.2 is married and she is living peacefully. Continuance of the criminal proceedings, in the above circumstances, will not be in the interest of respondent no.2 also.

6. From the perusal of complaint, it transpires that the relationship between the complainant and the accused was consensual. 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 Sessions Case No.237 of 2007 alive, pending on the file of Sessions Court for Greater Mumbai, except ultimately burdening the Sessions Courts which are already overburdened.

7. 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 Sessions Case No.237 of 2007 arising out of CR No.483 of 2016 registered with Ghatkopar Police Station, Mumbai.

8. Accordingly, application is allowed in terms of prayer clause (b), subject to payment of cost of Rs.5,000/-, which shall be paid to the “**Kirtikar Library, Bombay High Court**”. For the quashment to take effect, the Applicant shall pay above costs and produce the receipt thereof on the file of this Court within the period of four

weeks from today. In the event costs are not paid and receipt is not produced within stipulated time, the petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)

MST