

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3897 OF 2017**

Parag Ashok Shah ..Petitioner
Versus
The State of Maharashtra and anr. ..Respondents

Mr. Harshad Bhadbhade i/b. Mr. Harshwardhan Salgoankar, advocate for the petitioner.

Mr. V. B. Konde-Deshmukh, APP for the State.

Mr. G. C. Mogre, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, J J.**

DATE : 1st NOVEMBER, 2017.

P. C. :

Heard learned counsel for the petitioner, learned counsel for the respondent No.2 and learned APP for the State.

2. The petition is filed for quashing and setting-aside the FIR bearing CR No.307 of 2017 registered with Oshiwara Police Station, Mumbai, at the instance of the respondent No.2 against the petitioner for the offences punishable under Sections 376, 376(2)(n), 420, 323 and 504 of the Indian Penal Code, 1860 (for short "the IPC").

3. Pending investigation, the parties with the intervention of the elders, relatives and well-wishers settled their dispute amicably and, in pursuance of an understanding arrived at between them, they have

approached this Court for quashing the subject FIR by consent. The respondent No.2 has, accordingly, filed an affidavit dated 1st November, 2017. In paragraph 6, she has given no objection for quashing and setting-aside the subject FIR. The respondent No.2 is personally present before this Court. On being questioned, she specifically stated that she and the petitioner are now married and staying together happily and, therefore, she does not wish to pursue the FIR and wants the same to be quashed and set-aside. She further stated that she has gone through the contents of the petition and the affidavit and has fully understood the same. She also confirmed that she has given no objection for quashing the subject FIR out of free will and without there being any pressure or coercion.

4. 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 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.”

5. 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 if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

6. In the instant case, the FIR filed by the respondent No.2 revealed that she and the petitioner are of the same age and they were in love-relationship for a long time and the physical relationship between them was consensual. The FIR itself revealed that the respondent No.2 got married with the petitioner prior to filing of the FIR. In the above circumstances, we are of the considered opinion that the offence under Section 376 of the IPC is not made out. 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. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

7. Accordingly, the writ petition is allowed in terms of prayer clause (a). As a condition precedent for this order to take effect, the petitioner 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 petition within a period of four weeks from today, failing which, the criminal writ petition shall stand dismissed automatically without further reference to the Court.

8. Subject to above the writ petition stands disposed off.

9. At this stage, it is pointed out by the learned counsel for the petitioner as well as respondent No.2 that the investigating officer of the subject crime had confiscated the mobile phones of the petitioner and respondent No.2. Since, we have quashed the subject FIR, we direct the investigating officer of the subject crime to return those mobile phones to the petitioner and respondent No.2 immediately.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]