

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3946 OF 2017
(Order is corrected in pursuance of order dated 7th March, 2019)

Mr. Jayawardhan Satish Joshi and ors. ..Petitioners
Versus
The State of Maharashtra and anr. ..Respondents

Mrs. Usha Purohit i/b. Mr. M. S. Sawant, advocate for the petitioners.
Ms. S. D. Shinde, APP for the State.
Mrs. Uma Kshirsagar-Wagle, 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 petitioners, learned counsel for the respondent No.2 and learned APP for the State.

2. The petition is filed for quashing and setting-aside the Sessions Case No.263 of 2017 pending on the file of the Sessions Court at Dindoshi, Mumbai. The said case arises out of registration of FIR bearing CR No.273 of 2017 with Vile Parle Police Station, Mumbai, at the instance of the respondent No.2 against the petitioners for the offences punishable under Sections 498-A, 376, 377, 406, 506(II) read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC").

3. The petitioner No.1 and respondent No.2 got married to each

other on 23rd October, 2013. Rest of the petitioners are the family members of the petitioner No.1. Matrimonial dispute between the parties gave rise to filing several criminal and civil proceedings and the subject matter of the present petition is one of them.

4. Pending trial of the subject criminal case, the parties with the intervention of the elders and relatives settled their dispute amicably and have filed consent terms in the petition No.F-584 of 2017 pending in the Family Court at Bandra. A copy of the said consent terms is annexed to "Exhibit C" to the petition. In terms of the said consent terms, the parties have agreed to dissolve their marriage by way of mutual consent under Section 13-B of the Hindu Marriage Act, 1955. The respondent No.2 has given her no objection for quashing and setting-aside the proceedings of the subject sessions case. A common statement is made by the learned counsel for the petitioners and respondent No.2 that the Family Court at Bandra by its impugned judgment and order dated 15th September, 2017, has dissolved the marriage between the petitioner and respondent No.2 by decree of divorce by mutual consent. In the aforesaid circumstances and in terms of an understanding arrived at between the parties, they have approached this Court for quashing the proceedings of the subject criminal case by consent. The respondent No.2 has, accordingly, filed an affidavit dated 1st November, 2017. Whatever stated herein above, is reiterated by the respondent No.2 in paragraphs 2 and 3. In paragraph 5,

she has given her consent for quashing the proceedings of the subject sessions case. The respondent No.2 is personally present before this Court. On being questioned, she specifically stated that she has gone through the petition and the affidavit as well and has fully understood the contents thereof. She also confirmed that she has given no objection for quashing the proceedings of the subject criminal case out of free will and without there being any pressure or coercion.

5. It is true that the offences under Sections 376 and 377 of IPC are of serious nature and are 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/Charge-sheet 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 charge-sheet, 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 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.

7. In the instant case, the offences under Sections 376 and 377 of the IPC are alleged to have been committed by the husband. Since, the dispute between the parties is amicably settled and parties have separated, in our opinion, it would be in the interest of the respondent No.2 if the proceedings of the subject criminal case are quashed and set-aside. That apart, considering the fact that both the parties are young and educated, putting an end to the proceedings, will enable them to start their lives afresh.

8. Thus, in the light of the principles laid down by the Apex Court in **Narinder Singh (supra) and B.S.Joshi versus State of Haryana AIR 2003 SC 1386**, we are of the considered view that there is no impediment in quashing the proceedings of the subject sessions case. Besides, no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the proceedings of the subject sessions case are required to be quashed and set-aside. The petition is, accordingly, made absolute in terms of prayer clause (b) and is disposed off as such.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]

Signature of Hon'ble Smt. Justice Dr. Shalini Phansalkar-Joshi could not be obtained on this corrected judgment as Her Ladyship had already retired on the date when the matter was moved on 7th March, 2019, for speaking to the minutes of order .