

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3959 OF 2017

Tejas P. Parmar

Petitioner

versus

Ms.Komal Dhillon and another

Respondents

Mr.Rajendra Shirodkar i/by Archit Sakhalkar for petitioner.

Mr.K.V.Saste, APP, for State.

Mr.A.R.Maurya for respondent no.1.

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

DATE : 6th October 2017

PC :

1. Heard Mr.Shirodkar for petitioner, Mr.Maurya for respondent no.1 and Mr.Saste, APP, for State. The petition is filed for quashing and setting aside the first information report being CR No.366 of 2017 registered with Oshiwara Police Station, Mumbai at the instance of respondent no.1 for offences punishable under Sections 376(2)(n) and 420 of Indian Penal Code.

2. Pending investigation, the parties have settled their dispute amicably and pursuant to the understanding, have approached this Court for settlement. The respondent no.1 has filed an affidavit dated 27th September 2017. In the said affidavit she has stated that she had an affair with the petitioner for a period of three years, however, there were intermittent quarrels with him. It is also stated that subject FIR was filed out of frustration. It is stated that she

wants to withdraw the complaint against the petitioner. She states that she has no objection for quashing the FIR.

3. Respondent No.1 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 FIR being CR No.366 of 2017 initiated by her against the the Petitioner.

4. It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. The FIR reveals that the petitioner and respondent no.1 were friendly with each other and they were having physical relationship between October-2015 and May-2016. As petitioner stopped answering the phone calls of respondent no.1, she got angry and under frustration lodged the subject complaint against petitioner on the ground that petitioner refused to marry her. In our considered view, the FIR does not disclose the ingredients of Section 376 of Indian Penal Code. 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 FIR alive except ultimately burdening the Sessions Courts which are already overburdened.

5. It is true that the offence under Section 376 of IPC is serious in nature and the offence is against the society. However, we find that

the FIR does not disclose the ingredients of Section 376 of Indian Penal Code. 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.”

It is, thus, clear that the Court cannot decline to quash an FIR merely because FIR incorporates charge under Section 376. The Court has to endeavour to find out whether the FIR discloses the ingredients of

Section 376 of IPC. In the light of this, we have gone through the FIR. The FIR reveals that the petitioner and respondent no.1 were friendly with each other and having physical relationship between October-2015 and May-2017. Only after petitioner stopped giving response to the phone calls of Respondent no.1, that Respondent no.1 lodged the complaint in question. In our considered view, the FIR does not disclose the ingredients of Section 376 of IPC. Hence, we are of the considered view that there is no impediment in quashing the subject FIR being CR No.366 of 2017.

6. Accordingly, writ petition is allowed in terms of prayer clauses (a) and (b), subject to payment of costs quantified at Rs. 2,00,000/-, which shall be paid to the “**Central Police Welfare Fund Account No.914010029005759, Axis Bank, IFS Code - UTI B0000060**” within two weeks from today. For the quashment to take effect, the petitioner shall pay the said costs and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as *non-est*. Parties and all concerned to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)

MST