

WRIT PETITION NO. 3997 OF 2017

Mr.R.B. Mungekar for the Petitioner.
Mr.A.R. Kapadnis, A.P.P. for Respondent No.1-State.
Mr.Akshay Malviya i/b. Mr.S.S. Shirsath for Respondent No.2.

DATE : 15th NOVEMBER, 2017.

3] This petition is filed for quashing the First Investigation Report bearing C.R. No.126 of 2017 registered with Bhoiwada Police Station, Mumbai, at the instance of Respondent No.2 for the offence

punishable under Sections 376, 417, 506 of the Indian Penal Code.

4] Pending investigation, parties settled their dispute amicably and in terms of the understanding, they also got married to each other and therefore, they have approached before this Court to quash and set-aside the subject FIR.

5] Accordingly, Respondent No.2 has filed an affidavit dated 29th September, 2017. In the affidavit, she has stated that she and the Petitioner is now married and staying together happily. In paragraph (4) of the affidavit, she has given her no objection to quash the subject FIR.

6] Respondent No.2 is personally present before the Court. On 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 also confirmed that she is married with the Petitioner and, therefore, she has no objection to quash the subject FIR.

7] It is true that the offence punishable under Section 376 of the 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 Panjab [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 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 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 unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

8] 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 / Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

9] In the instant case, we have gone through the FIR. The FIR discloses that the Petitioner and Respondent No.2 were in love relationship for the period of nearly about 5 years. The FIR also shows that, the FIR came to be filed because the Petitioner has refused to get married with Respondent No.2 as his parents opposed the same. The fact remains that subsequently the Petitioner and Respondent No.2 got married on 18th August, 2017. The Marriage Certificate issued by the Registrar of Marriage, Municipal Corporation of Greater Mumbai is annexed at page 22 of the petition.

10] In the affidavit, in paragraph (3), Respondent No.2 has specifically stated that the subject FIR came to be filed out of misunderstanding between her and the Petitioner. The Petitioner is at present 26 years old and Respondent No.2 is at present 21 years old. As stated above, they are already married and happily staying together. In our considered opinion, in these circumstances, it would be in the interest of justice of Respondent No.2 to quash the FIR.

11] In the light of the above, we are of the considered view that there is no impediment to quash the FIR. The Petition is accordingly allowed and made absolute in terms of prayer Clause (a).

[DR.SHALINI PHANSALKAR-JOSHI, J.] [RANJIT MORE, J.]