

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3932 OF 2016**

Shrirang Chandrakant Mohite and ors. ..Petitioners
Versus
The State of Maharashtra and anr. ..Respondents

Mr. V. S. Tiwari, advocate for the petitioners.
Ms. V. S. Mhaispurkar, APP for the State.
Mr. A. S. Pandey, advocate for the respondent No. 2.

**CORAM : RANJIT MORE &
PRAKASH D. NAIK, J J.**

DATE : 11th OCTOBER, 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 FIR bearing CR No. 720 of 2015 registered with Sakinaka Police Station, at the instance of the respondent No.2 for the offences punishable under Sections 376, 313 and 420 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC").

3. Pending investigation, the parties have settled their dispute amicably with the help and intervention of family members, friends and

well-wishers and in pursuance of an understanding arrived at between them, they have approached this Court for quashing the proceedings of the subject FIR by consent.

4. In the instant case, the respondent No.2 has filed an affidavit dated 2nd June, 2016, wherein she has stated she is married to petitioner No.1 and both of them are staying together happily and, therefore, she has requested this Court to quash the subject FIR. The respondent No.2 is personally present before the Court. On being questioned, she specifically stated that she has gone through the affidavit and the petition as well and has fully understood the contents thereof. She further confirmed that she has given no objection for quashing the subject FIR out of free will and without there being any pressure or coercion.

5. 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/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.”

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/Charge-sheet 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 revealed that the petitioner No.1 had promised to marry respondent No.2 and in that view of the matter, both of them had consensual sexual relationship since 2011 to 2015. The FIR was filed since the petitioner No.1 refused to marry respondent No.2. The petitioner has annexed the affidavit of himself and respondent No.2 at “Exhibit-B”. The affidavit disclosed that both of them are married according to Hindu Rites on 15th January, 2016 and are staying together. The petitioner Nos.2 and 3 who are the parents of the petitioner No.1 are present before the Court. They have also accepted the above position and submitted that the parties have no grievance against each other. In these circumstances, we are of the considered

opinion that offence under Section 376 of the Indian Penal Code is not made out. Consequently, we find that no purpose would be served by keeping the criminal proceedings pending. 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. In view of the above, the petition is allowed in terms of prayer clause (ii) and is disposed off as such.

(PRAKASH D. NAIK, J.)

[RANJIT MORE, J.]