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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1119 OF 2017

Chetan Rajendra Sonawane ... Applicant

V/s.

Malti Jitendra Kumar Mishra
and another ... Respondents

Mr. Prabha V. Badadare, for the Applicant.
Mr. Omkar Nagvekar, for respondent No.2.
Ms. S. D. Shinde, APP for the Respondent.

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

DATE : 20th NOVEMBER, 2017.

P.C. :

1] Heard learned counsel for the applicant, respondent No.2
and learned APP.

2] This application is filed for quashing the F.I.R. bearing
C.R.No.475 of 2017, registered with D.N. Nagar Police Station, Andheri
(W), Mumbai, for the offences punishable under Section 376 of the
Indian Penal Code. Pending investigation, the parties have amicably
settled the dispute between them and by consent filed this application
for quashing the subject F.I.R.

3] Respondent No.1 accordingly has filed an affidavit dated

6th November, 2017. In paragraph No.3, she has given no objection for quashing the subject F.I.R. Respondent No.1 is present in the Court. She specifically states that she has gone through application and affidavit. She understood the contents thereof. She also states that since the dispute between herself and the applicant is settled, she has no objection to quash the subject F.I.R.

4] It is true that the offence under Section 376 of the Indian Penal Code is of serious nature and is offence against 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] In the instant case F.I.R. reveals that the complainant as well as the applicant are major and whatever relations between them were consensual. It appears that the F.I.R. came to be filed as the applicant refused to marry. In our considered view, therefore, offence under Section 376 is not made out. Consequently we find no purpose would be served by keeping the present dispute between the parties pending except burdening the Criminal Courts which are already overburdened.

6] Accordingly, application is allowed in terms of prayer

clauses (a) and (b) subject to payment of costs of Rs.25,000/- by the applicant to Tata Memorial Cancer Hospital, Mumbai for the use of its philanthropic purposes. The applicant shall pay the said costs and produce the receipt thereof on the file of this Court within a period of four weeks from today, failing which, the application shall stand dismissed automatically without further reference to the Court.

7] Subject to above, the application is disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]