Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4624 OF 2017

Aakash @ Kiran Krushnhari Kuni … Petitioner
Vs.
The State of Maharashtra & Ors. … Respondents

Mr. V.V. Purwant for the Petitioner.
Mr. S.S. Pednekar, A.P.P., for Respondent No.1-State.
Mr. V.R. Gaikwad, i/by Mr.P.C. Kamble, for Respondent Nos.2 & 3.

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

DATE : 29TH NOVEMBER 2017.

P.C. :

1. Heard learned counsel for the Petitioner, learned counsel for Respondent Nos.2 and 3 and learned A.P.P. for the Respondent-State.

2. This Petition is filed for quashing and setting aside the proceedings in Special Case No.360 of 2016, pending on the file of the learned Special Judge, Solapur. The said Special Case arises out of registration of an F.I.R. bearing C.R. No.212 of 2015

with the Jail Road Police Station, Solapur, at the instance of Respondent No.2 for an offence punishable under Sections 376(2)(h), 363 and 366-A of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012.

3. Pending trial, parties have settled their dispute amicably and in terms of the understanding arrived at between the parties, they have approached this Court for quashing the subject Sessions Case by consent.

4. Respondent No.2-Original Complainant as well as Respondent No.3-Victim have filed separate affidavits dated 29th November 2017, thereby giving their consent to quash the proceedings of the subject Special Case. Both, Respondent Nos.2 and 3, are personally present before the Court. They reiterate whatever is stated by them in their affidavits. On being questioned, she specifically stated that she has gone through the the Petition and the affidavit as well and she has fully understood the contents thereof. She also confirmed that she has given no objection for quashing the proceedings of the subject Special

Case out of her 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 No.28 of the Judgment in the case 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 present case, the FIR is filed by Respondent No.2 – the father of Respondent No.3. The FIR discloses that Respondent No.3 was in love-relationship with the Petitioner and, hence, on her own accord, she left the house and accompanied the Petitioner. The FIR further shows that the physical relationship between the parties was developed.

8. Be that as it may, Petitioner and Respondent No.3 are now married and blessed with two children. In the above-said facts and circumstances, in our opinion, it would be in the interest of Respondent Nos.2 and 3 to quash the proceedings.

9. Respondent No.2-Original Complainant and Respondent No.3-Victim, accordingly, have filed their affidavits dated 29th November 2017. In paragraph No6 of the said affidavits, Respondent Nos.2 and 3 have given their no objection to quash the proceedings of the Special Case No.360 of 2016. Respondent Nos.2 and 3 are personally present before the Court and admit that they have read over the petition and affidavit and understood the contents therein.

10. Accordingly, the Writ Petition is allowed in terms of prayer clause (a). The proceedings in Special Case No.360 of 2016, pending on the file of the learned Special Judge, Solapur, are hereby quashed and set aside.

11. Writ Petition is disposed of in the aforesaid terms.

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