

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1141 OF 2017

Shri Manish Anand Yadav ...Applicant
Versus
The State of Maharashtra and ors. ..Respondents

Mr. Himanshu Shinde, advocate for the applicant.
Ms. Sangeeta D. Shinde, APP for the State.
Ms. Raksha Dhotre, advocate for the respondent Nos. 2 and 3.

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

DATE : 28th NOVEMBER, 2017.

P. C. :

Heard learned counsel for the applicant, learned counsel for the respondent Nos. 2 and 3 and learned APP for the State.

2. The application is filed for quashing and setting-aside the proceedings of POCSO Sessions Case No.294 of 2017 pending before the learned Special Court No.12 at Dindoshi, Mumbai. The said case arises out of FIR bearing CR No.141 of 2017 registered with Sahar Police Station, at the instance of the respondent No.2, for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short the "IPC") and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO").

3. Pending trial, the parties settled their dispute amicably and have approached this Court for quashing the proceedings of the subject criminal case by consent. The respondent No.2 as well as respondent No.3-victim girl, have filed separate affidavits dated 23rd November, 2017. The affidavits show that the applicant and respondent No.3 were in love relationship and respondent No.3 voluntarily left her house and on her own accord accompanied the applicant and thereafter they performed marriage on 15th May, 2017. The affidavits also show that the applicant and respondent No.3 thereafter were staying as husband and wife in the applicant's house.

4. The respondent No.2 as well as respondent No.3 both are present before the Court. On being questioned, they stated that they have been explained the contents of the application and the affidavits in vernacular language and they have understood the same. The respondent Nos.2 and 3 reiterated whatever that has been stated above. The respondent No.3 is now a major. On being questioned, she specifically stated that she is already married to the applicant and staying along with his mother. The respondent Nos. 2 and 3 also have no objection if the proceedings of the subject crime case are quashed and set-aside.

5. The mother of the applicant is also present before the Court.

On being questioned, she stated that her son/applicant and respondent No.3 are married and she has accepted the said marriage. She also stated that she has accepted the respondent No.3 as her daughter-in-law and at present, the respondent No.3 is staying with her.

6. 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.”

7. 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.

8. In the instant case, the parties were in love relationship. The respondent No.3 on her own accord accompanied the applicant and both of them got married. Even the physical relations between them were consensual. We are, therefore, considered view that offence under Section 376 is not made out. 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 proceedings of the criminal case in question. The criminal application is, accordingly, allowed in terms of prayer clause (a) and is disposed off as such.

9. It is reported that the applicant is in custody in the subject sessions case. Since, we have quashed the proceedings of the subject criminal case, we direct that the applicant be released forthwith, if not required in any other case.

10. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]