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

CRIMINAL APPLICATION NO. 1434 OF 2016

Shri Pankaj Muneshwar Shah @ Pankaj Jha .. Petitioner
Vs.
Smt. Nirmaladevi T. Vishwakarma & Ors. .. Respondents

Mr. S. S. Karmarkar for the Petitioners.
Mr. N. B. Patil, APP for the Respondent-State.
Mr. A. D. Aswani for Respondent No.2.

**CORAM : RANJIT MORE AND
A. S. GADKARI, JJ.**

DATE : 31st JULY, 2017.

P. C. :

1. Heard learned counsel for the applicant, learned counsel for respondent No.2 and learned APP for the respondent-State. This application is filed for quashing and setting aside the proceedings of Sessions Case No. 63 of 2010 pending on the file of Sessions Court for Borivali-Division at Dindoshi-Goregaon, Mumbai.

2. At the instance of respondent No.1, FIR bearing C. R. No. 269 of 2011 came to be filed against the Petitioner for the offence punishable under section 363 of the Indian Penal Code. After completion of investigation, the charge-sheet is filed for the offence punishable under Sections 363 and 376 of the Indian Penal Code, 1860.

3. Pending trial of the subject criminal proceedings, the applicant

and respondent No.2 married in the year 2011 and also blessed with two children. In the circumstances, the parties decided to settle the dispute amicably and in pursuance of the understanding arrived at between them, they have approached this Court to quash the subject proceedings. Respondent No.1 has accordingly filed an affidavit dated 06.12.2016. It is averred that respondent No.2 and applicant are married in the year 2011 and now they are blessed with two children. In para 6 and 7 thereof, she has given no objection for quashing the subject proceedings. Respondent No.2 has too filed an affidavit dated 06.12.2016 and prayed that present application may be allowed and that she has no objection for the quashment of the criminal proceeding against the applicant.

4. Respondent No.1 as well as respondent No.2 are personally present in the Court. On a specific query made by us, they submitted that they have made the said affidavits on their own free will, without there being any pressure or undue influence. They further confirmed that they have no objection for quashing the subject Sessions case against the applicant. The applicant is also present before the Court. In the application he has made averments that he is married with respondent No.2 in the year 2011 and is blessed with two children. On specific query made by us, he states that he is taking proper care of respondent No.2 and their children.

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 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.”

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

7. In the present case, apart from the fact that the applicant and respondent No.2 are married each others and blessed with children, we find that the applicant and respondent No.2 were in love relationship and respondent No.2 had at her own will eloped with the applicant. In our considered view, therefore, the offence punishable under Section 375 of the Indian Penal Code is not made out.

8. In the backdrop of above facts and circumstances, continuation of the criminal proceedings against the Petitioner is not in the interest of Respondent Nos.1 and 2. Continuation of the proceedings will disturb the family peace and may hamper their relations. Parties are leading happy married life and in such situation making them face Court proceedings may destroy the fabric of their marital life too. Viewed from the angle of welfare of the parties and minor children, putting an end to the criminal prosecution of the Petitioner is in the best interests of all of them. In that view of the matter, the application deserves to be allowed. Hence, the application is made absolute in terms of prayer clause (b).

[A. S. GADKARI, J.]

[RANJIT MORE, J.]