

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 964 OF 2018

Arun Manjunath Jalisatgi. ..Applicant.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. A. P. Mundargi, Senior Advocate with Mr. J. J. Bardeskar for the Applicant

Ms. S. D. Shinde, APP for the Respondent-State.

Mr. Arjun Patil for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **October 26, 2018.**

P. C. :

1. Learned counsel for the Applicant seeks leave to amend the application so as to give particulars of the proceeding. Leave granted. Necessary amendment be carried out forthwith.

2. Heard the learned counsel for the respective parties. The application is filed seeking to quash and set aside the FIR bearing CR No. I-222 of 2017 registered with Navpada Police Station for the offence punishable under sections 354, 354A, 354B, 354C, 376C, 108 and 506 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No.2. After completion of investigation in the subject FIR, charge-sheet is filed before the JMFC, Thane where the proceeding has been numbered as RCC Case No. 1521 of 2018.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of above criminal proceedings, with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present application is filed for quashing the above FIR / criminal proceeding, by consent of Respondent No.2.

4. Respondent No.2 has filed an affidavit dated 11th September 2018. In paragraph 5 of the said affidavit, she has given her no objection for quashing the subject FIR / proceeding.

5. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made the said affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the subject FIR /criminal proceedings initiated by her against the Applicant.

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 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."

. 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 light of above observations of the Hon'ble Apex

Court, we have gone through the FIR. The FIR shows that the Applicant and Respondent No. 2 were major and married. The first incident is alleged to have occurred on 2nd December 2016. Thereafter Respondent No.2 continued with the office of the Applicant. The second incident is alleged to have occurred on 31st December 2016. Despite these incidents, Respondent No. 2 continued to attend the office of the Applicant. In that view of the matter, we are of the considered opinion that physical relationship between the parties was consensual and therefore the offence punishable under section 376 of IPC is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Applicant.

8. In the light of above, application is made absolute in terms of prayer clause (a). In the facts and circumstances of the case, we find it would be appropriate to saddle the Applicant with the cost of Rs.50,000/-, which shall be paid to “**Tata Memorial Hospital**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Applicant shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, application shall stand dismissed automatically without further reference to the Court and

order quashing the proceedings/FIR shall be treated as *non-est*. Registry will then intimate the concerned Police Station / Magistrate that subject FIR / proceedings shall not be treated to have been quashed and that police / Magistrate shall proceed against the Applicant in accordance with law.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]