

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1100 OF 2018

Samran Arkate and Others. ..Applicants.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. Bharat K. Maanghani for the Applicant.

Mr. DeepakThakare, PP for the Respondent-State.

Mr. J. B. Mishra for Respondent No. 2

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

Date : **October 25, 2018.**

P. C. :

1. Heard. The application seeks to quash and set aside the proceedings of POSCO Special Case No. 352 of 2016 pending on the file of Special Sessions Judge, Mumbai. The said case arises from the registration of an FIR bearing CR. No.2 of 2016 with Worli Police Station, Mumbai at the instance of Respondent No. 2 for the offence punishable under sections 326, 323, 354, 504 and 506 read with 34 of the Indian Penal Code, 1860 and sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. 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 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 criminal proceedings, by consent of Respondent No.2.

3. Respondent No.2 as well as the aggrieved persons, namely, Renuka Bhandari and Sharnappa Bhandari have filed separate affidavits dated 5th September 2018. In their affidavits, they have given no objection for quashing the subject criminal proceedings against the Applicants.

4. Respondent No.2 as well as Renuka and Sharnappa are personally present before the Court. On 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 have further confirmed that they have no objection for quashing the subject criminal proceedings against the Applicants.

5. It is true that the offence under the provisions of POCSO Act 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.

6. In the light of above observations of the Apex Court, we have gone through the charge-sheet and especially the statement of Respondent No. 2 (Complainant). Reading of the charge-sheet shows that there was an altercation between the Petitioners' family and family of 2nd Respondent in which Renuka-daughter of Respondent No. 2 intervened. It is alleged that Petitioner No.1 tore the maxi- gown of Renuka. It is required to be borne in mind that in order to make out a case under section 12 of POCSO Act, what is required to be alleged is that the act in question was done with sexual intent. Reading of the entire charge-sheet does not disclose that Petitioner No.2 tore the maxi-gown of Renuka with sexual intent. Therefore, the offence under section 12 of the POCSO Act is not made out.

7. In the light of above, no fruitful purpose will be served by continuing with the prosecution of Petitioners. In these circumstances, and especially, in view of the law laid down by the Apex

Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened.

8. In the light of principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing subject criminal proceedings. Accordingly, application is allowed in terms of prayer clause (a). In the facts and circumstances, the Applicants are saddled with the costs of Rs.5,000/- each, 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 Applicants 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*.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]