

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4173 OF 2018

Vishal Eknath Chandanshive.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Sourabh Rane for the Petitioner.

Mr. Deepak Thakare, PP for the Respondent-State.

Mr. A. A. Gharte for Respondent No. 2.

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

Date : **October 25, 2018.**

P. C. :

1. Heard. The petition is filed seeking quashment of FIR bearing CR No. 00 of 2018 registered with Mankhurd Police Station, Mumbai, and which was subsequently transferred to Matheran Police Station where it was re-numbered as CR. No. 5 of 2018, wherein the allegation against the Petitioner is with regard to the commission of offence punishable under sections 376 and 417 of the Indian Penal Code, 1860. The said FIR is registered at the instance of Respondent No. 2 herein.

2. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation in the above FIR ,

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 petition is filed for quashing the above FIR, by consent of Respondent No. 2.

3. Respondent No.2 has accordingly filed an affidavit in this Court, being affidavit dated 7th September 2018 wherein in paragraph 4, she has accorded her consent by stating that she has no objection for quashing the subject FIR against the Petitioner.

4. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has affirmed 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 initiated by her against the Petitioner.

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.”

. 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 of above ratio laid down by the Apex Court, we have perused the subject FIR. The said FIR discloses that at the time of alleged incident the Petitioner was 32 years old and is already married and Respondent No. 2 – complainant was 10 years elder to the Petitioner. The FIR further discloses that the Petitioner and Respondent No. 2 were in love relationship, which culminated into physical relationship. Though the alleged incident occurred in the year 2011-12, for the first time, the FIR came to be filed in the year 2018. In our opinion, the FIR discloses that physical relationship was consensual.

. In these circumstances, in our opinion, the offence under section 376 of IPC is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution. 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 FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

7. In the light of principles laid down by the Apex Court in the aforesaid decisions 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 the subject FIR. Accordingly, petition is made absolute in terms of prayer clause (b).

. In the facts and circumstances of the case, we find it would be appropriate to saddle the Petitioner with the cost of Rs.25,000/-, which shall be paid to “**Tata Memorial Hospital**” an institution that takes care of advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioner 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, petition 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.]