

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1234 of 2015

Anil Tulshiram Gaikwad and 2 ors.Applicants
versus
The State of MaharashtraRespondent

Mr. Nitesh J. Mohite I/b. Mr. Jaydeep Mane, advocate for the applicants.
Mr. F. R. Shaikh, APP for the State.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 12th SEPTEMBER, 2018.

P. C. :

1. Heard learned counsel for the applicants and learned APP for the State.
2. The accused, the prosecutrix and the uncle of the accused have approached this Court by filing joint application under Section 482 of the Code of the Criminal Procedure, 1973. At the instance of the applicant No.2, Shivaji Nagar Police Station, Pune, registered FIR bearing CR No. 182 of 2015 against the applicant No.1 for the offences punishable under sections 376, 506 read with section 34 of the Indian Penal Code, 1860 (for short "the IPC"). After completion of the investigation, charge-sheet came to be filed against the applicant No.1 and the same is numbered as R.C.C.No.5729 of 2017 which is pending on the file of the Additional Chief Magistrate, Pune.

3. Pending investigation, the applicant No.1 and applicant No.2 got married on 30th September, 2015. The applicant Nos.1 and 2 now contend that they are married and are staying happily together. The statement of the applicant Nos.1 and 2 is supported by the marriage certificate issued by the Registrar of Marriage dated 2nd October, 2015, certificate of Purohit dated 30th September, 2015 and photographs of the marriage ceremony which are annexed at pages 32 to 35 of the petition.

4. Since the parties are now married and staying together, they have approached this Court for quashing the proceedings of R.C.C.No.5729 of 2017 pending on the file of the Additional Chief Magistrate, Pune, and arising out of registration of the FIR bearing CR No.182 of 2015. The application is affirmed by applicant No.1 and applicant No.2. Both the applicant Nos.1 and 2 as well as applicant No.3 are present before this Court. On being questioned, applicant Nos.1 and 2 specifically stated that since they are married and happily staying together, they are seeking quashment of the subject criminal case by consent.

5. It is true that the offence under Section 376 of the 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/Chargesheet 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 chargesheet, 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 ingredient 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 instant case, the FIR/charge-sheet reveals that the complainant/applicant No.2 herein was 20 year old at the time of filing of the FIR in the year 2015 and the applicant No.1 at that time was 27 year old. Both the applicants were major at the time of registration of FIR. The FIR discloses that the applicant No.2 had friendly relation with

the applicant No.1. The FIR further discloses that the applicant No.2 had physical relationship with the applicant No.1 for the first time in the year 2012. Though she had stated that the applicant No.1 had compelled her to enter into such a relationship under the pretext of marriage, she had not lodged any complaints but had accompanied the applicant No.1 at several places during the period between 2012 and 2014 and had continued to have physical relationship with the applicant No.1 without there being any misconception of fact, force, pressure or coercion. The FIR, therefore, in our opinion, reveals that the relationship between the applicant No.1 and applicant No.2 was consensual. Hence, the offence under section 376 of the IPC is not made out.

8. In view of the above and especially since both the applicant No.1 and applicant No.2 have approached this Court for quashing the proceedings of the subject criminal case by consent, in our opinion, no fruitful purpose would be served by continuing with the prosecution. The criminal application is, accordingly, made absolute in terms of prayer clause (a) and is disposed of as such.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]