

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

WRIT PETITION NO. 1815 of 2019

(Order corrected pursuant to the order dated 8th August, 2019 passed in
criminal application No.415 of 2019)

Rajkiran Jaywant Maskar	Petitioner
versus	
The State of Maharashtra and anr.	Respondent

Mr. S. P. Joshi i/b. Mr. S. S.Kamble, advocate for the petitioner.
Ms. Sangita Shinde, APP for the State.
Mr. Nitesh J. Mohite, advocate for respondent No.2.

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

DATE : 3rd JULY, 2019.

P. C. :

1. Learned counsel for the petitioner, at the outset, seeks leave to amend prayer clause of the petition so as to give particulars of the criminal case. Since amendment is necessitated due to subsequent development, leave as prayed for, is granted. Necessary amendment be carried out within a period of one week from today.

2. Heard learned counsel and learned APP appearing for the respective parties.

3. The petition is filed for quashing and setting-aside the proceedings of Special (POCSO) Case No.14 of 2019 pending on the file

of the Special Judge at Islampur, District – Sangli. The said case arises out of registration of FIR bearing CR. No. 184 of 2018 with Shirala Police Station, at the instance of respondent No.2, for the offences punishable under Sections 376(2)(f) and 506 of the Indian Penal Code, 1860 and Sections 4, 8 and 10 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”).

4. Learned counsel appearing for the respective parties submitted that during pendency of the trial of the subject special case, the parties amicably resolved their differences by way of mutual settlement and in pursuance of an understanding arrived at between them, the present petition is filed for quashing the proceedings of the subject criminal case.

5. Respondent No.2 has filed an affidavit dated 17th June, 2019. In paragraph 2 thereof, she has given her no objection to quash the proceedings of the subject criminal case. Respondent No.2 is also personally present before the Court. On being questioned, she specifically stated that she has made the said affidavit on her own free will and without there being any pressure or coercion. She has further confirmed that she has no objection if the proceedings of the subject criminal case are quashed and set-aside.

6. It is true that the offence under Section 376 of IPC and offences under POCSO are of serious nature and are offences against the society. Consequently, such offences 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. So far as the instant case is concerned, we have gone through the FIR. The petitioner was cousin brother of respondent No.2. At the relevant time, the petitioner was 22 years old and respondent No.2 was 17 years and 10 months old. The FIR does disclose that the respondent No.2 conceived on account of rape committed by the petitioner in July 2018 and, thereafter, FIR came to be filed on 4th November, 2018. The petitioner and respondent No.2 thereafter with the intervention of the elders decided to marry and actually got married on 14th February, 2019. The certificate of registration of marriage to that effect dated 29th June, 2019 is placed on record. Be that as it may, the petitioner and respondent No.2 thereafter have given birth to a baby boy. Thus, the petitioner and respondent No.2 are now husband and wife and are happily staying together. In the above 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 case pending except ultimately burdening the Criminal Courts which are already overburdened.

8. In the light of the 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 the proceedings of the subject criminal case. We, accordingly, quash and set aside the proceedings of Special (POCSO) Case No.14 of 2019 pending on the file of the Special Judge at Islampur, District – Sangli and arising out of registration of FIR bearing CR. No. 184 of 2018 with Shirala Police Station. The writ petition stands disposed.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]