

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**WRIT PETITION NO.223 OF 2017**

Anurag Asim @ Anurag Tiwari .. Petitioner

Vs

The State of Maharashtra & Ors. .. RespondentS

...

Mr. Mahesh Vaswani with Ms. Dharini Nagda and Ms. Urshita Jain I/b Mr. Suhail Shariff for the petitioner.

Mr. F.R. Shaikh, A.G.P. for the State.

Mr. P.S. Shukla with M.S. Singh I/b MKS Legal Associates for Respondent No.2.

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

**DATED : 29<sup>th</sup> JULY, 2019.**

**P.C:-**

1. Mr. Vaswani, learned counsel for the petitioner, at the outset, makes a statement that he is not pressing the relief (a) to (d) of the petition. He also seeks leave to amend the petition so as to enable him to mention the C.R. number in the petition. The statement is accepted. Amendment to be carried out forthwith.

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2. Heard learned counsel for the petitioner, learned counsel for Respondent No.2 and learned A.P.P. for the state.

3. The petition is filed for quashing and setting aside the proceedings of FIR being C.R. No.561 of 2016 registered at Oshivara Police Station for offences punishable under Section 376(2)(n) and Section 420 of the IPC, charge-sheet dated 14/06/2018 and all related proceedings being Sessions Case No.186 of 2018.

4. Learned counsel appearing for respective parties submit that during the pendency of the subject FIR the parties have amicably settled their disputes and, pursuant to the said understanding, they approached this court for quashing the subject FIR, by consent. Respondent No.2 has accordingly filed an affidavit dated 05/12/2018. In para 2 of the said affidavit, she has stated that the alleged incident had not happened on the date as mentioned in the FIR. It is also stated that respondent No.2 and the petitioner have also entered into the consent terms dated 05/12/2018 to end all litigation, prosecution and differences between her and the petitioner. A copy of the consent terms is annexed to the said affidavit. In para 3 of the said affidavit, she has given her no objection to quash the proceedings in the subject crime. Respondent No.2 is personally present in the court. On a specific query made by us, she stated that she has made the affidavit on her free will

without there being any pressure or undue influence. She has further stated that she has no objection for quashing the FIR registered for offences punishable under Sections 376(2)(n) and 420 of the IPC and the proceedings in the subject crime.

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 v. State of Punjab, reported in 2014 AIR SCW 206*, 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 an offence and that the Court can accept the settlement and quash the FIR if the Court is of the opinion that such an offence is unnecessarily incorporated.

6. So far as the instant case is concerned, we have gone through the FIR. It is clear from the perusal of the FIR that both the petitioner and respondent No2 are adults and they are familiar to each other. The FIR further shows that the physical relationship between them was consensual. The FIR makes it further clear that the same was filed as the petitioner refused to marry the complainant. In these facts, we are of the opinion that the offence under Section 376 of the IPC is not made out. Consequently, no fruitful purpose would be served by continuing with the prosecution.

7. In the circumstances, and especially, in view of the law laid down by the Apex Court in the cases of *Madan Mohan Abbot v. State of Punjab, reported in (2008) 4 SCC 582* and

**B.S. Joshi v. State of Haryana reported in AIR 2003 SC 1386**, we find that no purpose would be served by keeping the subject FIR alive 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 decisions as well as in the case of **Narinder Singh (supra)**, we are of the considered view that there is no impediment in quashing the subject FIR. In that view of the matter, the petition is made absolute in terms of prayer clause (E-i) of the writ petition. The FIR bearing C.R. No.561 of 2016 registered under Sections 376(2)(n) and 420 of the IPC at Oshiwara Police Station, Mumbai, Charge-sheet dated 14/06/2018 and also all related proceedings being Sessions Case No.186 of 2018 are quashed and set aside.

9. The writ petition is disposed of in the aforestated terms.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)