

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICITON

WRIT PETITION NO. 441 OF 2019

Siddharth Nirajan Pagedar.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Milind Deshmukh for the Petitioner.

Mr. S. D. Shinde, APP for the Respondent-State.

Mr. P .K.Shahane for Respondent No. 2.

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

Date : **March 20, 2019.**

P. C. :

1. The learned counsel for the Petitioner at the outset seeks leave to amend the prayer clause so as to give details of sessions case. Leave as prayed for is granted. Necessary amendment be carried out forthwith.

2. Heard the learned counsel for the Petitioner, learned APP for the Respondent-State and the learned counsel for Respondent No.2. The petition is filed seeking to quash and set aside the proceedings of Sessions Case No.445 of 2018 pending on the file of learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai. The said case has arisen from the registration of FIR bearing CR. No. 164 of 2018 with Antop Hill Police Station at the instance of Respondent No.2 for the offence punishable under sections 376 and

417 of the Indian Penal Code, 1860.

3. The learned Counsel appearing for the respective parties submitted that pending trial of above sessions case, the parties have 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 proceeding of afore-stated sessions case, by consent of Respondent No. 2.

4. Respondent No.2–original complainant has filed an affidavit dated 17th January 2019. In paragraphs 3 and 4 she has given consent to quash and set aside the prosecution against the Petitioner. Respondent No.2 is personally present before the Court. On specific query made by us, she submitted that she has made 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 proceedings of subject sessions case 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 above observations of the Apex Court, we have gone through the entire record of the sessions case, including charge-sheet and FIR. The record reveals that both the parties, namely, the Petitioner and Respondent No.2 were major at the time of incident. It further reveals that the Petitioner and Respondent no.2 had developed love relationship in the year 2017 which resulted into physical relations. This relationship was continued between the Petitioner and Respondent No. 2 till filing of the FIR in April 2018. The record further reveals that physical relations were consensual and FIR came to be filed as the Petitioner refused to marry with Respondent No. 2. In the said facts and circumstances, we are of the opinion that offence under section 376 is not made out. Consequently, no fruitful purpose would be served by continuing with the prosecution of the Petitioner.

7. 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 sessions 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 sessions case. In that view of the matter, writ petition is made absolute in terms of prayer clause (b). In the fact 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 **“Yashodhan Charitable Trust”, Satara** [having Registration No. 1895/Satara, Maharashtra], an institution that takes care of the mentally retarded and elderly people in the downtrodden society. 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.]