

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 586 OF 2019

Ganesh D. Gawade Patil.

..Petitioner.

Versus

State of Maharashtra.

..Respondent.

Mr. Naveen Sharma i/b P. J. Pardeshi for the Petitioner.

Ms. Sangita Shinde, APP for the Respondent-State.

Smt. Meenakshi S. Saxena Respondent No. 2.

Coram : RANJIT MORE &
N. J. JAMADAR, JJ.

Date : **August 13, 2019.**

P. C. :

1. Heard the learned counsel appearing for the Petitioner, learned APP for the Respondent-State and Smt. Meenakshi Saxena Respondent No.2 in-person.

2. The petition is filed seeking to quash and set aside the FIR bearing CR.No.812 of 2018 registered with Kondhwa Police Station, Pune at the instance of Respondent No.2 herein for the offences punishable under sections 376, 420, 312 and 313 of the Indian Penal Code, 1860. The learned counsel for the Petitioner and Smt. Saxena, Respondent No.2 in-person submitted that during the pendency of investigation into the subject FIR, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding

arrived at between them, the present petition is filed for quashing the subject FIR, by consent of Respondent No.2 (first informant in the said FIR).

3. Respondent No.2 has filed an affidavit dated 30th July 2019, wherein she has stated thus :

"2. I state that I was always interested to do marriage with the Petitioner hence when the Petitioner did not agree to do the marriage, due to anger and short temper, I filed the complaint against the Petitioner as he he was noty ready to do the marriage.

3. I state that on 14/07/2019 this First Informant and the Petitioner got married ad Alandi, Pune with their free will, wish and later the said marriage got registered on 21/07/2019. Here to annexed and marked as Exhibit-A is copy of marriage certificate dated 21.07.2019.

4. That in view of above stated facts and circumstances, no purpose will serve by keeping continue the investigation of C.R.No.812 of 2018 dated 19th December 2018 registered with Kondhwa

Police Station, Pune.

5. *That I do not wish to proceed with any of the cases, complaints filed by me with the Police against the Petitioner. Hence, the First Informant wants to withdraw all the allegations mentioned in FIR and she has no objection to quash the FIR No.812 of 2018 dated 19th December 2018 registered with Kondhwa Police Station, Pune."*

. 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 FIR in question initiated by her against the Petitioner.

4. It is true that offence under section 376 of IPC is of serious nature and is an offence against society. Consequently, such an offence cannot be quashed even 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 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.

5. So far as the instant case is concerned, we have gone through the FIR. It discloses that both the parties, the Petitioner and Respondent No.2, are adult and their physical relationship was consensual. The maiden name of Respondent No. 2 is Meenakshi Haribhau Shinde. She had married with one Sumit Saxena. However, that marriage of Respondent No.2 with Mr. Sumit Saxena was dissolved by judgment and decree dated 16th June 2016 passed by the 3rd Joint Civil Judge, Senior Division, Thane in a proceeding under section 13B of the Hindu Marriage Act, 1955. Subsequently, she came in contact with the Petitioner. At that time, the Petitioner was married with one Priti Ganesh Gawade and when the relationship between them became discordant, they filed marriage petition for dissolving the marriage between themselves under section 13B of the Hindu Marriage Act, 1955. It is the case of Respondent No.2 in the FIR that she continued the physical relationship with the Petitioner on Petitioner's promise to marry her and since the Petitioner refused to marry her, the present FIR came to be filed.

6. Be that as it may, prior to registration of subject FIR, the Petitioner got divorce from his first wife-Priti Ganesh Gawade

and the said marriage is dissolved by the grant of decree of divorce dated 1st October 2018 under the provisions of section 13B of the Hindu Marriage Act, 1955, granted by the Family Court at Pune in P. A. No. 793 of 2017.

7. The Petitioner and Respondent No.2 thereafter on 14th July 2019 got married according to the Hindu rites and rituals and this marriage is registered with the Registrar of Marriages under the provisions of section 6(1) of the Maharashtra Regulations of Marriage Bureaus and Registrations of Marriage Act, 1998. The said marriage certificate is placed on record by Respondent No.2 herself with her affidavit. Both the parties, i.e., the Petitioner and Respondent No.2 are present before the Court. Common statement is made by them that they are residing together as husband and wife and have no complaint of any kind against each other.

8. Thus, the offence under section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution of Petitioner in the subject FIR.

9. 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.

10. 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 subject FIR. In that view of the matter, writ petition is made absolute in terms of prayer clause (a).

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]