

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

CRIMINAL APPLICATION NO. 167 OF 2019

Areeb Naseer Sarguroh

.. Applicant

Vs.

1. The State of Maharashtra
& Anr.

.. Respondents

Mr.Amin Solkar for applicant.

Ms. Sangita Shinde, APP for respondent No.1-State.

Mr.Maaz Ansari for respondent No.2.

**CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.**

DATE : 9TH OCTOBER 2019

P.C.

1. Heard the learned counsel for the applicant, the learned APP for the respondent No.1-State and the learned counsel for the respondent No.2.

2. The present application is filed for quashing and setting aside the First Information Report bearing C.R. No.177 of 2018, at the instance of the respondent No.2, registered with Dongri Police Station, for the offences punishable under sections 376, 363 and 406 of the Indian Penal Code and sections 4, 8 and 12 of the Protection of Children from Sexual Offences (*POCSO*) Act, 2012 ('*POCSO* Act').

3. The learned counsels for the respective parties submitted that during the pendency of the investigation in the subject first information report, the parties have amicably resolved their differences and pursuant to the understandings arrived at between them, they have approached this Court for quashing the subject first information report by mutual consent.

4. The matter was placed before this Court on 30th April 2019 and at that time, a common statement was made that on 5th October 2018, the applicant and the respondent No.2 agreed to marry and accordingly executed Kabin-Nama [Agreement to marry]. They had also performed engagement ceremony. Under the said Kabin-Nama, parties agreed to get married within a period of one year. The agreement was required to be executed as the respondent No.2 was minor. A further statement was also made that the applicant and the respondent No.2 would be married after 27th August 2019. On these statements, we deferred the hearing of the application to 16th September 2019 in order to give an opportunity to the parties to get married. Today, a common statement is made by the learned counsels of the respective parties that the applicant and the respondent No.2 have married on 12th February 2019 in presence of the two witnesses.

5. In these circumstances, the applicant and the respondent No.2 are before this Court with a prayer for quashing the subject first information report with consent. The respondent No.2 has filed a separate affidavit dated 9th October 2019 and in paragraph 1, she has stated that she has married the applicant on 12th September 2019 in presence of two witnesses. The Memorandum of Marriage dated 12th September 2019 is also annexed at Exh.'A' to the said affidavit. In paragraph 2 of the said affidavit, she stated that she has no objection in quashing the subject FIR. The applicant and the respondent No.2 are present in Court and they categorically make a statement that they are married and they are staying together. Even the mothers of the applicant and the respondent No.2 are present in Court and they reiterated the same story and also stated the applicant and the respondent No.2 are married and staying together. The respondent No.2, in addition to this, confirmed that she has no objection for quashing the subject FIR.

6. 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 ¹, 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.”

7. So far as the instant case is concerned, the applicant, at

¹ 2014 AIR SCW 2065]

the relevant time was 18 years of age and at present of 19 years. The respondent No.2, at the relevant time of 17 years and at present, she is of 18 years. Both the applicant and the respondent No.2 are staying in the same locality and the record shows that they were in love relationship and both eloped together. The present FIR came to be filed as the applicant refused to marry the respondent No.2.

8. 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*², we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

9. 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* (Supra), we are of the considered view that there is no impediment in quashing the subject FIR. In that view of the matter, the application is made absolute in terms of prayer clause (a).

10. Subject to above, the criminal application stands disposed of.

² (2008) 4 SCC 582

[N.J. JAMADAR, J.]

[RANJIT MORE, J.]