

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

CRIMINAL WRIT PETITION NO. 2408 OF 2019

Shri Sachin Pandurang Mohite

.. Petitioner

Vs.

Deepali Vithal Mohite

& Anr.

.. Respondents

Mr.S.B. Shetye I/b Rishi P. Mantri for petitioner.

Mr.Manish Bohra for respondent No.1.

Mr.K.V. Saste, APP for respondent No.2-State.

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

DATE : 21ST AUGUST 2019

P.C.

1 Heard Shri Shetye, the learned counsel for the petitioner, Shri Manish Bohra for respondent No.1 and the learned APP for the respondent No.2-State.

2 The petition is filed for quashing and setting aside the first information report bearing C.R. No.82 of 2019 registered with Khalapur Police Station, Dist. Raigad at the instance of the respondent No.1 for the offences punishable under sections 376, 376(2)(n), 313, 366, 324, 323, 504 and 506 of the Indian Penal Code, 1860 ('IPC').

3 The learned counsels for the respective parties submitted that during pendency of the investigation of the subject FIR, parties have amicably settled their dispute and pursuant to the understanding arrived at between them, they have approached this Court for quashing the subject FIR by mutual consent. The respondent No.1 has filed an affidavit, affirmed on 18th June 2019. In paragraphs 2, 3 and 4 of the said affidavit, the following averments are made :-

2 *I say that the dispute between me and Petitioner is amicably settled and therefore, I give my consent for quashing of present FIR being C.R. No.82/2019 registered with Khalapur Police Station against the Petitioner.*

3 *I say that the physical relation done between me and Petitioner was with both of our consent and as I was not physically fit for carrying pregnancy and as per Doctors advice, I myself decided to go for abortion. The allegation made in FIR was due to misunderstanding and through oversight and further for both of our future benefit, I and Petitioner have decided not to keep any relation or contact in future and will leave our own respective lives.*

4 *I further state that the withdrawal of all allegation leveled by me in the said C.R. No.82/2019 against the Petitioner is without any pressure or compulsion of either of the parties.”*

4 The respondent No.1-original complainant is personally present in Court. On specific query made by us, the respondent No.1 submitted that she has filed the affidavit on her free will and without there being any pressure or coercion. The respondent No.1 further confirmed that she has no objection for quashing the proceedings of the subject FIR.

5 It is true that the offence under Sections 376, 376(2)(n) 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 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/Chargesheet incorporates the provisions 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 the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the 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 chargesheet, the court can accept the plea of compounding of the offence based on settlement between the parties.”

6 So far as the instant case is concerned, we have gone through the subject FIR. The same makes it abundantly clear that the petitioner as well as the respondent No.1 are adult and their physical relationship was

1 2014 AIR SCW 20651

consensual in nature. The FIR was registered on 23rd March 2019 and immediately, on 25th March 2019, the respondent No.1 had filed an affidavit before the learned Magistrate stating that the FIR was lodged on account of misunderstanding. The respondent No.1 has also filed another affidavit dated 27th March 2019 before the learned Sessions Court, Alibag, stating that the FIR came to be filed due to misunderstanding. The affidavit filed today in the Court also shows that the physical relations between the petitioner and the respondent No.1 were of consensual nature. The respondent No.1's statement further reveals that she has undergone abortion. In the light of the affidavits, in our opinion, the allegations made by the respondent No.1 against the petitioner under Section 376 of IPC cannot be sustained and no case is made out so far as the offence under this section is concerned.

7 In the backdrop of above facts and circumstances and especially in view of law laid down by the Apex Court in the case of **Narinder Singh (Supra)**, we are of the considered view that there is no impediment in quashing the FIR in question. Consequently, no fruitful purpose will be served by continuing with the prosecution. In our view, in the interest of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial machinery for settling their personal

disputes.

8 Accordingly, the petition is allowed in terms of prayer clause (a), subject to payment of costs of Rs.10,000/- by the petitioner to “**Yashodhan Charitable Trust**” (having Registration No.1895/Satara, Maharashtra, Account No.60245873355 IFSC Code MAHB000305) an institution that takes care of mentally retarded and elderly people in the downtrodden society. The petitioner shall pay the said costs and produce the receipt thereof on the file of this Court within a period of four weeks from today, failing which, the criminal writ petition shall stand dismissed automatically without further reference to the Court and the order quashing the FIR shall be treated as *non-est*.

9 Subject to above, the criminal writ petition stands disposed of.

[N.J. JAMADAR, J.]

[RANJIT MORE, J.]