

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

WRIT PETITION NO. 3522 of 2019

Mr. Prasad Bhausahab Awari and ors.	Petitioners
versus	
The State of Maharashtra and anr.	Respondents

Mr. Dayanand C. Awari, advocate for the petitioners.
Ms. Sangita Shinde, APP for the State.
Mr. S. S. Musale, advocate for respondent No.2.

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

DATE : 26^h AUGUST, 2019.

P. C. :

Heard learned counsel and learned APP appearing for the respective parties.

2. The petition is filed for quashing and setting-aside the FIR bearing CR No. 212 of 2019 registered with Khadak Police Station, at the instance of respondent No.2, for the offences punishable under Sections 376(2)(n), 377, 313, 417, 420, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC").

3. Learned counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR, the parties 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 above FIR, by consent of respondent No.2. Respondent No.2 has filed an affidavit dated 26th August, 2019. In paragraphs 3 and 4 therein, she has stated that the dispute between herself and the petitioners is settled amicably and therefore, she has decided not to prosecute the petitioners in the subject FIR. In paragraph 5, it is stated that on 27th June, 2019, petitioner No.1 gave notice of intended marriage as contemplated under Section 6 of the Special Marriage Act and, thereafter on 6th August, 2019, respondent No.2 performed marriage with petitioner No.1 which is registered before the Marriage Officer at Pune. In paragraph 6, a statement is made that respondent No.2 and petitioner No.1 are happily married and all previous misunderstandings between them have been clarified and, therefore, she has no objection, if the subject FIR is quashed as against the petitioners. 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 petitioners.

4. 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.

5 So far as the instant case is concerned, we have gone through the FIR. The FIR shows that both the petitioner No.1 and respondent No.3 are adults and sexual relationship between them was consensual. The subject FIR came to be filed because petitioner No.1 refused to marry respondent No.2. In these facts and circumstances, we are of the opinion that the dispute between them is private and the offence under Section 376 of IPC is not made out.

6. Be that as it may, along with the aforesaid affidavit of respondent No.2, a copy of certificate of marriage dated 6th August, 2019 is also annexed. Thus, it is clear that the marriage between petitioner No.1 and respondent No.2 has been registered by the Marriage Officer, Pune District, Pune. The petitioner No.1 and respondent No.2 are now residing as husband and wife and wish to live harmoniously in future and,

therefore, quashing of the subject FIR is sought by them. In these circumstances, we are of the opinion that quashing of the FIR would be in the interest of respondent No.2 itself.

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 FIR 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 subject FIR. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

9. Accordingly, the writ petition is made absolute in terms of prayer clause (a) subject to payment of costs of Rs.10,000/- by the petitioners. The petitioners shall pay the cost to **“Tata Memorial Hospital”** an institution that takes care of the advanced and terminally ill cancer patients and thereafter produce the receipt thereof on the file of

this petition within a period of four weeks from today, failing which, the petition shall stand dismissed automatically without further reference to the Court and order quashing the FIR shall be treated as *non-est*.

10. Subject to above, the writ petition stands disposed of.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]