

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

WRIT PETITION NO. 3667 of 2019

Shri Kunal Sunit Suman @ Kunal Kumar SumanPetitioner
versus
The State of Maharashtra and anr.Respondents

Mr. Sachin K. Hande, advocate for the petitioner.

Ms. Sangita Shinde, APP for the State.

Mr. M. M. Kale, advocate for respondent No.2.

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

DATE : 26^h AUGUST, 2019.

P. C. :

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

2. The petition is filed for quashing and setting-aside the FIR No.259 of 2019 registered with Vakola Police Station, at the instance of respondent No.2, for the offences punishable under Sections 376(2)(n), 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 10th July, 2019. In paragraphs 3 to 7 therein, she has made following averments :

“3. I say that, I have come to know that the present petitioner is included as an accused in the present complaint. I say that the present petitioner and me done all act with my consent other but as per allegation he do not have any type of role in the said incident and, therefore, I do not have any type of grievances against the petitioner.

4. I say that the present petitioner and I now married as per the rights and customs of the Hindu Marriage on 3rd July, 2019. I say that the marriage ceremony has been performed at Arya Samaj Mandir Trust (Regd. No.478/14) 74-B, Khanna Market, Tis Hajari, Delhi – 110054. I say that now the same has been registered with the Revenue Department, Govt of NCT of Delhi office of the District Magistrate, Kotwali; Central District, as per Hindu Marriage Act, the Certificate No.90730000080339 dated 8th July 2019.

5. I say that, during the course of live in relationship between the petitioner and me the quarrel started between us on the count that the petitioner dined for the marriage and the same was disliked by me sour and unhappy. Resultantly, the

relationships between us became bitter and as a result thereof I made a complaint at Vakola Police Station against the petitioner, due to temporary phase of anger and to imbalance of mind at the relevant point of time.

6. I say that, I am aware that, I am submitting that, I do not have any objection if the complaint lodged by myself with the Vakola Police Station at Vakola Mumbai as C.R. No.259 of 2019 for offences punishable u/s.376(2)(n) of Indian Penal Code, 1860 and all the proceedings arising pursuant to my complaint be quashed. I say that, I do not want to pursue the said complaint as against the petitioner.

7. I am filing this affidavit on my own free will without any fear or pressure or undue influence. Considering the fact that petitioner and I do not have any issues and also the present petitioner is not involved in the said incident. I say that, I am giving consent for quashing the complaint lodged by me. I say that the the above said affidavit contents are read over to me in vernacular/Hindi/Marathi/English language and I understood the same.”

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 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 and respondent No.2 are adults and physical relationship between them was consensual. The subject FIR came to be filed because petitioner refused to marry respondent No.2. However, during the pendency of the investigation into the subject FIR, the petitioner and respondent No.2 got married and marriage certificate to that effect is annexed at page 15. The petitioner and respondent No.2 are now residing together as husband and wife and,

in these circumstances, they have approached this Court for quashing the subject FIR by consent. In the above said fact, no fruitful purpose will be served by continuing with the prosecution.

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 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 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.]