

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.3268 OF 2018**

Mr. Nasir Hussain Siddiqui .....Petitioner  
versus  
The State of Maharashtra and anr. ....Respondents

Mr. P. B. Shah I/b. Mr. Mahesh V. Rawool, advocate for the petitioner.  
Ms. Sangeeta D. Shinde, APP for the State.  
Mr. J. K. Shah, advocate for respondent No.2.

**CORAM : RANJIT MORE &  
SMT. BHARATI H. DANGRE, JJ.**

**DATE : 29<sup>th</sup> MARCH, 2019.**

**P. C. :**

Mr. Shah, learned counsel for the petitioner, at the outset, seeks leave to amend the prayer clause of the petition so as to give details of the criminal case. Leave as prayed for, is granted. Necessary amendment be carried out forthwith.

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

3. The petition is filed for quashing and setting-aside the proceedings of Session Case No.619 of 2018 pending on the file of the learned Additional Sessions Court, 35<sup>th</sup> Court at Mumbai. The said case arises out of registration of FIR No. 175 of 2018 with Mahim Police

Station, at the instance of respondent No.2, for offences punishable under Sections 354 of the Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

4. Pending trial, learned counsel appearing for the petitioner and respondent No.2 stated that the dispute between the parties is amicably settled and in pursuance of an understanding arrived at between them, they have have approached this Court for quashing the proceedings of the subject criminal case by consent. Respondent No.2 as well as her husband have filed separate affidavits dated 27<sup>th</sup> March, 2019. They have made following averments in paragraphs 3 and 5 of their respective affidavits which reads thus :

“3. I say that the FIR was registered because of some misinformation provided to me and my husband viz. Inamul Haq Qureshi. I say that after registration of the aforesaid FIR with the Mahim Police Station, we have diligently made enquiry with our daughter who personally stated that such incident never took place with her and at the same time we came to know that out of misunderstanding, we have registered the aforesaid FIR.

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5. I say that the FIR was filed by me out of gross misunderstanding and also out of false information provided to us and hence we have no objection to quash and set aside the said FIR No.175 of 2018 filed with the Mahim Police Station.”

Respondent No.2 and her husband are personally present before the Court. On specific query made by us, they submitted that they have made these affidavits on their own free will, without there being any pressure or undue influence. They have further confirmed that they have no objection for quashing the criminal proceedings initiated by them against the petitioner for the offence punishable under Section 12 of the POCSO.

4. It is true that the offence under Section 12 of POCSO is serious in 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 perused the charge-sheet and we are of the opinion that the provisions of Section 12 of POCSO are not attracted as there was no sexual intent on the part of the petitioner. Be that as it may, respondent No.2 and her

husband have filed separate affidavits, wherein they have stated on oath that such incident never happened. In the facts and circumstances of the case, we are of the opinion that no fruitful purpose will be served by continuing with the prosecution.

6. 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 criminal case pending except ultimately burdening the Criminal Courts which are already overburdened.

7. 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 proceedings of the subject criminal case. 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.

8. Accordingly, the writ petition is made absolute in terms of prayer clause (b) 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 criminal proceedings shall be treated as *non-est*.

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

**[SMT. BHARATI H. DANGRE, J.]**

**[RANJIT MORE, J.]**