

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI WRIT PETITION NO. 3733 OF 2019

(Order is corrected as per the speaking to the minutes order dated 5/11/2019)

Priyadarshani Rajkumar Devare ...Petitioner

Versus

The State of Maharashtra & anr. ...Respondents

Mr. Ranjeet Patil, for the petitioner.

Ms. Sangita Shinde, APP for the State/Respondent no.1.

Mr. P. G. Sarda, for Respondent no.2.

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

DATED: 19th AUGUST, 2019

PC:-

1. Heard Mr. Patil, the learned Counsel for the petitioner, Ms. Shinde, the learned APP for the State/respondent no.1 and Mr. Sarda, the learned Counsel for respondent no.2.

2. The complainant herself has approached this Court invoking writ jurisdiction under Article 226 of the Constitution of India and under Section 482 of Criminal Procedure Code, for quashing the proceedings of Sessions Case No.115 of 2019, pending on the file of Sessions Court at Solapur. The said case arises out of registration of FIR being CR No.411 of 2018 with Jodbhavi Peth Police Station, Solapur, at the instance of petitioner for the offences punishable under Sections 376, 417, 493 and 506 of IPC.

3. The allegations in the FIR disclose that the petitioner at the relevant time was serving in the office of Commandant Home Guard at Solapur. In the year 2016, the petitioner was posted at Samrat Chowk Police Chowky, where respondent no.2 was working as police constable. The petitioner and respondent no.2 got acquainted, and the acquaintance developed into friendship between them. The FIR further states that the petitioner and respondent no.2 had physical relations. On 3rd January, 2017, the petitioner came to know that respondent no.2 is already married and has two issues. Despite this, the relationship between them continued due to the promise made by respondent no.2 that he will marry the petitioner. The FIR discloses that, as a matter of fact, on 18th November, 2017, the petitioner and respondent no.2 got married in a temple. The petitioner, thereafter, continued physical relationship with respondent no.2. Out of this relationship, the petitioner got pregnant. However, the pregnancy was terminated. In this factual backdrop, the said FIR came to be lodged with the allegations that respondent no.2 committed sexual intercourse with the petitioner under the promise of marriage.

4. In paragraph 3 of the petition, the petitioner has stated that she subsequently came to know that respondent no.2

was not having any intention to commit any offence as alleged by her and he was ready to maintain the petitioner. A statement is also made that after performance of marriage on 18th November, 2017 till July, 2018, respondent no.2 has taken good care of the petitioner as his wife and he helped the petitioner in all aspects.

5. In paragraph no.4, the petitioner has stated that despite knowledge that respondent no.2 is already married, she has performed second marriage with him but the said marriage is null and void having no legal value. It is further stated that, in these circumstances, the petitioner discussed the matter with her parents and decided to withdraw the prosecution lodged against respondent no.2 as she wants to perform legal marriage.

6. In paragraph 5, the petitioner states that FIR was lodged in the heat of passion and anger only because respondent no.2 was not answering the phone calls of the petitioner but now the petitioner came to know the true facts. It is contended that the FIR was lodged under misunderstanding and misconception of facts.

7. The petitioner and her parents are present in the Court. They reiterated whatever stated hereinabove. The petitioner

in addition to above also states that proceedings of the subject Sessions Case may be quashed. She also states that she is giving consent out of her own free will and without there being any pressure or coercion.

8. It is true that the offence under section 376 of IPC is of serious nature and is an offence against the society. Consequently, prosecution for 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.”

9. 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 make an 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.

10. So far as the present case is concerned, we have gone through the entire charge-sheet, especially the FIR, the reference to contents of which we have already made hereinabove. The reading of FIR makes it clear that the petitioner and respondent no.2 were adult. The physical relationship between them was consensual. The petitioner was aware that respondent no.2 was already married and, despite knowing the said fact, she continued the physical relationship with him. As a matter of fact, FIR also discloses that the petitioner and respondent no.2 had gone through the ceremony of marriage in a temple, however, this marriage is void. From the averments of the petitioner, it reveals that, the subject FIR was lodged against respondent no.2 as he

was not responding the phone calls of the petitioner.

11. In these circumstances, we are of the considered opinion that the offence under Section 376 of IPC is not made out. Reading of the FIR makes it abundantly clear that the Petitioner as well as Respondent No.2 were adult and their relationship was consensual. In fact, it is a dispute between two adults who had consensual sexual relations. Thus offence under section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

12. 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 alive except ultimately burdening the Criminal Courts which are already overburdened.

13. 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*** (supra) we are of the considered view that there is no impediment in quashing the subject Sessions Case No.115 of 2019 pending on the file of Sessions Court, Solapur. In that view of the matter, the writ petition is made absolute in terms of prayer clause (b).

14. The writ petition stands disposed of accordingly.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]