

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.832 OF 2017

Avinash Jhony Motwani & Ors. .. Applicants

Vs.

State of Maharashtra & Anr. .. Respondents

...

Mr. Nilesh Kadam for the applicants.

Mrs. A.S. Pai, A.P.P. for the State.

Ms. Trupti A. Lotankar-Bharadi for Respondent No.2.

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

DATED : 23rd JULY, 2019.

P.C.:-

1. Heard learned counsel for the applicants, learned counsel for respondent No.2 and learned A.P.P. for the State.

2. The application is filed for quashing and setting aside the FIR bearing No.305 of 2016 registered at the Pimpri Police Station, Pune at the instance of Respondent No.2 for offences punishable under Sections 307, 328, 498A, 354, 323, 504 read with Section 34 of the IPC. The applicant No.1 and respondent

AJN

No.2 are ex-husband and wife. Applicant Nos.2 and 3 are relatives of applicant No.1. The matrimonial discord led to the registration of the subject FIR.

3. Learned counsel for the petitioner has invited our attention to Affidavit which was tendered by the complainant on 26/05/2016 wherein she has made the following statements:

“I was married to Mr. Avinash Motwani on 30/04/16 at Pimpri. That, after marriage I went to reside in my matrimonial home and immediately after my marriage there were some differences between me and my husband and due to the differences there were misunderstandings and petty quarrel and I have not kept any physical relation with my husband till date.

That on 21/05/16, I was thirsty and I believing the phenol as water, I consumed the same and I felt uneasy and I realized that I have consumed phenol inspite of water and when I was taken in hospital in the rage of anger and misunderstanding I gave complaint to the Police against my husband Mr. Avinash Jhonny Motwani and my in-laws and offence came to be registered which was numbered as Pimpri Police Station Cr.N o.305/16.”

4. Pending investigation, parties have settled their dispute amicably and, pursuant to the said understanding, they approached this Court for quashing the subject FIR, by consent. Respondent no.2 has accordingly filed an affidavit dated 10/10/2017. In paragraph Nos.2 and 3, she has stated as under:

“2. I say that after the intervention of family and friends, I have settled all the disputes with the

Applicants amicably. The Applicant No.1 and Respondent No.2 have filed a Marriage Petition bearing No.1178/2016 for divorce by mutual consent before the Civil Judge, Sr. Division, Pune. The same is pending till date. Hence, I have decided not to proceed with the criminal case further.

3. I say that I do not have any objection if the said F.I.R. bearing No.305 of 2016 registered before Pimpri Police Station, Pune on 23/05/2016 under Sections 307, 328, 498A, 354, 323, 504 r/w. Section 34 of the Indian Penal Code is quashed by this Hon'ble High Court.”

5. Respondent No.2 is personally present in the Court. On a specific query, she has stated that she has gone through the affidavit and understood the contents thereof. She has stated that the disputes between her and applicant No.1 have been settled amicably; her marriage with applicant No.1 is dissolved by a decree of divorce under Section 13(1)(b) of the Hindu Marriage Act and she has also stated that she has no objection for quashing the subject FIR.

6. The application was initially placed before the Division Bench of R.M. Savant and Sandeep K. Shinde, JJ. On 25/01/2018, the Division Bench recorded a *prima facie* finding that the filing of the FIR is an abuse of process of the Court as also misuse of the police machinery. Hence, the Division Bench of this Court directed the parties to deposit an amount of Rs.50,000/- by way of costs for considering the request of

quashing the subject FIR. The record shows that the parties have deposited the said amount of Rs.50,000/- in this Court on 27/11/2018.

7. It can thus be seen that offence under Section 307 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 v. State of Punjab, reported in 2014 AIR SCW 206*, 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.”

8. 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 if the Court is of the opinion that such an offence is unnecessarily incorporated.

9. In the light of the aforesaid observations, if we consider the first affidavit filed by respondent No.2, it is clear that she consumed phenol believing the same as water and, thereafter, she was taken to the hospital and in the rage of anger and misunderstanding, she gave complaint to the police station against applicant No.1 and, therefore, we are of the opinion that case under Section 307 of the IPC is not made out. Consequently, no fruitful purpose would be served by continuing with the prosecution.

10. In the circumstances, and especially, in view of the law laid down by the Apex Court in the cases of Madan Mohan Abbot v. State of Punjab, reported in (2008) 4 SCC 582 and B.S. Joshi v. State of Haryana reported in AIR 2003 SC 1386, we find that no purpose would be served by keeping the subject FIR alive except ultimately burdening the criminal

courts which are already overburdened.

11. In the light of the principles laid down by the Apex Court in the aforesaid decisions 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 FIR. In that view of the matter, criminal application is made absolute in terms of prayer clause (i) of the Criminal Application. The FIR bearing No.305 of 2016 registered at Pimpri Police Station, Pune on 23/05/2016 for offences under Sections 307, 328, 498A, 354, 323, 504 read with Section 34 of the IPC is quashed and set aside.

12. So far as the amount of Rs.50,000/- deposited in this court as costs by the parties pursuant to the direction of this Court dated 25/01/2018 is concerned, we direct the Registry to transfer the said amount to the account of Maharashtra Legal Services Authority. The application is disposed of in the aforesated terms.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)