

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

WRIT PETITION NO. 4025 of 2019

Mr. Moinuddin Abdul Aziz RangariPetitioner
versus
The State of Maharashtra and ors.Respondents

Mr. Aniket Vagal along with Ms. S. U. Jagtap, advocate for the petitioner.
Ms. Sangita Shinde, APP for the State.
Mr. Aashish Shastri i/b. Mr. Sharad Mulik, advocate for respondent No.3.

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

DATE : 15th OCTOBER, 2019.

P. C. :

Heard learned counsel appearing for the respective parties.

2. The petition is filed for quashing and setting-aside the FIR bearing CR No.699 of 2018 registered with Bandra Police Station, at the instance of respondent No.3, for offences punishable under Section 376 and 506 of the Indian Penal Code, 1860 (for short “the IPC”).

3. Learned counsel appearing for the respective parties submitted that pending investigation into the FIR, the parties amicably settled their differences by way of mutual settlement and in pursuance of an understanding arrived at between them, they have have approached this Court for quashing the subject FIR by consent of respondent No.3.

Respondent No.3/complainant has filed an affidavit dated 15th October, 2019. In the said affidavit, she has made following averments:

“I say that I kept the physical relation with petitioner with my consent and there was consensual physical relation between petitioner and myself.

I say that now petitioner as married to another girl and settle in his life and now I am not willing to troubled him anymore.

I say that I am also willing to pursue my carrier. I therefore I am consenting for withdrawal of complaint against petitioner.”

4. Respondent No.3 is personally present before the Court. On specific query made by us, she submitted that she has gone through the petition and the affidavit and has fully understood the contents thereof. She further confirmed that she has made the said affidavit on her own free will, without there being any pressure or undue influence and, therefore, has no objection if the subject FIR initiated by her against the petitioner for the offence punishable under Section 376 of the IPC is quashed and set-aside.

5. 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.

6. So far as the instant case is concerned, we have gone through the FIR. Perusal of the FIR makes it abundantly clear that the petitioner as well as respondent No.3 are adults. The allegation in the FIR coupled with the statement in the affidavit also makes it abundantly clear that shows that physical relationship between respondent No.3 and petitioner was consensual. We are, therefore, of the opinion that the offence under Section 376 is not made out. Consequently, 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 alive 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.25,000/- by the petitioner 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 subject FIR shall be treated as *non-est*.

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

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]