

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

WRIT PETITION NO. 3837 of 2018

Dr. Ajay Rajman Singh	Petitioner
versus	
The State and anr.	Respondents

Mr. R. V. Gupta, advocate for the petitioner.
Ms. Sangita Shinde, APP for the State.
Mr. Abhishek Gokhale, 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 Sessions Case No.109 of 2018 pending on the file of Sessions Court at Dindoshi. The said case arises out of FIR bearing CR No.478 of 2017 registered with M.I.D.C. Police Station, at the instance of respondent No.2, for the offences punishable under Sections 376, 506(II) and 120B of the Indian Penal Code, 1860 (for short "the IPC").
3. Learned counsel appearing for the respective parties submitted that during the pendency of the trial, 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 proceedings of the subject criminal case, by consent of respondent No.2. Respondent No.2 has filed an affidavit dated 5th August, 2019. In paragraphs 1 to 8, she has made following averments :

1. I, the respondent No.2 say that on 14.11.2017 I lodged complaint against petitioner at M.I.D.C. Police Station, Andheri vide C. R. No.478 of 2017 for the offences punishable U/S.376, 506(2), 120B of IPC.
2. I say that the petitioner and I both are doctor, have good friendly relations and professional bonding.
3. I say that the petitioner and I had a joint meeting with elderly people and have amicably settled the matter out of Court and do not wish to proceed further.
4. I say that on 20.10.2017 I met the petitioner at Thane Railway Station and went with him to Gateway of India. Thereafter we went to Marine Drive sea face for roaming and then we went to my doctor's quarter. I say that at the doctor's quarter we had consensual physical relation.
5. I say that while I was going in mental trauma, the wife of the petitioner came to know about our relation. Thereafter the petitioner's wife and her advocate started threatening me to defame. Due to fear of defamation and social stigma I lodged

complaint against the petitioner, his wife and her advocate.

6. I say that the petitioner and I wish to live peacefully our future life and have amicably settled the matter with the help of the elderly people and do not wish to proceed any further.
7. I say that I have no objections if Sessions Case No.109 of 2018 pending in the file of Dindoshi Sessions Court, at Goregaon, Mumbai arising out of C.R.No.478 of 2017 registered at M.I.D.C. Police Station for the offences punishable U/S.376, 506(2), 120(B) of IPC is quashed and set-aside.
8. I say that I have prepared this affidavit in my full senses, with my free will, without any force, coercion, pressure, misrepresentation and undue influence.”

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 if the proceedings of the subject criminal case initiated by her against the petitioner are quashed and set-aside.

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 charge-sheet including the FIR. The FIR discloses that both the petitioner and respondent No.2 are adults and if the charge-sheet coupled with the affidavit filed by respondent No.2 is read together, then, it is clear that the physical relationship between petitioner and respondent No.2 was consensual. In that view of the matter, we are of the opinion that offence under Section 376 of IPC is not made out. Consequently, 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 criminal proceedings 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 (a) subject to payment of costs of Rs.25,000/- by the petitioner. The petitioner shall pay the cost 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 proceedings of the criminal case shall be treated as *non-est*.

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

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]