

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1136 OF 2019

Prem Kudan Deonandan Barai. ..Applicant.
Versus
State of Maharashtra & Another. ..Respondents.

Mr. S. G. Deshmukh i/b G. T. Kanchanpurkar for the Applicant.
Mr. S. R. Shinde, APP for the Respondent-State.
Mr. Prekumar R. Pandey for Respondent No. 2.

Coram : RANJIT MORE &
N. J. JAMADAR, JJ.
Date : **September 17, 2019.**

P. C. :

1. Heard learned counsel for the Applicant, learned counsel for Respondent No.2 and learned APP for the Respondent- State.
2. By this application filed under section 482 of the Code of Criminal Procedure, 1973, the Applicant is seeking to quash the proceedings of a sessions case pending on the file of learned Additional Sessions Judge, Thane, being Sessions Case No. 187 of 2018. The said case has arisen from the FIR bearing CR.No.I-05 of 2016 registered with CBD, Navi Mumbai Police Station at the instance of Respondent No.2 on the allegation of commission of the offences punishable under sections 376, 323 and 504 of the Indian Penal Code, 1860.

3. Learned counsel appearing for the respective parties submitted that pending trial of the above sessions case, the parties have amicably settled their disputes by mutual settlement and pursuant to the understanding arrived at between them, present application is filed for quashing the above FIR, by consent of Respondent No.2 (first informant).

4. Respondent No.2 has accordingly filed an affidavit dated 16th August 2019. In paragraph 2 and 3, she has made following averments :

“2. I say that 13/01/2016 I have lodged a complaint against the Applicant stating that the Applicant had committed offence of the sexual assault by obtaining my consent with the promise of marriage. On the basis of the same the offence has been registered being Crime bearing FIR No.I-05 of 2016 dated 13/01/2016 registered with the CBD Police Station, Navi Mumbai. I say that initially the Applicant and myself became a good friends and after some time our friendship developed in the love affair. I say that both of us mutually came close to each other and there was no force or pressure from anyone for anything done by us during said period. I say that the relations established between us during those days were consensual. I say that, however, as assured the Applicant refused to marry with me I have filed First Information Report against the Applicant / accused. I say that in the heat of anger I have filed present FIR against the Applicant since he refused to marry with me.

3. I say that after the registration of the report we have realised that we have our own careers ahead. We therefore decided to settle our dispute amicably and the same is now resolved with the intervention of the elders in our families. I say that I therefore want to withdraw the first information report filed against the Applicant. I say that I am filing present affidavit by which I am giving my

“No-objection” for quashing of the FIR No. I-05 of 2016 registered with the CBD Station, Navi Mumbai for for the offence punishable under section 376, 323 and 504 of the Indian Penal Code, and sessions case No.187 of 2018 pending on the file of the learned Sessions Court, thane against the Applicant / accused. I say that now the charge-sheet has filed and the matter has been committed to the learned District and Sessions Court, Thane bearing Sessions Case No.187 of 2018. I respectfully submit that if this Hon'ble Court quashes the said First Information Report registered against the Applicant / accused, I have NO-OBJECTION.”

4. 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 for quashing proceedings of subject sessions case and FIR in question initiated by her against the Applicant.

5. The Applicant too is personally present before the Court. He submitted that as per the statement made by him in paragraph 10 of the application he will withdraw complaint filed by him against Respondent No.2 in the Court of JMFC, Thane bearing SCC No. 6067 of 2016.

6. 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.

7. So far as the instant case is concerned, we have gone through the FIR. We have also gone other statements recorded in the matter. The reading of the same makes it abundantly clear that parties are adult and their relations were consensual. The subject FIR came to be filed since the Applicant refused to marry Respondent No.2. In fact, it is a dispute between private parties. Thus offence under section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

8. 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 proceedings / FIR alive except ultimately burdening the Criminal Courts which are already overburdened.

9. 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 proceedings, ie., Sessions Case No. 187 of 2018.. In that view of the matter, writ application is made absolute in terms of prayer clause (a). As the police machinery and the Court machinery was used by the parties to settle their private disputes as a corollary of differences of opinion, we find it would be appropriate to saddle the Applicant with the cost of Rs.25,000/-, which shall be paid to the “**Tata Memorial Hospital**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Applicant shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, application shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

[N. J. JAMADAR, J.]

[RANJIT MORE, J.]