

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICITON

WRIT PETITION NO. 3857 OF 2018

Mohit Joshi.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. G. S. Hegde I/b T. J. Pandian for the Petitioner.

Ms. S. D. Shinde, APP for the Respondent-State.

Ms. Sonali P. Sawant for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : March 14, 2019.

P. C. :

1. Mr. Hegde, the learned counsel for the Petitioner at the outset seeks leave to amend the prayer clause. Since the amendment is necessitated due to occurrence of events subsequent to the filing of writ petition, we grant leave to amend. Necessary amendment be carried out forthwith.

2. Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.2 and learned APP for the Respondent-State. The petition is filed seeking to quash the proceedings of criminal case bearing CC No. 610/PW/2019 pending on the file of learned Metropolitan Magistrate, 65th Court, Andheri. The

said proceeding is an offshoot of FIR bearing CR.No.326 of 2017 registered with Vile Parle Police Station at the instance of Respondent No.2 against the Applicant for the offence punishable under sections 376, 377, 420, 506 and 500 of the Indian Penal Code, 1860 and section 67A of the Information Technology Act.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR the parties amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, present petition is filed for quashing the above FIR, by consent of Respondent No. 2.

4. Respondent No.2–original complainant has filed an affidavit dated 14th March 2019. In paragraph 7 she has stated tghat she does not desire to prosecute the Petitioner in the subject FIR / proceeding. She has further solemnly affirmed that she has no objection if the subject FIR/proceeding is quashed and set aside. 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 FIR in question initiated by her against the Petitioner.

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 and other documents. Perusal of the same makes it abundantly clear that the Petitioner and Respondent No.2 were classmates and on friendly terms. At the time of incident both were major. The FIR discloses that since 2013, there were physical relations between the Petitioner and Respondent No. 2 on several occasions. It further discloses that those physical relations were consensual. Though such relations were there since 2013, FIR is filed for the first time in the year 2017. In the backdrop of this fact-situation, we are of

the opinion that the offence punishable under sections 376 and 377 of IPC is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution especially when both the parties have parted their ways and leading their lives separately.

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 / proceeding. In that view of the matter, writ petition is made absolute in terms of prayer clause (a).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]