

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**WRIT PETITION NO. 4388 OF 2014**

Yogesh Akhilesh Yadav and Others. ..Petitioners.  
*Versus*  
State of Maharashtra & Another. ..Respondents.

Mr. A. M. Sarogi for the Petitioner.  
Mr. A. D. Kamkhedkar, APP for the Respondent-State.  
Mr. S. K. Chinchalikar for Respondent No. 2.

Coram : RANJIT MORE &  
N. J. JAMADAR, JJ.  
Date : **September 3, 2019.**

P. C. :

1. Heard the learned counsel for the Petitioner, learned counsel for Respondent No.2 and the learned APP for the Respondent-State. The petition is filed seeking to quash and set aside the proceedings of Sessions Case No. 153 of 2012 pending on the file of Additional Sessions Judge for Greater Mumbai, at Dindoshi. The said case has arisen from the registration of FIR bearing No. 100 of 2011 with Charkop Police Station, Mumbai at the instance of Respondent No.2 for the offences punishable under sections 328, 342, 344, 365, 366, 376, 465, 467, 471 and 506(2) read with 34 of the Indian Penal Code, 1860.
2. The learned Counsel appearing for the respective parties submitted that pending trial, the parties have 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 sessions case, by consent of Respondent No.2 – original complainant.

3. Respondent No.2 has filed an affidavit dated 11<sup>th</sup> March 2015 in this petition. In Paragraph 5 of the said affidavit she has given no objection to quash the proceedings of subject sessions case against the Petitioners. Respondent No.2 is personally present before the Court. She has been identified by advocate Chinchalikar. 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 the proceedings of subject sessions case initiated by her against the Petitioner for the offence punishable under section 376 of the IPC.

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 and FIR. The allegations proceed to state that twice Petitioner No.1 forced Respondent No.2 to marry him; once at Gorakhpur in Uttar Pradesh and second time at Mumbai; and thereafter kept physical relations with her. Pending trial of the sessions case, parties approached the Family Court Mumbai at Bandra by filing a divorce petition, being Petition No.A-1298 of 2012. In this proceeding, consent terms came to filed and parties agreed to dissolve their marriage by consent. Respondent No. 2 also agreed to quash the proceedings of the subject FIR / Sessions Case. The said marriage petition was allowed by the Family Court Mumbai at Bandra on 26<sup>th</sup> June 2015. The joint statement is made at bar by the learned counsel appearing for the respective parties that thereafter Petitioner No. 1 has got married to another woman and Respondent No. 2 has got married to some other man and since then they have been leading happy marital life with their respective spouses. Respondent No. 2, who is personally present before the Court, confirms the said facts. In this background, Respondent No. 2

has given consent to quash the proceedings of subject sessions case against the Petitioners.

6. We have independently gone through the charge-sheet. The fact remains that before keeping physical relations, Petitioner No.1 and Respondent No. 2 had got married and thereafter sought dissolution of the marriage by mutual consent. In these facts and circumstances, we are of the opinion that continuation of the criminal proceedings / sessions case would not be in the interests of Respondent No. 2 and no fruitful purpose would be served by keeping the said sessions case pending. 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 sessions case pending 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 proceedings of the subject sessions case against the Petitioners.

In that view of the matter, writ petition is made absolute in terms of prayer clause (a). In the facts and circumstances of the case, we find it would be appropriate to saddle the Petitioners with the cost of Rs.20,000/- each, which shall be paid to “**Tata Memorial Hospital**” an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said cost and produce the receipts thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipts within stipulated time, petition 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.]**