

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1196 of 2018

Ms. Seema Sameer DuttaApplicant
versus
State of Maharashtra and anr.Respondents

Mr. Sanjay Kulkarni, advocate for the applicant.

Ms. Sangeeta D. Shinde, APP for the State.

Mr. V. B. Tiwari I/b. Ms. Jyoti V. Tiwari, advocate for the respondent No.2.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 10th APRIL, 2019.

P. C. :

Heard learned counsel and learned APP appearing for the respective parties.

2. The criminal application is filed by the applicant, who is the original complainant, for quashing the FIR No.I-245/2018 registered by her with NRI Sagari Police Station, Navi Mumbai against the respondent No.2 for the offences punishable under Sections 376(2)(n) and 417 of the Indian Penal Code, 1860.

3. The learned counsel appearing for the parties submitted that pending investigation, the parties have amicably settled their differences by mutual settlement and in pursuance of an understanding arrived at

between them, the applicant/original complainant herself has approached this Court for quashing the subject FIR by consent. The applicant has filed an affidavit dated 10th April, 2019. In paragraph 3, she has stated that physical relations between herself and the respondent No.2 was with her consent and the respondent No.2 never forced her for the same. In paragraphs 4 and 5, she has made following averments :

“4. I say that though in the FIR it has been stated that Respondent No.2 asked me for marriage, the fact of the matter is that I am Hindu by Religion and Respondent No.2 is Muslim. As it is I am a divorcee with one 14 years old daughter from earlier marriage and I do not want to complicate by life further by entering into marital relationship with Resp.no.2. I, therefore, do not want to marry Respondent No.2 at all. I do not think that we will be happy in the marital relationship.

5. I say and submit that even otherwise, when I went to police I never wanted the police to register an FIR and all that I had expected from the police was that they should reprimand the respondent no.2. The fact that I filed the quashing petition, before the respondent no.2 was released on bail by the Sessions Court at Thane, shows the said fact. I say that there is absolutely no force from anybody

to pray for quashing of FIR and it is done with my fee(sic) will without any pressure from anybody. I say even in my statement recorded by the learned Magistrate I have stated so and at that time also respondent no.2 was in jail.”

In paragraph 8, she has prayed for quashing the subject FIR.

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 FIR and other documents. Perusal of the FIR and the affidavit of the applicant referred above, makes it abundantly clear that the applicant and the respondent No.2 were serving in the same company and were on friendly terms. At the time of the incident, both were major. The FIR further discloses that the physical relations between the applicant and the respondent No.2 were consensual. We are,

therefore, of the opinion that the offence under Section 376(2)(n) of the Indian Penal Code, 1860, 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.

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 subject FIR 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 subject FIR. In that view of the matter, the criminal application is made absolute in terms of prayer clause (a) and is disposed of as such.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]