

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4874 OF 2018

Adwait Amrish Goel. ..Petitioner.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. K. P. Dave for the Petitioner.

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

Ms. Rucheeta Dhuru for Respondent No. 2.

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

Date : **March 18, 2019.**

P. C. :

1. Learned counsel for the Petitioner seeks leave to amend the petition. We grant leave. Necessary amendments be carried out for. Advocate Ms. Dhuru states that she has instructions to appear on behalf of Respondent No. 2. She is directed to file vakalatnama.
2. Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.2 and the learned APP for Respondent-State. The petition is filed for quashing FIR bearing C.R.No. 262 of 2017 registered with Samta Nagar Police Station, Mumbai for the offence punishable under sections 376, 376(II)N, 417, 323 and 504 of the Indian Penal Code, 1860.
3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR

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 FIR, by consent of Respondent No. 2.

4. Learned APP opposed the petition on the ground that offence alleged against the Petitioner is of serious nature and it is an offence against the society.

5. Respondent No. 2 has filed an affidavit dated 18th March 2019. In paragraph 4, 7 and 9 she has made following averments :

"4. I say that there were due difference arose between myself and the Applicant sometime in or about 2016 which was on account of our different culture different lifestyle and as such our relationships got broken. At that time, I felt badly let down and had misunderstanding of fact in the confused state of mind, I thought that the Applicant cheated me giving lame excuses contrary to promises given earlier which was understanding between us.

7. I say that by passage of time I had realised that being an educated girl no fruitful purpose will be served in prosecuting the Applicant because on my future living in different environment and manner will affect the same and only frustrate my future life and his life too by not coming out from the problems which is affecting my future career and health.

9. The Applicant family had met my family when even my family have decided to resolve the problem without any force or coercion hence without any force or coercion I have no objections whatsoever in nature if the CR mentioned in the Petition is quashed under the directions of this Hon'ble Court"

6. 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 the FIR in question initiated by her against the Petitioner.

7. 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 even 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.

8. So far as the instant case is concerned, we have gone through FIR. Perusal of the same makes it abundantly clear that both, the Petitioner and Respondent No.2 were adult and of the same age. FIR further discloses that they were in physical relationship since 2016. It can be discerned from the FIR itself that relationship was consensual. But at a late stage, they realised that they are not compatible with each other and as mature adults they decided to part their ways and lead life independently. In the light of this fact-situation, we are of the opinion that offence under section 376 is not made out. Consequently, no fruitful purpose would be served in

continuing the proceedings.

9. 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.

10. In the light of 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, writ petition is made absolute in terms of prayer clause (b).

11. At this stage, learned counsel for the Petitioner submitted that Samata Nagar Police Station has under a panchnama, seized various articles from the Petitioner including his passport and laptop. Since the subject FIR is quashed, the Petitioner is at liberty to approach the said Police Station for return of his articles. In the event, such an application is made by the Petitioner, Samata Nagar Police Station shall return those articles to the Petitioner expeditiously.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]