

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5179 of 2018**

Pratik Mukesh ShahPetitioner
versus
The State of Maharashtra and ors.Respondents

Mr. Ashish Mishra I/b. Mr. Sanjeet Shukla, advocate for the petitioner.
Mr. A. D. Kamkhedkar, APP for the State.
Ms. Kanchan Dube, advocate for the respondent No.3.

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

DATE : 27th MARCH, 2019.

P.C. :

1. Heard learned counsel and learned APP appearing for the respective parties.
2. The petition is filed for quashing and setting-aside the proceedings of Session Case No.137 of 2014 pending on the file of Sessions Court at Dindoshi(Borivali Division), Goregaon, Mumbai. The said case arises out of FIR No. 121 of 2014 registered with Goregaon Police Station, at the instance of respondent No.3, for offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860.
3. Learned counsel appearing for the respective parties submitted that during the pendency of the trial of the subject sessions case, the parties amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, they have have

approached this Court for quashing the proceedings of the subject criminal case by consent. Respondent No.3 has filed an affidavit dated 26th March, 2019. In paragraph 2, she has stated that the said FIR came to be filed due to misunderstanding between herself and the petitioner. She has also stated that the physical relationship between herself and the petitioner was consensual. In paragraph 3, she has stated that she has moved on in life and she is getting married. In paragraph 4, she has stated that she does not wish to proceed with the subject criminal case. Respondent No.3 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 criminal proceedings 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.

6. So far as the instant case is concerned, we have gone through the FIR. The FIR shows that respondent No.3 was married, however, she was not staying with her husband and that the petitioner and respondent No.3 developed friendly relations. The FIR also shows that both the petitioner and respondent No.3 were adults. As stated hereinabove, the affidavit filed by respondent No.3 discloses that the sexual act between her and the petitioner was consensual. We are, therefore, of the opinion that the offence under Section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

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 criminal 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 criminal case. However, at the same time, costs need to be saddled on

the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

9. Accordingly, the writ petition is made absolute in terms of prayer clause (a) subject to payment of costs of Rs.10,000/- by the petitioner. The petitioner shall pay the cost to **“Tata Memorial Hospital”** an institution that takes care of the advanced and terminally ill cancer patients and thereafter produce the receipt thereof on the file of this petition within a period of four weeks from today, failing which, the petition shall stand dismissed automatically without further reference to the Court and order quashing the criminal proceedings shall be treated as *non-est*.

10. Subject to above, the writ petition stands disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]