

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICITON

WRIT PETITION NO. 5806 OF 2018

Santosh Gangadhar Gadkari.

..Petitioner.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Akshay Topiwala I/b Anjali Patil for the Petitioner.

Mrs. A S. Pai, APP for the Respondent-State.

Mr. Arun K Rajput for Respondent No. 2.

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

Date : **April 12, 2019.**

P. C. :

1. Heard the learned counsel for the Petitioner, the 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.762 of 2018 pending on the file of learned Sessions Judge at Bombay, Court Room No.39, Sessions Court at Mumbai. The said case is an offshoot of registration of FIR bearing CR. No.97 of 2018 with Azad Maidan Police station, Mumbai at the instance of Respondent No.2 for the offence punishable under sections 376 and 420 of the Indian Penal Code, 1860.

2. The learned counsel appearing for the respective parties submitted that during the pendency of trial into above sessions case, with the intervention of parents, elders, friends and well-wishers, 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 proceedings of above

said Sessions Case by consent of Respondent No. 2.

3. Respondent No.2-original complainant has filed an affidavit in this Court being Affidavit dated 2nd January 2019. In paragraphs 5 to 8, following averments are made by Respondent No. :

- "5. I say that during the pendency of proceedings being sessions case No. 762 of 2018, arising out of CR No. 97 of 2018 registered at the instance of Azad Maidan Police Station, due to intervention of the parents of the Petitioner and relatives from both sides and as per the assurance given by the Petitioner parents of performing marriage I have decided to settle the whole dispute amicably. It is decided between me and the Petitioner to get married and clear off the misunderstandings which had resulted in registration of the FIR.*
- 6. I say that we have settled the matter amicably and I do not want to prosecute the Petitioner further and do not have any objection if the present proceedings is quashed.*
- 7. I say that I have no objection if the relief's claimed by the Petitioner in the present Criminal Writ Petition is granted to them by this Hon'ble Court.*
- 8. I say that I am making this affidavit out of my own free will and my consent is free consent."*

4. 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 proceedings of the subject Sessions Case initiated by her against the Petitioner for the offence punishable under section 376 and 420 of IPC.

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/proceeding 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 charge-sheet. Evidently, the Petitioner and Respondent No.2 were adult at the time of incident in question. The physical relationship between the parties was consensual and the FIR came to be filed when the Petitioner refused to marry Respondent No. 2.

7. Be that as it may, the learned counsel for the respective parties submitted that the Petitioner and Respondent No. 2 have got married on 19th January 2019 under the provisions of Special Marriage Act, 1954. They placed on record a certificate of marriage issued by the Marriage Officer, Mumbai. The Petitioner and Respondent No.2 also state that they are married and residing together as husband and wife. In the backdrop of this fact-situation, no fruitful purpose will be served by continuing with the prosecution of the Petitioner in the subject sessions case. Looking from the angle of welfare of Respondent No. 2, who is now married to the Petitioner, it would be just and proper to end the prosecution against the Petitioner. It is in the interest of Respondent No. 2 that prosecution against her husband be put at rest.

8. 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.

9. 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 subject sessions case. In that view of the matter, writ petition is made absolute in terms of prayer clause (b).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]