

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5848 OF 2018

Avinashh Haribhau Shinde ..Petitioner
V/s.
The State of Maharashtra & Anr. .. Respondents

Mr.Satyavart Joshi for the Petitioner.

Mr.K.V. Saste, AGP for the Respondent-State.

Mr.Sagar S. Tambe for Respondent No.2.

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

DATE : 26th JUNE 2019

P.C.

1. Heard learned counsel for the petitioner, learned APP for the Respondent No.-1-State and learned counsel for respondent No.2.

2. The petition is filed for quashing and setting aside the proceedings of the Criminal Case bearing RCC No.403224/2013 pending in the Court of learned JMFC, Pune. The said case arises out of the registration of FIR bearing C.R. No.14 of 2012 with Paud Police Station, Pune Gramin at the instance of respondent No.2 for

an offence punishable under Sections 376 and 420 of Indian Penal Code and under Section 3(1) (12) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. The learned counsel appearing for the respective parties submit that during the pendency of the trial of the subject Criminal Case, the parties amicably settled differences by way of mutual settlement and pursuant to the understanding arrived between them, the present petition is filed for quashing the subject criminal case by consent of the respondent No.2.

4. The respondent No.2-original complainant has filed affidavit dated 23.04.2019. In paragraph No.3, she has stated that the dispute between herself and petitioner is amicably resolved and therefore further proceedings in connection with the subject CR and Criminal Case needs to be quashed and in paragraph No.4 she has stated that she has no grievance against the petitioner and gives voluntary consent for quashment of the criminal proceeding of the subject criminal case. In paragraph No.5, she has given no objection for quashing and setting aside the subject criminal case.

5. 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 FIR and proceedings in question initiated by her against the Petitioner for the offence punishable under sections 376 and 420 of IPC.

6. 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*¹, 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

1 [2014 AIR SCW 2065]

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.

7. So far as present instant case is concerned, we have gone through the FIR. Reading of the FIR makes abundantly clear that the petitioner and respondent No.2-original complainant were adult at the time of the incident. The complainant belongs to the caste 'Hindu Mahar' and caste of the petitioner belongs to the 'Hindu Gondhali'. Both the petitioners and respondent No.2-original

complainant were serving in Universal Biacon Pvt. Ltd. on contract basis. The FIR further discloses that the petitioner and respondent No.2 were in love relationship which resulted into physical relationship. The FIR came to be filed as the petitioner refused to marry the complainant.

8. That apart, a common statement is made at the bar that the respondent No.2-complainant subsequent to the registration of FIR, got married and she has two issues from the marriage. It was also submitted that child born out of the relationship between complainant and the petitioner is entrusted to an NGO. It was lastly submitted that in these circumstances quashing of the FIR would be in the interest of complainant herself. In light of the above facts and circumstances and the submissions of the learned counsel for the respective parties, we are of the opinion that offence under Section 376 is not made out from the FIR, since the relationship was consensual. Hence we are inclined to quash the subject FIR and proceedings as no purpose would be served by continuing the investigation in the subject proceeding.

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*², 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 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 Criminal Case bearing RCC No.403224/2013 pending in the Court of learned JMFC, Pune. In that view of the matter, writ petition is made absolute in terms of prayer clause (a).

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)

2 2008-2-SCC-582