

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1504 OF 2018

Farhan Afroz Ahmad Siddiqui. ..Applicant.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. P. S. Kumbhar for the Applicant.

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

Mr. P. G. Sarda for Respondent No. 2.

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

Date : **April 2, 2019.**

P. C. :

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

2. By this application filed under section 482 of the Code of Criminal Procedure, 1973, the Applicant seeks to quash the FIR bearing Cr. No. 246 of 2018 registered with Mankhurd Police Station, Mumbai for the offence punishable under sections 376(2)(f)(n), 377, 354D, 504, 507, 351, 201 of the Indian Penal Code, 1860 and section 67, 66B and 66E of the Information Technology Act, 2000. The said FIR is registered at the instance of Respondent No. 2 herein.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into subject FIR

with the help and intervention of the family members, 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 application is filed for quashing the above FIR, by consent of Respondent No. 2.

4. Respondent No. 2 has filed an affidavit dated 11th February 2019. IN paragraph Nos. 9 and 17, she has made following averments :

"9) I state and submit that I was in love with the Applicant and all the acts as alleged in the FIR were with consent but as I was feeling insecure about the future of my life and as I got depressed and at the relevant time I have stopped to eat and drink and at that time I became thoughtless and thus in the heat of anger I have lodged the FIR against the present Applicant.

17) I state and submit that the offences alleged against the present Applicant are personal in nature and in the interest of future marital relationship of both the parties I am hereby showing my free consent for compounding of the case."

5. On 13th February 2019, the matter was placed before the Court. On that day, Respondent No. 2- complainant, her parents and mother and elder brother of the Applicant accused have filed an agreement signed by all of them stating that the Applicant will marry complainant – Respondent No. 2. In the light of the said agreement, the Court deferred the hearing on the application in order to enable the parties to perform the marriage of the Applicant with Respondent No. 2. the Applicant and Respondent No.2 have accordingly got

married on 2nd March 2019 as per the muslim rites and rituals. They have produced the marriage certificate issued by Madarsa SALATHAT, the same is taken on record. It is informed that the Applicant and Respondent No. 2 are residing together as husband and wife.

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 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.

7. So far as the instant case is concerned, there is no dispute that FIR discloses an offence. However, Respondent No. 2 has filed an affidavit referred to above and in paragraph 9 she has made a statement that the alleged acts were with her consent. The physical relations were consensual as they were in love. In the light of this, offence under section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution of the Applicant.

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 FIR alive 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 subject FIR. In that view of the matter, application is made absolute in terms of prayer clause (b).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]