

UMESH
SHRINIWAS
MALANI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPLICATION NO. 52 OF 2021

Swapnil Digambar Patil

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Ganesh Gupta a/w Mr. Pratik Patil i/by G.G. Legal
Asso for the Applicant.

Ms. Noori Khan for Respondent No. 2.

Mr. K.V. Saste, APP, for the Respondent – State.

CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.

DATE : JANUARY 03, 2022.

PER COURT :

1. Heard learned Counsel for Applicant as well as
learned APP for Respondent – State and learned Counsel
for Respondent No. 2.

2. **Rule.** Rule made returnable forthwith. With
consent of learned Counsel appearing for respective
parties, heard finally.

3. The present Application is filed seeking
quashment of the first information report bearing Crime
No. 34/2020 lodged at Wadala T.T. Police Station on

20.01.2020 for commission of offence punishable under Section 376, 354 of IPC.

4. It is submitted by the learned Counsel for the Applicant that post filing the report the applicant had approached Court below for seeking his enlargement on bail and the said bail application was allowed. The copy of the order passed by the learned Court below is placed on record at page 18. Post order granting bail to the Applicant, the marriage between the Applicant and the Respondent No. 2 – Komal Dilip Sapkal was solemnized on 11.03.2020 in Ganpati Temple, Mahad, Tq. Khalapur, Dist. Raigad. The copy of the certificate of registration of marriage duly signed by the Registrar is also placed on record at page 20. The copy of marriage invitation card is also placed on record at page 21. Then there are certain photographs of the rituals being performed in the marriage as well as photographs showing some relatives attending the marriage are also placed on record.

5. Our attention was also invited to an affidavit filed at the instance of Respondent No. 2 placed on record at page 29.

6. It may be useful for our purposes to refer to certain statements in the affidavit which reads thus:

3. I say that I am aware that the present Applicant/Original Accused is preferring present Criminal Application before this Hon'ble Court thereby seeking quashing of the F.I.R. bearing its C.R. No. 34 of 2020 duly registered with Wadala T.T. Police Station lodged by me due to misunderstanding.

4. I say that I have settled my case amicably with the Applicant in view of performing marriage with the Applicant, therefore now I am willing to settle all my complaint with the Applicant, therefore I am willing to withdraw my criminal complaint which is pending in terms of criminal F.I.R. bearing its C.R. No. 34 of 2020 registered with Wadala T.T. Police Station for an offence punishable u/s 376, 354 of IPC against the Applicant.

5. I say that I am not willing to lead any evidence whether oral or documentary either before Police Machinery or before appropriate Court of Law in the present subject crime against the present Applicant in C.R. No. 34 of 2020 in view of amicable settlement and thereby consenting to allow

the prayer made in the quashing Application.

6. I do hereby record my No-Objection for allowing the application preferred by the above-named Applicant thereby quashing of criminal F.I.R. bearing its C.R. No. 34 of 2020 duly registered with Wadala T.T. Police Station for an offence punishable u/s 376, 354 of IPC against present Applicant.

7. I say that I am giving my free consent for quashing of above referred criminal F.I.R. with my conscious mind, free will and without any sort of pressure, coercion, fraud applied on me by any person(s). Further I am also aware about the effect of the present affidavit-cum-declaration more specifically the criminal F.I.R. bearing its C.R. No. 34 of 2020 pending in the file of Wadala T.T. Police Station may get quashed and the above-named Applicant may get discharged from the criminal F.I.R. filed by me for which I am recording my free consent.

7. Apart from the statements made in the affidavit by Respondent No. 2, when a query put by us to the Respondent No. 2 who is personally present in

this Court, the Respondent No. 2 reiterated before this Court that the affidavit is filed on her free will and she is not willing to lead any evidence whether oral or documentary in case the matter proceeds on the lodgment of report.

8. 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 if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

9. In the instant case, the FIR reveals that the Complainant – Respondent No. 2 herein is a 25 year old lady. She was friendly with the Applicant. She had

physical relationship with the applicant for the first time in the month of June 2019. Though she had stated that the applicant had compelled her to enter into such a relationship under the pretext of marriage, she had not lodged any complaint but had accompanied the Petitioner at several places during the period June 2019 to January 2020 and had continued to have physical relationship with the applicant without there being any misconception of fact, force, pressure or coercion. The FIR therefore reveals that the relationship between the applicant and Respondent No. 2 was consensual. Hence, the offence under Section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution. Apart from this, now the Respondent No. 2 and Applicant have got married and residing together as husband and wife.

10. Considering all these facts, we are of the opinion, that learned Counsel for Applicant has made out a case for allowing the Application. Accordingly, Criminal Application is allowed in terms of prayer clause 'B' and the first information report bearing C.R. No. 34 of 2020 registered at Wadala T.T. Police

Station for commission of offence punishable under Section 376, 354 of IPC and consequent proceedings arising out of said first information report are quashed and set aside.

11. Rule made absolute in above terms.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)