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

CRIMINAL APPLICATION NO. 159 OF 2022

Mayur Gevarchand Mehta

...Applicant

Versus

The State of Maharashtra & Anr

...Respondents

- Dr. Abhinav Chandrachud i/by Premkumar Pandey for the Applicant.
- Mr. J.P. Yagnik, APP, for the Respondent – State.
- Mr. Sanrish Shetye i/by Khushboo Pathak for Respondent No. 2.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : MARCH 22, 2022.

PER COURT :

1. Heard learned Counsel appearing for respective parties.

2. The Present Application is filed in this Court seeking quashment of the FIR bearing CR No. 82 of 2020, registered with Nehru Nagar Police Station, Mumbai for the offences punishable under Sections 376(2)(N), 354, 354(D), 500, 504, 506, and proceedings arising out of the said CR bearing C.C. No. 470/PW/20, at the instance of Respondent No. 2.

3. The learned Counsel appearing for the respective parties submitted that during the pendency of investigation into above FIR, & during the on going trial of above criminal proceedings, with the help and intervention of 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, the instant Application is filed for quashing the above criminal proceedings, by consent of original complainant - Respondent No. 2 herein.

4. Our attention was also invited to an affidavit filed at the instance of Respondent No. 2.

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

5. I hereby now state that, in the recent past, the Applicant and I have buried our differences and have agreed to amicably resolve the ongoing dispute between us and our respective families.

6. In 2019, the Applicant and I were introduced to each other by our respective families as the two of us were on the

lookout for suitable prospects to marry. When we first met, the Applicant suggested that the two of us should spend some time together in order to get to know each other before deciding to marry. I agreed to the suggestion made by the Applicant. The Applicant and I were adults at the relevant period of time.

7. Accordingly, the Applicant and I started socialising regularly with each other. This developed romantic feelings and eventually led to sexual encounters between us. During our sexual encounters, the two of us always intended to marry to each other at some point in the future.

8. During the aforesaid period, I was a working professional with a demanding job which left me with little time for myself and for the Applicant. The Applicant on the other hand expected me to spend more time with him. However, my professional commitments did not provide me with the time to do so. Hence, over a period of time, I came to realize that the Applicant and I are highly incompatible and it would be unwise for the two of us to marry. My decision to not take our relationship ahead caused a dispute between the two of us and led to certain unfortunate emotional

outbursts.

9. Thereafter, my family met the Applicant's family and conveyed to them that I did not want to marry the Applicant and my family did not intend to maintain any relations with them. This enraged the Applicant and he showed my family some of our intimate pictures which were meant to be private. When I learnt about this, in a fit of anger, I lodged the impugned FIR against the Applicant.

10. In the time that has passed by, I have married someone else and am living a content life. The Applicant and I have our respective career and life ahead of us. Keeping the same in mind, I have no objection to the impugned FIR and the impugned chargesheet being quashed.

6. 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.

7. In the instant case, the FIR reveals that the Complainant – Respondent No. 2 herein is a 32 year old lady. She was friendly with the Applicant. She had physical relationship with the Applicant for the first time in the year 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 Applicant at several places during the period between October 2019 to November 2019 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.

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. 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 'i' subject to condition that the Applicant to extend social services on every fortnight i.e., on every 2nd and 4th Saturdays of each month for a period of 6 months from today at **Baal Welfare Children Trust**, No. 93, Sai Kripa Building Opp. Marathi Municipal School, Ghatla Village Road, Chembur -71 and the Respondent No. 2 to also extend social services on every fortnight i.e., on every 2nd and 4th Saturdays of each month for a period of 6 months from today at **Maru Ghal**, 27/28, Hariom Niwas, Dr. Babasaheb Ambedkar Road, Gorai - 1,

Borivali (W). 400 092.

10. The Applicant and Respondent No. 2 shall report to the Head of the respective institutions with a copy of this order. The Investigating Officer shall forward a copy of this order to the respective institutions. The Head of the respective institutions shall allocate appropriate works/services to the Applicant and Respondent No. 2 in their respective institutions, which will be performed/rendered by the Applicant and Respondent No. 2 as part of community service.

11. The Applicant and Respondent No. 2 shall obtain certificates from the respective institutes of having rendered community service satisfactorily for the period of six months and place the same on the record of this Criminal Application. The quashment of FIR is subject to Applicant and Respondent No. 2 producing the certificates from the concerned institutions and placing the same on the record of this Court within 9 months from today. Failing to do so, the order quashing FIR shall stand recalled automatically and application shall stand dismissed

automatically without further reference to the Court
and order quashing the FIR shall be treated as *non-est*.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)