

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

CRIMINAL APPLICATION NO. 416 OF 2021

Mr.Prashant Manohar Kharat

...Applicant

vs.

Priyanka Rajendra Wagh & Anr.

...Respondents

Mr.Nazneen Khatri for Applicant.

Ms.M.H. Mhatre, APP for State.

Ms.Priyanka Rajendra Wagh @ Prayanka Prashant Kharat, Respondent
No.1 present.

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

DATED : 9 FEBRUARY 2022

PC. :

Heard learned Counsel for the Applicant and learned APP for the State.

2. Respondent No.1 is the first informant, who lodged the report at Tilak Nagar Police Station, Mumbai on 2 January 2021 against the Applicant for the offences punishable under Sections 376, 504 and 506, 376(N) of IPC and Section 67A of the Information Technology Act. The aforesaid complaint was registered as Crime No.2/2021. Respondent No.1 has alleged in the aforesaid complaint that the Applicant, on a false promise of marriage, has established physical and sexual relations with her on many occasions and later on refused to marry her. It is also alleged that some obscene video of Respondent No.1 was forwarded by the Applicant to her brother and aunt.

3. The Applicant is seeking to quash the said FIR on the ground that the matter has been settled between the parties and he has married with Respondent No.1. Learned Counsel for the Applicant has drawn attention of this court to the marriage registration certificate, marriage card and other relevant documents to show that after the FIR in question, the Applicant has solemnized marriage with Respondent No.1.

4. Learned Counsel for the Applicant further points out the affidavit filed by Respondent No.1, stating therein that she does not want to pursue the complaint further. It is further pointed out that out of the said wedlock, they have a six months old son and as such, they jointly pray for quashing of FIR in question.

5. We have gone through the record and perused the affidavit filed by Respondent No.1 and also the marriage certificate. It is clear from the record that Respondent No.1 and Applicant have performed the marriage and they have a six months old son.

6. Respondent No.1 is personally present by virtual mode and after intervening with her, she has stated that as the Applicant has performed marriage with her and she is having a son of six months old, she has no grievance against the Applicant and she does not want to proceed further in the matter.

7. After going through the record, it is clear that Respondent No.1 is staying happily with the Applicant and they have a son of six months old. Looking to the above referred facts, though the offence was

registered under Section 376 of IPC, we are of the opinion that it will be a futile exercise to ask the parties to go for trial. Moreover, the subsequent events after registration of FIR are relevant which prompted us that this application deserves to be allowed.

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. However, in a peculiar facts and circumstances of this case and in view of judgment in the case 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.”

9. 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.

10. In the instant case, the FIR reveals that the Complainant/ Respondent No.1 herein is a 23 year old lady. She was friendly with the Applicant since 1999. She had physical relationship with the Applicant for the first time in the year 2017. Though she had stated that the Applicant had compelled her to enter into such relationship under the pretext of marriage, she had not lodged any complaint but had accompanied the Applicant at several places during the period 2017 to 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. 1 was consensual. Hence, the offence under Section 376 is not made out. Consequently, no fruitful purpose will be served by continuing with the prosecution.

11. Considering all these facts, we are of the opinion that a case is made out for allowing the application.

12. Accordingly, the criminal application is allowed in terms of prayer clause (a) and the first information report, bearing C.R. No.2/2021, registered at Tilak Nagar Police Station, Mumbai for offence punishable under Sections 376, 504 and 506, 376(N) of IPC and Section 67A of the Information Technology Act and chargesheet are hereby quashed and set aside.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)