

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 6441 OF 2021**

Mrs. Sanjida Lalla	Petitioner
Versus	
The State of Maharashtra and anr.	Respondents

Ms. Beerta H. Bajwa along with Mr. J. Badgujar and Mr.Hiren Mehta,
advocates for the petitioner.
Mr. K. V. Saste, APP for the State.
Ms. Pooja Sejpal, advocate for respondent No.2.
Mrs. Sanjida Lalla, petitioner present.
Mr.Pramod G. Nair, respondent No.2 present.

**CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE JJ.**

DATE : 28th FEBRUARY, 2022.

P.C. :

1. Ms. Bajwa, learned counsel for the petitioner, at the outset, sought oral leave to amend the petition as the Sessions Case number is inadvertently referred as Sessions Case No.780 of 2013 instead of **“Sessions Case No.48 of 2014”**. Leave as prayed for, is granted. Necessary amendment be carried out forthwith.
2. Heard learned counsel and learned APP appearing for the respective parties.
3. The petitioner is before this Court for seeking quashment of the

proceedings initiated against respondent No.2 viz. Sessions Case No.48 of 2014 arising out of FIR No.463 of 2013 registered at Samata Nagar Police Station, Mumbai, for the offences punishable under Sections 376 and 420 of the Indian Penal Code, 1860. Though, normally the person facing proceedings, who is added as accused, approaches this Court for quashing the FIR or the criminal case, in the present case, it is the informant/petitioner who is before this Court for quashment of the proceedings in the backdrop of the peculiar circumstances.

4. Our attention was invited to the document placed on record viz. copy of the FIR at page 18. The sum and the substance of the FIR is that the petitioner was initially married to one Shri Vishal Kapoor in the year 2006. The couple was blessed with daughter "Parinaz". Subsequently due to matrimonial discord, the couple thought it fit to part their ways and accordingly, a petition for decree of divorce by mutual consent was filed in the Family Court in the year 2013. Respondent No.2 was a colleague of the petitioner while she was working in a private company as Response Executive. Respondent No.2 has also attended family function of the petitioner. In the year 2011, the petitioner was in need of some job and respondent No.2 provided assistance to the petitioner for securing job in the company where he himself was working. Then, there is also a reference of certain meetings/events of the company and respondent No.2 attended these meetings and events at various places such as

Hyderabad and Goa. It is stated in the report that respondent No.2 by taking undue benefit of the close association between him and respondent No.2 exploited the petitioner physically. Initially, respondent No.2 assured to marry the petitioner but subsequently whenever the petitioner questioned respondent No.2 about marriage, he avoided the same. Denial to marry and ill-treatment at the instance of respondent No.2, led the petitioner to suffer severe depression and in that mental state, the petitioner took extreme step of committing suicide. Due to immediate medical assistance being provided to the petitioner, she was treated in private hospital and was discharged from the hospital on 13th August, 2013. It is further stated in the FIR that due to repeated insistence of the petitioner, respondent No.2 for namesake, completed formality of marriage in temple and again continued to ill-treat the petitioner. Being aggrieved by the ill-treatment and deceit, the petitioner had approached the police station and after lodging the FIR, as the investigating agency was set in motion, necessary steps were taken and the exercise of investigation was completed by filing charge-sheet against respondent No.2. Now, for all these sequence of events referred above, it took pretty long time.

Respondent No.2 filed an application before the competent Court seeking discharge under Section 227 of the Code of Criminal Procedure, 1973 and the plea taken by respondent No.2 was of

consensual intimacy between the parties. Learned Additional Sessions Judge, Sessions Court, Borivali Division, Dindoshi, was of the opinion that there are sufficient grounds for proceeding against respondent No.2 though it was observed by the learned Additional Sessions Judge that whether the trial against respondent No.2 will end in conviction or acquittal is immaterial, but there are sufficient grounds for proceeding against the respondent No.2. The application was accordingly rejected by an order dated 15th February, 2020.

Being aggrieved by the aforesaid order dated 15th February, 2020, respondent No.2 preferred revision. During the pendency of the revision, petitioner submitted her affidavit to the Court, a copy of which is placed on record at Exhibit "C", page 140 of the petition. In the said affidavit, the petitioner has stated that a period of 8 years has been elapsed after registration of the crime and she has already remarried and moved ahead in her life, as such, she is not desirous of proceeding with the matter against respondent No.2. The petitioner further stated in the affidavit that the prayer of allowing the revision application be granted. The petitioner has also stated in the affidavit that the statements made in the affidavit are without any force, coercion, duress and the same are made on her own free will.

5. The petitioner is personally present before this Court. We have

apprised the petitioner about her statements in the affidavit referred above and, on a query, as to whether all these statements are made on her free will, the petitioner replied in affirmative to this Court.

5. The learned counsel for the petitioner also invited our attention to the order passed by learned Single Judge of this Court dated 13th October, 2021 in Revision Application No.168 of 2020, a copy of which is placed on record at page 143 of the petition. It would be useful for our purpose to refer to paragraph 4 of the order, which reads thus :

“4. The learned counsel for the complainant on instructions submitted that the complainant may file substantive petition in this Court seeking to quash the proceedings in the Sessions Case No.780 of 2013 pending before the Additional Sessions Judge, Greater Bombay.”

6. Learned counsel for the petitioner also invited our attention to the grounds raised in the petition, more particularly grounds b and c, which reads thus :

“b. That the Petitioner humbly submits that due to the abovementioned case the Petitioner suffered from Post Traumatic Stress Disorder (PTSD) and was under treatment for the same.

c. That on service of the Revision Application the Petitioner again suffered from panic attacks and has to again undergo treatment for Post Traumatic Stress Disorder (PTSD) under Dr. Devendra L. Save.”

7. We find considerable merit in the submission of learned counsel for the petitioner that pendency of the proceedings would only cause mental disturbance to the petitioner and the petitioner has decided to adopt the approach of forget and forgive, no fruitful purpose would be served by allowing the continuity of the proceedings, on the contrary, it would adversely affect the petitioner as now she is settled in her life. As the petitioner who had suffered agony and misfortune for some time and after passage of eight years, she has moved in her life and now settled in her life after remarriage and is willing to forget her past and anxious to lead her future life peacefully, we are of the opinion that quashing of the criminal proceedings would be in the interest of the petitioner.

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 – petitioner at the time of filing the FIR in the year 2013 was a 26 year old lady. She was friendly with the respondent No.2 and at the relevant time she had physical relationship with respondent No.2 being full aware that respondent No.2 was a married man. Though she had stated that respondent No.2 had compelled her to enter into such a relationship under the pretext of marriage, the relationship between petitioner 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, 8 years have elapsed since lodging of the FIR and now the petitioner has remarried and settled in her life.

10. Considering all these aspects, we are of the opinion that learned counsel for the petitioner has made out case for allowing the petition. Accordingly, the Sessions Case No.48 of 2014 pending against the respondent No.2 before learned Sessions Judge, Dindoshi for offences punishable under Sections 376 and 420 of the Indian Penal Code, 1860 as well as FIR No.463 of 2013 registered with Samata Nagar Police Station, Mumbai, are quashed and set-aside. **The writ petition stands disposed of accordingly.**

11. Learned counsel for respondent No.2 submits that though, on instructions, she appeared on behalf of respondent No.2 but for certain difficulty, vakalatnama could not be filed in the Registry. Accordingly, she undertakes to file vakalatnama in the Registry within two weeks from today. The Registry to accept the same, if filed within two weeks.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)