

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.3740 OF 2022**

1. Azhruddin Ayub Shaikh
2. Sahara Ayub Shaikh
3. Ayub Latib Shaikh
4. Tajuddin Ayub Shaikh
5. Amar Ayub Shaikh
6. Faijuddin Ayub Shaikh
7. Jabbar Shaikh

...Petitioners

V/s.

1. The State of Maharashtra
2. Anjum Ara Shaikh

...Respondents

WITH**CRIMINAL WRIT PETITION NO.3744 OF 2022**

1. Anjum Ara Shaikh
2. Mehjabeen Shaikh
3. Ejaj Habib Shaikh
4. Alamasabegum Dalwale
5. Sabiya Iqbal Birajdar
6. Zakirhusain Shaikh

...Petitioners

V/s.

1. The State of Maharashtra
2. Sahara Ayub Shaikh

...Respondents

Mr. Keral Mehta i/by Mr. Devendra Kuber for Petitioners in W.P. No.3740 of 2022 and Respondent No.2 in W.P. No.3744 of 2022.

Mr. Faisal F. Shaikh for Petitioners in W.P. No.3744 of 2022 and Respondent No.2 in W.P. No.3740 of 2022.

Mr. S.S. Hulke, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 13th MARCH, 2023.

PC:-

. Rule. Rule is made returnable forthwith. With the consent of the parties, the Petitions are taken up for final disposal.

2. The Petitioners and Respondent No.2 in both the Petitions are seeking relief of quashing the First Information Reports (*for short 'FIR'*), which are subject matter of each Petition, by consent.

3. The Petitioners in Criminal Writ Petition No.3740 of 2022 are arraigned as accused in C.R. No.441 of 2021 registered with Vijapur Naka Police Station, Solapur (Rural) on 02.09.2021 at the instance of Respondent No.2 in the said Petition for offences punishable under Sections 307, 315, 354, 403, 420, 498-A, 323, 504 & 506 read with Section 34 of Indian Penal Code (*for short 'IPC'*). Respondent No.2 - Anjum Ara Shaikh is the wife of Petitioner No.1 - Azhruddin Ayub Shaikh. Petitioner No.2 is the mother of Petitioner No.1, Petitioner No.3 is the father of Petitioner No.1, Petitioner Nos. 4, 5 & 6 are the brothers of Petitioner No.1 and Petitioner No.7 is the paternal uncle of Petitioner No.1. Petitioner No.1 and Respondent No.2 were married as per Muslim rites and rituals on 15.07.2020. Respondent No.2 has alleged that, the Petitioners/Accused had ill treated her after marriage with Petitioner No.1. She was abused and assaulted. Her brother-in-law has committed an act of outraging her modesty. Her husband had assaulted her during her pregnancy, which resulted in termination of pregnancy. Her husband throttled her.

4. Petitioner Nos.1 and 2 had preferred application for anticipatory bail before the sessions Court at Solapur in connection with C.R. No.441 of 2021. The said application was allowed by Order dated 29.09.2021. While allowing the said application, the Sessions Court while dealing with charge under Section 315 of IPC has observed that, Casualty Report of K.E.M. Hospital, Mumbai, dated 20.09.2020 indicate that, there is no history of assault by husband as alleged by Respondent No.2. Sonography report dated 20.09.2020 of K.E.M. Hospital, Mumbai, shows that, subschorionic haemorrhage is seen. That, means there was bleeding. The reason for bleeding was nowhere mentioned in any of the reports. The reports also indicates that, the complainant had fever. At this stage it cannot be concluded that, due to assault by her husband the complainant had abortion.

5. Respondent No.2 in Criminal Writ Petition No.3740 of 2022 has lodged the FIR with Kurduwadi Police Station, District Solapur (Rural), on 19.07.2022 vide C.R. No.324 of 2022 for offences punishable under Sections 307, 326, 327, 354, 452, 107, 143, 147, 148, 149, 504 & 506 of Indian Penal Code. Petitioners in the said Petition were arraigned as accused. The Petition is filed for quashing FIR in C.R. No.324 of 2022. The complainant had alleged that, on 18.07.2022, the accused entered her house and abused her and others. One of them pressed her neck and throttled her. They were assaulted. Accused took away cash and gold ring.

6. The Respondent No.2 in Criminal Writ Petition No.3740 of 2022 had also lodged the FIR vide C.R. No.327 of 2022 with Kurduwadi Police Station, Solapur Rural for offences punishable under Sections 327, 324, 354, 107, 143, 147, 148, 149, 323, 504 & 506 of Indian Penal Code against Sahara Shaikh, Amar Shaikh, Faijuddin Shaikh, Dilshad Shaikh, Asma Shaikh, Farzana Sayyed and Azhruddin Shaikh. The aforesaid accused in C.R. No.327 of 2022 had preferred Criminal Writ Petition No.3736 of 2022 before this Court challenging the said FIR.

7. Learned Advocates appearing for both the sides submitted that, the parties in these proceedings have amicably settled the dispute and agreed to quash the FIRs by consent. The parties have executed Consent Terms in respective FIRs wherein it is agreed that, the FIRs could be quashed with the consent of the complainants.

8. Criminal Writ Petition No.3736 of 2022 is allowed by this Court vide Order dated 11.11.2022 and the FIR registered vide C.R. No.327 of 2022 has been quashed and set aside with the consent of Complainant.

9. Learned Advocate for the Petitioners and Respondent/Complainant in Criminal Writ Petition No.3740 of 2022 and Criminal Writ Petition No.3744 of 2022 have jointly submitted that, both the FIRs which are subject matter of this Petitions can be quashed with the consent of Complainant. The Complainant has no objection for quashing the FIR and they have filed affidavits and consented for quashing respective FIR's. They have executed

‘Consent Terms’ which is annexed to the Petitions whereby it has been agreed that, the FIR can be quashed on account of settlement between the parties. Learned Advocate appearing for Respondent No.2 in Criminal Writ Petition No.3740 of 2022 submitted that, although Respondent No.2 Ms. Anjum Ara Shaikh is not present in Court, she has confirmed contents of Affidavit and Consent Terms and agreed for quashing FIR in C.R. No.441 of 2021 registered with Vijapur Naka Police Station, Solapur (Rural). Learned Advocate for Petitioners in Criminal Writ Petition No.3740 of 2022 has submitted that, the Petitioner Azhrudin Ayub Shaikh has transferred the amount of Rs.10 Lakhs into the account of Respondent No.2. Ms. Anjum Ara Shaikh by way of permanent alimony to her. The said fact is not disputed by Advocate for Respondent No.2 in the said Petition. It is submitted that, although the offence under Section 307 of IPC and 315 of IPC has been invoked in respective FIRs, there is no evidence to establish the said offences. It is submitted that, disputes are on account of matrimonial discord and in view of settlement, the proceedings may be quashed.

10. It is pertinent to note that, FIR in relation to C.R. No.327 of 2022 registered with Kurduwadi Police Station, Solapur (Rural) at the instance of Anjum Ara Shaikh has been quashed by this Court vide Order dated 11.11.2022 passed in Criminal Writ Petition No.3736 of 2022 by relying upon the ‘Consent Terms’. Considering the fact that, Complaints were

lodged on account of matrimonial discord, 'Consent Terms' entered between parties and affidavit of complainant in both the cases, there is no impediment in quashing the respective FIRs.

11. The Hon'ble Supreme Court in the case of *Gian Singh Vs. State of Punjab and Another*, (2012) 10 SCC 303 has held that, power of High Court in quashing criminal proceedings or FIR in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of Cr.P.C. Where the High Court quashes a criminal proceedings having regard to the fact that, the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case of demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute.

12. In the case of *Narinder Singh and Others Vs. State of Punjab and Another* reported in (2014) 6 SCC 466 the apex Court had considered whether the offence under Section 307 of IPC would fall in the category of

heinous and serious offences and whether such proceedings could be quashed on the basis of settlement between the parties. It was held that, although the offence under Section 307 of IPC is serious offence, 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 of IPC as well. Therefore, only because FIR/charge-sheet incorporates the provisions 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. 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 and the nature of weapons used etc. On the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms opinion that, provisions of Section 307 of IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on the settlement between the parties.

13. In light of the principles enunciated in the aforesaid decisions, the cause of disputes on account of matrimonial discord and the settlement arrived at between the parties, we are of the considered opinion that, proceedings which are subject matter of both the Petitions can be quashed with the consent of parties.

ORDER

- i) Criminal Writ Petition Nos.3740 of 2022 and 3744 of 2022 are allowed.
- ii) First Information Report registered vide C.R. No.441 of 2021 registered with Vijapur Naka Police Station, Solapur (Rural) is quashed and set aside and First Information Report registered vide C.R. No.324 of 2022 registered with with Kurduwadi Police Station, Solapur (Rural) are quashed and set aside.
- iii) Rule is made absolute in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)