

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 613 OF 2018**

Anshul Bammi s/o Ajay Kumar Bammi ... Applicant

Versus

The State of Maharashtra and anr. ... Respondents

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Mr. Mohd. Saeed Asgar Moghul a/w Mr. Azhar Shaikh for
the Applicant.

Mr. S. V. Gavand, APP for the State.

Ms. Deepa Panicker for Respondent No. 2.

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**CORAM : SMT. ANUJA PRABHUDESSAI &
N.R. BORKAR, JJ.**

DATED : 21 SEPTEMBER 2023

P.C. :-

Learned counsel for the petitioner states that during the pendency of the petition charge-sheet came to be filed and that the case has been committed to the Sessions Court and registered as Sessions Case No. 50 of 2019. He thus, seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out forthwith.

2. This is an application under Section 482 of the Code of Criminal Procedure to quash Sessions Case No. 50 of 2019 pending on the file of learned Sessions Court

Dindoshi, arising from FIR No. 44 of 2018 registered at Charkop police station for offences under Sections 376(1), 417, 323, 504, 506 of the Indian Penal Code.

3. The applicant and respondent No. 2 both adults were known to each other. The initial acquaintance turned into romantic relationship.

4. It is alleged that the applicant had sexual relationship with the respondent No. 2 on the pretext of promise of marriage. The applicant subsequently refused to marry and this led to the lodging of the FIR.

5. Learned counsel for the applicant and respondent No. 2 state that during the pendency of the application both the parties have entered into amicable settlement.

6. The respondent No. 2 has filed her affidavit, wherein she has stated that the FIR was lodged in a heat of passion due to some misunderstanding. She stated that she does not wish to proceed with the case as the relationship was consensual and the dispute has been settled. She has further stated that she plans to get married in the near

future and wants to live a peaceful life. She, therefore, does not wish to proceed with the criminal prosecution.

7. The offences alleged against the petitioners are of serious nature. In ***Gian Singh Vs. State of Punjab and Anr. (2013) 1 SCC (cri) 160*** the Apex Court while recognising the power of the High Court on the basis of settlement between the parties, has ruled that the Court must refrain from quashing criminal proceedings where the offences, heinous and serious like murder, rape, dacoity, etc or other offences of mental depravity under IPC or offences of moral turpitude under special statute like Prevention of Corruption Act and the offences which threatens the well being of the society.

8. In ***Narinder Singh Vs. State of Punjab, 2014 AIR SCW 2065*** while considering the question whether the crime registered under Section 307 of the IPC could be quashed with consent, the Apex Court has reiterated that the offences of serious and heinous nature or the offences against the society cannot be quashed merely on the basis

of compromise between the parties. Nevertheless, the decision of the Court cannot be based solely on the Section mentioned in the FIR or the charge framed under the provision. The Apex Court emphasized that it is open to the High Court to examine as to whether incorporation of such section is for the sake of it or whether the prosecution has collected sufficient material, which if proved, would lead to proving the charge. On the basis of the prima facie analysis, the High Court can examine whether there is strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quashed the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. It is further held that while deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at

immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings / investigation. It is held that the Court can also be awayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

9. In ***Kapil Gupta Vs. State of NCT of Delhi and anr.*** in ***Criminal Appeal No. 1217 of 2022***, the Apex Court has reiterated that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved, would lead to proving the charge for the offence charged with. The Court has also to take into consideration whether the settlement between the parties is going to result into harmony between them which may improve their mutual

relationship.

10. It is thus well settled that while the powers under Section 482 of Cr.P.C. or Article 226 of the Constitution of India cannot be exercised to quash the proceedings involving serious or heinous offences, or offences against society merely on the basis of the settlement between the parties, yet the Court cannot and should not hesitate to exercise such powers when uncontroverted allegations in the FIR and the other material collected in the course of the investigation does not disclose cognizable offence, albeit the sections mentioned in the FIR or in the charge. It is therefore necessary to consider the factual matrix of the case and ascertain whether the allegations in the FIR and the other records, taken as a whole, disclose the basic ingredients of the offence.

11. In the instant case, the facts narrated in the First Information Report reveal that the applicant and respondent No. 2 both adults had indulged in sexual relationship multiple times. It is thus , apparent that the

relationship between the parties was purely consensual. Thus, the crucial ingredients of the offence under Section 375 are absent. Further more, the respondent No. 2 has stated that she does not want to proceed with the criminal prosecution, that she wants to get married and live a peaceful marital life.

12. Considering the overall facts and circumstances, it would be appropriate to exercise powers under Section 482 of the Code of Criminal Procedure and to quash the proceedings. Hence, the following order:

- (i) Application is allowed.
- (ii) Sessions Case No. 50 of 2019 pending on the file of learned Sessions Court Dindoshi, arising from FIR No. 44 of 2018 registered at Charkop police station for offences under Sections 376(1), 417, 323, 504, 506 of the Indian Penal Code is hereby quashed subject to payment of cost of Rs. 50,000/- to be paid to Tata Memorial Hospital, Mumbai within four weeks from the date of order.

(N.R. BORKAR, J.) (SMT. ANUJA PRABHUDESSAI, J.)