

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.794 OF 2021

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| <b>Ganesh Ramdas Kolhal</b>        | <b>]</b> | <b>Applicant</b>   |
| <b>Vs.</b>                         |          |                    |
| <b>1. The State of Maharashtra</b> | <b>]</b> |                    |
| <b>2. XYZ</b>                      | <b>]</b> | <b>Respondents</b> |
| <b>.....</b>                       |          |                    |

Mr. Vishal Kolekar and Mr. Sachin Chavan i/b Mr. Kishan Chaudhari, for Applicant.

Mr. Y.M. Nakhwa, A.P.P, for Respondent No.1-State.

Mr. Vinod Sangvikar i/b Ms. Shakuntala Sangvikar, for Respondent No.2.

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CORAM : REVATI MOHITE DERE &  
PRITHVIRAJ K. CHAVAN, J.J.

**DATE** : 7th February, 2023.

**ORDER:** [Per Prithviraj K. Chavan, J.]:

1. Heard.
2. At the outset, learned Counsel for the applicant seeks leave to amend to truncate the name of the prosecutrix and replace it with an alphabet not only in the cause title but wherever it appears in the application. Leave granted. Amendment to be carried out forthwith.

3. Learned Counsel for the applicant also seeks leave to amend to remove the photographs/WhatsApp chats from the application. Leave granted. Amendment to be carried out forthwith and the photographs and WhatsApp chat be put in a sealed envelope alongwith the application.

4. Rule.

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

6. Learned A.P.P waives notice of behalf of respondent No.1-State and Mr. Sangvikar, learned Counsel waives notice on behalf of respondent No.2.

7. By this application under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the applicant seeks quashing of the First Information Report (for short "F.I.R") registered vide C.R. No.44 of 2020 with Junnar Police Station, Pune (Rural) for the alleged offences punishable under sections 323, 341, 354, 376, 504 and 506 of the Indian Penal Code (for short "I.P.C") and

consequently, the proceeding pending before the Designated Court being RCC No.173 of 2022. Quashing is sought on the premise that the parties have amicably settled their dispute.

8. Briefly stated, facts are as follows.

9. Respondent No.2 is a married woman. Her marriage was solemnized 17th May, 2014. She has a daughter aged about four years. She resides in a joint family comprising of her in-laws. The applicant is the neighbour of the respondent No.2's family who runs a Hair Cutting Salon. Wife of the applicant runs a Beauty Parlour. Due to intermittent visits of the respondent No.2 to the said Beauty Parlour, they became friends. Sometime, in the month of October, 2019, during the festival of Diwali, the respondent No.2 had been to the Beauty Parlour of the applicant's wife. She was not there, however, the applicant was present over there. When the respondent No.2 was about to leave the parlour, it is alleged that the applicant closed the door and forcibly embarrassed her by saying that he wanted to marry her. When the respondent No.2 refused and resisted the act of the applicant, it is alleged that he threatened her of dire consequences. Thereafter, the applicant

started calling her on mobile and used to threaten her. He started stalking her continuously.

10. In the month of November, 2019, when the respondent No.2 had been to Junnar by a Jeep and about to walk towards Shingote Hospital, the applicant came over there in a Maruti Alto Car and forcibly dragged her inside. He took her to one lodge. He had snatched her purse, Aadhar Card and took her to a room in the hotel. He committed forcible sexual intercourse with her. It is alleged that she was forced to surrender as the applicant had threatened that if she did not surrender, he would kill her husband. Accordingly, a report came to be lodged on 13th February, 2020.

11. The parties have now decided to compromise and amicably settle the dispute. The respondent No.2 has sworn an affidavit dated 7th February, 2023 duly affirmed before the Assistant Registrar, High Court, Appellate Side, Bombay. A photostat copy of the Aadhar Card of the respondent No.2 duly attested by her is also annexed with the said affidavit. The same are taken on record. In paragraph 5 of the said affidavit, respondent No.2 has categorically deposed that the relations between her and the applicant were by

her consent. As her husband came to know about the said fact, as a counterblast, to save her marital life, she had lodged an F.I.R. She further categorically states that she wants to withdraw the complaint against the applicant and does not wish to proceed further in the light of the fact that she has a 7 year old daughter.

12. Respondent No.2 is present in the Court. On being questioned, she reiterates what is stated by her in her affidavit. Learned Counsel for the respondent No.2 has identified her. Learned A.P.P has verified her original Aadhar Card.

13. The Hon'ble Apex Court in a latest decision in case of **Kapil Gupta Vs. State of NCT of Delhi and another**<sup>1</sup> while quashing the F.I.R registered with Mehrauli, New Delhi Police Station for the alleged offence punishable under Section 376 of the I.P.C as well as an offence of extortion opined as to when the proceedings can be quashed by the High Courts by taking into consideration the facts, attending circumstances, sufficiency of evidence and at which stage quashing is sought. It would be apposite to extract paragraphs 13 and 14 of the judgment, which read thus;

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<sup>1</sup> Criminal Appeal No.1217 of 2022 @ SLP (CRL) No.5806 of 2022

"13. It can thus be seen that this Court has clearly held 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 as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the Court in exercising its power".

The Hon'ble Supreme Court has also referred to its judgment in case of **Narender Singh Vs. State of Punjab**<sup>2</sup>. Relevant paragraphs of

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<sup>2</sup> (2014) 6 SCC 466

the said judgment are reproduced below, which read thus;

"29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

"29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a 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 quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. 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 because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial Court would be in a position to

decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime".

The ratio laid down by the Hon'ble Supreme Court can be squarely applied to the facts of the present case.

14. Considering the nature of the dispute, amicable settlement between the parties, affidavit of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another<sup>3</sup>** and **Narinder Singh** (supra), there is no impediment in allowing the application.

15. Accordingly, we allow the application. The F.I.R bearing C.R. No.44 of 2020 registered with Junnar Police Station, Pune (Rural)

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<sup>3</sup> (2012) 10 SCC 303

as against the applicant and consequently the proceeding pending before the Designated Court being R.C.C No.173 of 2022 are quashed and set aside.

16. Rule is made absolute in the aforesaid terms. Application is disposed of accordingly.

17. All parties to act upon the authenticated copy of this order.

**[PRITHVIRAJ K. CHAVAN, J.]**

**[REVATI MOHITE DERE, J.]**