



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3058 OF 2023

1. Sandip Sundarrao Patil
2. Vikas Dadasaheb Patil
3. Sundarrao Dadasaheb Patil
4. Yashwant Gowardhan Patil
5. Rajshri Sambhaji Mite
6. Dr. Premil Yatesh Pujar

...Petitioners

Versus

The State of Maharashtra and
Anr.

...Respondents

....

Mr. Yogesh Patil for the Petitioners.
Mr. S.V. Gavand, APP for Respondent No.1-State.
Mr. Pankaj Thakur with Mr. Sarfaraj Shaikh for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI &

N.R. BORKAR, JJ.

DATED: 20th SEPTEMBER, 2023.

P.C.:-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. This is a petition under Article 226 of the Constitution of India to quash R.C.C. No.302 of 2018 pending on the file of learned Magistrate, Barshi, District-Solapur, arising from FIR No.544 of 2017 registered at Barshi City Police Station, District-Solapur, for the

offences punishable under Sections 313, 323, 376, 504 and 506 r/w 34 of the IPC and Section 5 of the Medical Termination of Pregnancy Act, 1971.

3. Learned counsel for the Petitioners and Respondent No.2 state that the parties have settled the dispute amicably and have sought to quash the FIR with consent.

4. Respondent No.2 has filed her affidavit stating that the relationship with Petitioner No.1 was consensual and that she had taken a conscious decision to abort the pregnancy since she was not legally married. She claims that she is already married to another person and has a child and is living a peaceful family life. She has accorded her consent to quash the FIR and all consequent proceedings. Respondent No.2 is present in the Court and she confirms the statements made in the affidavit.

5. The Petitioner No.1 is alleged to have committed offence under Section 376 of the IPC. The Respondent No.2 has also alleged that the Petitioner Nos.1 to 5 had compelled her to terminate the pregnancy without her consent. The Petitioner No.6, who is a

Doctor by profession is alleged to have terminated the pregnancy beyond 20 weeks without the consent of Respondent No.2.

6. Before advertng to the facts of the case, it would be relevant to refer to the decision in *Narinder Singh Vs. State of Punjab, 2014 AIR SCW 2065* wherein the Apex Court, while considering the question whether the crime registered under Section 307 of the IPC could be quashed with consent, 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 quash 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 swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

7. In *Kapil Gupta v/s. 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.

8. It is thus well settled that 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, notwithstanding 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.

9. The facts narrated in the FIR reveal that the Respondent No.2 and the Petitioner No.1 both police constables were attached to Traffic Cell of Barshi City Police Station. The Respondent No.2 was

a married woman and the divorce proceedings filed by her were pending before the Court. Respondent No.2 alleged that Petitioner No.1 had promised to marry her after her divorce. She claims that taking advantage of the fact that she was living separately from her husband, the Petitioner No.1 had physical relationship with her under the promise of marriage.

10. The Respondent No.2 also alleged that the Petitioner Nos.1 to 5 assaulted her and took her to Sushma Clinic and compelled her to terminate the pregnancy. Respondent No.2 claims that even after dissolution of her marriage, the Petitioner No.1 continued to have physical relationship with her under the promise of marriage. The Petitioner No.1 once again took her to Dr. Pujar Hospital at Karnataka and compelled her to terminate the pregnancy on the pretext that his sisters were not yet married and under a threat of committing suicide. The Petitioner No.1 had agreed to solemnize the marriage on 17/04/2017 at Alandi. He once again backed out and promised to marry after the marriage of his sisters, but later refused to marry her.

11. The FIR reveals that the Petitioner No.1 and Respondent No.2 both adults have indulged in sexual relationship multiple times since 2015 to 2017. The Respondent No.2 was pregnant twice. The 1st pregnancy was terminated during subsistence of her marriage. Though she has claimed that the Petitioner Nos.1 to 5 had assaulted her, taken her to the clinic and compelled her to terminate the pregnancy, the statement of Dr. Vijay Pandurang Karale reveals that Petitioner No.1 as well as Respondent No.2 had visited his hospital on 05/08/2015. They claimed to be husband and wife and stated that they did not want the child and requested him to terminate the pregnancy. This witness has stated that Respondent No.2 was about 8 to 10 weeks pregnant and that he terminated the pregnancy with consent of Petitioner No.1 and Respondent No.2.

12. The records further reveal that even after termination of the first pregnancy, the Petitioner No.1 and Respondent No.2 continued to have physical relationship and she was pregnant the second time. The second pregnancy was terminated by Petitioner No.6 in Karnataka. The consent form of Dr. Pujar Hospital reveals that Petitioner No.1 and Respondent No.2 visited the hospital and

Respondent No.2 had given her consent to terminate the pregnancy saying that it was due to contraceptive failure. The records thus indicate that the pregnancy was terminated with consent of Respondent No.2.

13. The allegations made in the FIR and the other material on record, even if accepted in their entirety, reveal that the physical relationship between the Petitioner No.1 and Respondent No.2 was consensual. The Respondent No.2 had indulged in sexual relationship with the Petitioner No.1 during subsistence of her marriage. Hence, the consent is not vitiated due to misconception of fact. Suffice it to say that consensual physical relationship between two adults does not constitutes rape within the meaning of section 375 of IPC.

14. The Petitioner No.6 is alleged to have committed offence under section 313 of the IPC, which prescribes punishment for causing miscarriage without the consent of the mother. It is also the case of the prosecution that the Petitioner No.6 had terminated the pregnancy after 20 weeks. As noted above, the records reveal that

the Respondent No.2 had consented to terminate the pregnancy. The report of pre-natal diagnostic test conducted on 03/03/2017 at Jaysmith Imaging Center, Barshi reveals that on 03/03/2017 the length of pregnancy was 16 weeks. The pregnancy was terminated on 30/03/2017. Hence, as on that date of termination of pregnancy, the length of pregnancy would be 19 weeks 6 days, which is within the permissible limits, stipulated in Section 3(2) of the M.T.P Act, 1971. Even otherwise, as stated earlier, termination of pregnancy was with consent of Respondent No.2 and hence, Section 313 of the IPC is not attracted. Section 312 of IPC, even if made out, is compoundable with permission of the Court by the woman to whom miscarriage is caused. In the instant case, the Respondent No.2 has given her no objection to quash the FIR not only against Petitioner No.1 and his family members but also against Petitioner No.6-Dr. Premil Yatesh Pujar.

15. Having gone through the records, in our considered view, the facts narrated in the FIR as well as other material on record even if accepted in totality, do not disclose any offence of serious and heinous nature. The Respondent No.2 has also stated in her affidavit

that she is now married, with a child and that she wants to proceed with her matrimonial life, leaving the past behind. In such circumstances, continuance of criminal prosecution is likely to jeopardize her family life.

16. Under the circumstances and in view of discussion supra, the Petition is allowed in terms of prayer clause (a). Consequently, R.C.C. No.302 of 2018 pending on the file of learned Magistrate, Barshi, District-Solapur arising from FIR No.544 of 2017 registered at Barshi City Police Station, District-Solapur for the offences punishable under Sections 313, 323, 376, 504 and 506 r/w 34 of the IPC and Section 5 of the Medical Termination of Pregnancy Act, 1971, is hereby quashed with direction to the Respondent No.2 to pay costs of Rs.25,000/- to the Tata Memorial Hospital, Mumbai within a period of two weeks from the date the order is uploaded.

17. Petition stands disposed of in above terms.

18. Stand over to **12/10/2023** for compliance.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)