

(2019) 02 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 1810 Of 2018

Ravindra Laxman Ghogardare

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 312, 376, 376(2)(n), 420

Citation : (2019) 02 BOM CK 0016

Hon'ble Judges : S.S. Shinde, J; R.G. Avachat, J

Bench : Division Bench

Advocate : D.C. Awari, S.B. Joshi, R.C. Bora, R.P. Bidwe

Final Decision : Dismissed

Judgement

S.S.Shinde, J

[1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

[2] This Petition is filed praying therein to quash and set aside the FIR vide Crime No.I-266/2018, registered with Kotwali Police Station, Ahmednagar, for the offences punishable under Sections 376 (2) (n), 420 and 312 of the Indian Penal Code.

[3] In brief, it is alleged in the FIR by respondent no.2 that, the applicant and respondent no.2 are resident of the same village. The applicant is residing adjacent to the house of the parents of respondent no.2. Respondent no.2 was working as Nurse in the Priti Deshpande Hospital, Anandibazar, Ahmednagar. She started residing at Mudgalwada, Nalegaon. The applicant, whose mobile Number is 7720006373, used to call respondent no.2 on her mobile Nos.9623579403 and 9767340577, and used to tell her that he loves her. It is alleged that on 22nd December, 2015, at 7.00 p.m. the applicant came to meet respondent no.2 at Sidhi Baug, Ahmednagar, and then they went to the garden, there the applicant told her that the applicant loves respondent no.2. Thereafter, he left Ahmednagar

and went to his native place. Again he came at Ahmednagar on 25th December, 2015, and respondent no.2 was called at Delhi Gate, and on his motorbike the applicant took respondent no.2 to Chandbibhi Mahal and promised her that, the applicant will marry with her. However, she should not tell to her family members and respondent no.2 gave consent for such marriage. Thereafter, the applicant caught hold her and took selfie in his mobile. Thereafter, he left respondent no.2 at Ahmednagar and he left for Pune.

[4] It is further alleged that in the month of March, 2016, the applicant came at Kedgaon, Ahmednagar, and stayed in Nisha Lodge. Respondent no.2 was called by the applicant at the said Lodge, and one night they stayed there. On the said night, by giving promise of marriage, the applicant without consent of respondent no.2, forcibly committed rape twice. On next day morning, he left her at Delhi Gate and went to Pune. Thereafter, he used to come at Nisha Lodge frequently, and used to call her for sexual intercourse. Thereafter, the applicant took respondent no.2 to Pimpri Chinchwad, Pune, and also performed sex with her. In the year 2016, respondent no.2 suspected that, she is pregnant, and after ascertaining that she is pregnant, she informed the applicant. On 9th June, 2016, the applicant called her at Bhugaon Lawasa Phata, Pune, and in Inamdar Hospital, terminated the pregnancy; informing the said Hospital that the applicant and respondent no.2 are the husband and wife. When respondent no.2 asked the applicant in the month of January, 2017, to perform marriage, the applicant started avoiding.

Again the applicant called respondent no.2 on 6th and 7th November, 2017, at Omega Hotel, Pune, and performed sex with her. During the said night, there was one call to the applicant. Respondent no.2 enquired the applicant about the said call, when the applicant informed her that, the said call was by one Usha, a girl selected by his parents for performing marriage with him. Then respondent no.2 told the applicant that the applicant was to marry her. Then the applicant started quarreling with her and told respondent no.2 that, he would not solemnize / perform marriage with her. Thereafter, respondent no.2 came to Ahmednagar and went to the place of her parents that the applicant is not ready to marry with her. Thereafter, respondent no.2 along with her parents went to the house of the applicant, however, the parents of the applicant stated that already the marriage of the applicant is fixed with some other girl. Thereafter, with intervention of the relatives and well wishers, respondent no.2 tried to convince the applicant to perform the marriage, however, the applicant refused to marry. Therefore, respondent no.2 lodged the FIR, alleging that during the period of 22nd December, 2015 to 7th November, 2017, the applicant, by giving promise of marriage, without consent of respondent no.2, committed sex, and as a result respondent no.2 became pregnant, and subsequently, the said pregnancy was terminated. The applicant has cheated respondent no.2.

[5] It is the case of the applicant that the applicant and respondent no.2 have settled the dispute amicably, and respondent no.2 has given consent for

quashing the FIR. Respondent no.2 has no grievance for quashing such FIR, since they have resolved their dispute.

[6] During the course of hearing, learned counsel appearing for the applicant pressed into service the judgments of the Supreme Court in the case of Gian Singh V/s. State of Punjab and another 2012 (10) SC Page 303;, in the case of Narinder Singh & others Vs. State of Punjab & another 2014 AIR SCW 2065, and in the case of Anup K. Paul Vs. State of Rajasthan & another in Criminal Misc. Petition No.2556 of 2016 [Rajasthan High Court], decided on 24th July, 2015, and submits that the Application may be allowed.

[7] Respondent no.2 has filed affidavit and also additional affidavit, stating therein that the applicant and respondent no.2 have agreed to settle their dispute amicably, and to that effect the consent terms are placed on record. It is stated that the applicant and respondent no.2 have no grievance against each other. They do not have claim against each other.

[8] It is stated in the additional affidavit filed by respondent no.2 that respondent no.2 wants to marry with some other boy, and to that effect already there is an engagement, but due to the present pending criminal proceedings there is impediment to perform the marriage.

[9] On the other hand, learned APP appearing for the respondent-State vehemently opposed the prayer for quashing the FIR, and submits that there are serious allegations by respondent no.2 of forceful sexual assault against her Will, and without her consent. Learned APP submits that the Supreme Court in the case of State of M.P. Vs. Madanlal 2015 [7] SCC 681 held that rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. He further invites our attention to the judgment of the Division Bench [Coram : Naresh H. Patil & Prakash D. Naik, JJ.] at Principal Seat at Bombay, in the case of Mohammad Faizan Amir Khan Vs. The State of Maharashtra & others in Criminal Writ Petition No.1721 of 2016, and submits that in similar set of facts the Division Bench has rejected the prayer to quash the FIR on the basis of alleged settlement, relying upon the judgment of the Supreme Court in the case of Gian Singh [supra].

[10] We have given careful consideration to the submissions of the learned counsel appearing for the applicant, learned APP appearing for the respondent-State and learned counsel appearing for respondent no.2. If the allegations in the FIR are perused carefully, it is alleged that, the applicant has performed sexual intercourse with respondent no.2 without her consent and against her Will on various occasions. It is true that the consent terms are filed on record stating that the applicant and respondent no.2 have settled the dispute.

However, an alleged offence is punishable under Section 376 of the IPC, it is not possible to accept such alleged settlement and quash the FIR. The Supreme Court in the case of State of M.P. Vs. Madanlal [supra] in paras 15 to 19 held thus:

15. Having stated the aforesaid, ordinarily we would have proceeded to record our formal conclusion, but, an extremely pertinent and pregnant one, another aspect in the context of this case warrants to be addressed. As it seems to us the learned Single Judge has been influenced by the compromise that has been entered into between the accused and the parents of the victim as the victim was a minor. The learned trial Judge had rejected the said application on the ground that the offence was not compoundable. In this context, it is profitable to reproduce a passage from *Shimbhu and Another v. State of Haryana* [(2014) 13 SCC 318] wherein, a three-Judge Bench has ruled thus:-

"Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at] between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376 (2) IPC."

16. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility. It has to be kept in mind, as has been held in *Shyam Narain v. State (NCT of Delhi)* [(2013) 7 SCC 77] that:-

"Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyones mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men."

17. At this juncture, we are obliged to refer to two authorities, namely, Baldev Singh v. State of Punjab[(2011) 13 SCC 705] and Ravindra v. State of Madhya Pradesh [(2015) 4 SCC 491]. Baldev Singh (supra) was considered by the three-Judge Bench in Shimbhu (supra) and in that case it has been stated that:-

"18.1. In Baldev Singh v. State of Punjab, though the courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1000 to Rs. 50,000. In the light of series of decisions, taking contrary view, we hold that the said decision in Baldev Singh v. State of Punjab cannot be cited as a precedent and it should be confined to that case." 18. Recently, in Ravindra (supra), a two-Judge Bench taking note of the fact that there was a compromise has opined thus:-

"17. This Court has in Baldev Singh v. State of Punjab, invoked the proviso to Section 376 (2) IPC on the consideration that the case was an old one. The facts of the above case also state that there was compromise entered into between the parties.

18. In the light of the discussion in the foregoing paragraphs, we are of the opinion that the case of the appellant is a fit case for invoking the proviso to Section 376(2) IPC for awarding lesser sentence, as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although we uphold the conviction of the appellant but reduce the sentence to the period already undergone by the appellant. The appeal is disposed of accordingly."

19. Placing reliance on Shimbhu (supra), we also say that the judgments in Baldev Singh (supra) and Ravindra (supra) have to be confined to the facts of the said cases and are not to be regarded as binding precedents.

[11] Since the rape is not compoundable offence, and it is an offence against the society, as observed by the Supreme Court in the aforesaid judgment, it is not a matter to be left for the parties to compromise and settle. We are not inclined to quash the impugned FIR on the basis of alleged settlement. The Division Bench [Coram : Naresh H. Patil & Prakash D. Naik, JJ.] at Principal Seat, in the case of Mohammad Faizan Amir Khan Vs. The State of Maharashtra & others in Criminal Writ Petition No.1721 of 2016, in similar facts situation, in para 8 and 9 held thus:

8. In the case of Gian Singh v. State of Punjab and another (2012) 10-SCC-303, the Apex Court has observed that the power of quashing should be exercised very sparingly. Paragraph 58 of the said decision reads as follows:

"58. Where the High Court quashes a criminal proceeding 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 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.

No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.

The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed"

9. In the aforesaid paragraph, the Apex Court has observed that in respect of serious offences like murder, rape, dacoity etc or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special

statutes like Prevention of Corruption Act, the settlement between the offender and the victim can have no legal sanction at all. Taking into consideration the law laid down by the Apex Court as above and the factual aspects of the present case, we are not impressed with the submissions made by learned counsel for the Petitioner and the third Respondent. It is not possible at this stage to give finding that offence under Section 376 of IPC is not made out in the FIR. The factual aspects of the FIR fortified by the conduct of the accused and subsequent events, are sufficient to decline the prayers made in this petition. The observations made herein are only for the purpose of deciding the present petition.

[12] Taking into consideration the law laid down by the Supreme Court in the case of State of M.P. Vs. Madanlal [supra], and in the case of Gian Singh [supra], and the factual aspects of the present case, we are not inclined to allow the Application and quash the FIR on the basis of alleged settlement. It is not possible at this stage to give finding that offence under Section 376 of IPC is not made out. The allegations in the FIR, and the conduct of the accused and subsequent events, are sufficient to decline the prayers made in the Petition. Hence the Petition stands dismissed. Rule stands discharged.

[13] An observations made herein above are only for the purpose of deciding the present Petition.