

(2015) 06 BOM CK 0181

In the Bombay High Court

Case No : Criminal Writ Petition No. 4779 of 2014

XXX

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307, 376

Citation : (2015) 06 BOM CK 0181

Hon'ble Judges : R.V. More, J;Anuja Prabhudesai, J

Bench : Division Bench

Advocate : V.Y. Mishra, for the Appellant; M.M. Deshmukh, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner and the learned APP for the State. The petition is filed by the complainant herself under Article 226 of the Constitution of India r/w. with the provisions of Section 482 of Cr.P.C. for quashing the proceeding of FIR No. 508 of 2014 registered with the Wadala Police Station, Wadala, against the respondent no. 3 for the offence punishable under Section 376 of Indian Penal Code.

2. Learned Counsel for the petitioner submits that the petitioner and respondent no. 3 have agreed to get married and hence the petitioner does not wish to proceed further with the said FIR. The father of respondent no. 3 is also present in the court. He submits that the respondent no. 3 is at present employed in Saudi Arabia and he is likely to return to India within a month for Ramzan festival. He further submits that the marriage of the petitioner and the respondent no. 3 would be solemnized during this period. Statement accepted.

3. We have perused copy of the FIR. A perusal of the same shows that the petitioner is major and she was friendly with the respondent no. 3. Their physical

relationship was consensual, and the only reason for the petitioner filing the complaint was that the respondent no. 3 refused to marry her in view of the objection of his family members.

4. The petitioner has filed affidavit dated 24.11.2015. She is personally present before the Court. On specific query made by us, she submitted that she has made the said statement in the affidavit on her own free will, without there being any pressure or undue influence. She has further confirmed that she has no objection for quashing the criminal proceedings in question initiated by her against the respondent no. 3 for the offence punishable under sections 376 IPC.

5. It is true that the offence under Section 376 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph 28 of *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 wherein the Apex Court has held as under:

"28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is 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 IPC as well. Therefore, only because FIR/Chargesheet 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. We are, therefore, of the opinion that 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 the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the chargesheet, the court can accept the plea of compounding of the offence based on settlement between the parties."

6. The decision of the Apex Court. Thus, makes it clear that the court cannot decline to quash the FIR merely because the FIR incorporates a particular provisions which is a serious offence or an offence against the society. The court has to endeavour to find out whether the FIR indeed discloses ingredient of such offence and that the court can accept the settlement and quash the FIR/Chargesheet if the court is of the opinion that such an offence is unnecessarily incorporated in the chargesheet.

7. In the instant case, the FIR reveals the physical relationships between the petitioner and the respondent no. 3 was consensual. In view of the above circumstances and even otherwise, we find that no offence under Section 376 IPC is made out.

8. In the circumstances we find no purpose would be served by keeping the FIR and criminal proceeding against the petitioner except burdening the criminal courts which are already overburdened. Not only that, it would hamper the healthy relationship between the petitioner and the respondent No. 3 and they would be put to unnecessary hardship of attending the police and court. We find that quashing of the FIR would be in the best interest of the petitioner herself and the respondent no. 3.

9. In the light of the principles laid down by the Apex Court in *Narinder Singh and Others Vs. State of Punjab and Another*, (2014) AIRSCW 2065 : (2014) CriLJ 2436 : (2014) 4 JT 573 : (2014) 4 SCALE 195 : (2014) 6 SCC 466 we are of the considered view that there is no impediment in quashing the FIR in question. Accordingly application/petition is allowed in terms of prayer clause (a).