

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 114 OF 2012

**SAHEBRAO HARCHAND MARATHE
VERSUS
THE STATE OF MAH AND ANR**

...

Advocate for Petitioners : Mr. N.L. Chaudhary h/f Mr.
Shinde Ravindra S

APP for Respondent/State : Mr. S.G. Nandedkar
Advocate for Respondent no.2 : Mr. Shinde Digambar B.

...

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
Dated: March 12, 2015

...

PER COURT :-

This Petition is filed with the following prayer :-

"B. By way of appropriate writ, order or directions in the like nature, the criminal proceedings initiated in furtherance of FIR/complaint, registered with Dhule Taluka Police Station, vide C.R. No. 164/2009, for offences U/s 307, 504, 506 OF Indian Penal Code, pending before the Ld. Sessions Judge, Dhule, as Sessions case No. 172/2009, may kindly be quashed and set aside, in furtherance of compromise pursis (Ex.-B)."

2. In pursuant to the notices issued to the Respondents, the Respondent No.1-State has filed the affidavit in reply. The learned counsel appearing for the

petitioner and Respondent No.2 invited our attention to the compromise pursis filed by Sahebrao Harchand Marathe i.e. original accused and Vishnu Kautik Patil original complainant and submits that, after the alleged incident the complainant and the petitioner have developed cordial relations. So also the elder persons in the village, with a view to make the village dispute free (Tanta Mukti) have advised the petitioner as well as Respondent No.2 for settling the dispute, and therefore, the parties have decided to set at rest the dispute between them and accordingly, amicable settlement has been arrived.

3. When the Petition is taken up for hearing today, the learned counsel appearing for the parties have tendered across the bar further compromise pursis not only between the original accused and complainant but even signed by the injured person namely Bharat Vishnu Patil. Paras 1 to 3 of the said compromise pursis read thus :-

“1. That, I am the Orig. injured person in the said crime (165/2009). the above crime was registered with Dhule Taluka Police Station and investigation has been completed and Charge Sheet has been filed and thereafter, the case is committed to the court of Sessions bearing Sessions Case No. 172/2009. During the pendency of this crime/sessions case we have understood our faults of disputing on political rivalry. Accordingly, the complainant and the accused have prepared and executed undertaking affidavits for amicable settlement and compromise in the above mentioned crime i.e. C.R. No. 164/2009 and Sessions Case No. 172/2009.

They all have stated that there was previous rivalry in both the groups and as such complaint has been lodged. However, in the said alleged incident dated 05.09.2009. Accordingly, all of them have executed the affidavit that the said crime which has been registered, merely due to misunderstanding and in a state of anger, only because of previous political rivalry.

2. The deponent further submits that, being the main injured person in the said crime, I do hereby submit that, even though I had sustained injury in the said incident, the same has not caused any permanent physical disability to me. Now my health is proper and in well condition. Accordingly, I support contention of original complainant i.e. my father about settling the said dispute/crime amicably before this Hon'ble High Court. I have no any grievance against the present applicant i.e. the original accused in respect of the said crime. In view of and in furtherance of the said amicable settlement all of us have decided to give-up the disputes amongst ourselves and to stay amicably and peacefully without any grudge against each other.

3. That, all of us i.e. myself, injured Bharat S/o Vishnu Patil and complainant, who have herein below signed, verified and executed this Compromise Pursis do hereby undertake and affirm that hence afterwards i.e. in future we all will reside peacefully and amicably and we all assure that we will not quarrel or create any dispute amongst us. We assure and affirm before this Hon'ble High Court that in future there will not be any such incident of dispute, quarrel against each other.

4. The learned counsel appearing for the parties relying upon the averments in the compromise pursis jointly submit that, this Petition may be allowed.

5. The accused, complainant and injured witness Bharat Vishnu Patil are present before this Court. On interacting with them, they have stated that, they have amicably settled the dispute with the help of elder persons in the village. The settlement arrived between the parties is with free will and without any coercion. Injured witness is specifically interacted whether he has agreed to set at rest the dispute and for quashing the C.R. No. 164/2009 registered with Dhule Taluka Police Station and further proceedings based upon it with free will and without any coercion. He stated that, he has agreed for such settlement without any coercion and with free will.

6. The Supreme Court in the case of **Narinder Singh & others Vs. State of Punjab & another**¹ in para 29 has laid down the principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Cr.P.C. The Hon'ble Supreme Court in the said case in para No.29 observed, thus:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the

1. (2014) 6 SCC 466

Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of

commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

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 is 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 later 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.”

7. In the case of **Narinder Singh** (Supra), it appears that, the accused therein were charged under various provisions of the Indian Penal Code. It appears that, injuries 1 to 3 were caused with sharp-edged weapons and injury 4 was simple. However, the Supreme Court keeping in view the principles laid down in para 29 of the said judgment, proceeded to examine the allegations in the First Information Report and after considering the allegations in the First Information Report, the evidence collected by the prosecution agency and in particular the medical evidence reached to the conclusion that, even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The Supreme Court further observed that, the chances of conviction, therefore, appear to be remote. Therefore, prayer for quashing the proceedings arising out of the First Information Report, which was the subject matter of the said case was allowed.

8. In the facts of the present case, upon considering the averments in two affidavits in the nature of compromise pursis, one thing is certain that, the neither the complainant nor the injured witness are interested to prosecute the petitioner and in all probabilities they may not support the prosecution case, and therefore, the chances of

conviction on the basis of the material collected by the prosecution are remote.

9. In that view of the matter and applying the principles laid down by the Supreme Court in case of Narinder Singh (supra) and in particular clauses 29.2, 29.5, 29.6 and 29.07, the present settlement arrived between the parties deserves to be accepted in the light of discussion in foregoing paragraphs. The Petition is allowed in terms of prayer clause 'B' and stands disposed of. Rule made absolute in the aforesaid terms.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

sga/-

...