IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2230 OF 2014

1] Laxman S/o Dharba Bobade,
Age : 45 Years, Occu.: Agril,

2] Uttam S/o Laxman Bobade,
Age : 25 Years, Occu.: Agril,

Both R/o Padegaon, Tq. Gangakhed,
Dist. Parbhani. **...Applicants**

Versus

1] The State of Maharashtra

2] Hanumant S/o Satyabhan Kale,
Age : 28 Years, Occu.: Agril,
R/o Padegaon, Tq. Gangakhed,
Dist. Parbhani.

...Respondents

...

Mr. Sudarshan J. Salunke, Advocate for the Applicants.
Mr. S.G. Karlekar, APP for Respondent/State.
Mr. P.B.Kadam, Advocate h/f Mr.S.G. Kawade, Advocate for Respondent No.2

CORAM : S.S. SHINDE &
A.M. BADAR, JJ.

DATE OF RESERVING THE JUDGMENT : 28TH JANUARY, 2015
DATE OF PRONOUNCEMENT OF JUDGMENT: 30TH JANUARY, 2015

JUDGMENT :- [PER A.M. BADAR, J.]:

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] This is an application under Section 482 of the Code of Criminal Procedure 1973 (“Cr.P.C.” for the sake of brevity) whereby, applicants/accused in Crime No. 39 of 2014 for the offence punishable under sections 307, 323, 504 r/w. 34 of iPC registered at Police Station, Gangakhed District Parbhani, are praying for quashing and setting aside the FIR. Initially, informant Hanumant Satyabhan Kale was also arrayed as applicant No.3. However, subsequently he was transposed as respondent No.2 as per the order passed by this Court on 13.11.2014.

3] Facts in brief are thus :-

On 31.1.2014, while taking treatment as indoor patient at Medical Hospital Ambejogai, informant Hanumant Satyabhan Kale r/o. Village Padegaon, Taluka Gangakhed, District Parbhani, gave a statement to police, contending that on 24/1/2014 at about 8.30 a.m., he visited his field to have a look the crop. At that time, applicant/accused Laxman and Uttam Bobade came there and questioned him as to why he entered the field. He was slapped and

subsequently, applicant/accused No.1 Laxman caught hold of him and applicant/accused No.2 Uttam administered poison to him. Informant/respondent No.2 Hanumant Kale further stated that telephonically informed about this incident to his brother Narhari Kale, who rushed to the spot of incident. Then by hiring an auto-rickshaw, he was taken to Sub-District Hospital, Gangakhed and thereafter, to the Government Hospital Ambejogai. It was on 6.2.2014, that on the basis of that statement of informant/respondent No.2 – Hanumant Kale, offence vide Crime No. 39 of 2014 under Sections 307, 323, 504 of IPC, came to be registered at Police Station, Gangakhed. The spot was then inspected and other routine investigation started.

4] This Court, vide order dated 11.6.2014, while issuing notice to respondents/accused has been pleased to pass an interim order directing that the charge sheet, if not filed, then should not be filed.

5] On 28th January, 2015, respondent No.2/informant Hanumant Satyabhan Kale as well as both the applicants/accused appeared before us. Their respective counsel duly identified them and we had an occasion to interact with them. Respondent No.2/informant Hanumant Satyabhan Kale has stated in tune with his affidavit dated

26.11.2014 that both the applicants/accused are his relatives and with intervention of wise elder villagers and other relatives differences between him and applicants/accused are sorted and that they have amicably settled the matter. Respondent No.2/informant Hanumant Satyabhan Kale further made it clear before us that for continuing the peace and harmony between his family as well as families of applicants/accused, appropriate orders may kindly be passed.

6] Upon questioning respondent No.2/informant Hanumant Satyabhan Kale, we are satisfied that he has settled and compromised the matter with applicants/accused without any coercion, undue influence and misrepresentation and settlement is an outcome of free will of the respondent No.2/informant Hanumant Satyabhan Kale. Both the applicants/accused have also made clear before us that difference between them and respondent No.2/informant Hanumant Satyabhan Kale are settled because of intervention of elders in the family as well as Naroba @ Narhari – brother of respondent No.2/informant Hanumant Satyabhan Kale. Our attention is also drawn at affidavit placed on record at Exhibit B, sworn on 8.4.2014, by Narhari Satyabhan Kale – brother of respondent No.2/informant Hanumant Satyabhan Kale stating that the differences between the parties are amicably settled and they are now residing in the same

village in cordial and peaceful manner. Undisputedly, both the parties are resident of village Padegaon, Taluka Gangakhed, District Parbhani.

7] We have also heard the learned APP and perused the papers of investigation supplied to us by him.

8] Now, let us examine, whether the criminal proceedings initiated against applicants on the basis of FIR in Crime No. 39 of 2014 for the offence punishable under Sections 307,323, 504 r/w. 34 of IPC needs to be quashed and set aside. Applicants/accused have resorted to the provisions of Section 482 of Cr.P.C. for quashing and setting aside the crime in question. Inherent powers under Section 482 of Cr.P.C. needs to be exercised with caution and circumspection for achieving following twin objects :-

[a] to prevent abuse of process of any court;

[b] to secure ends of justice.

Powers under Section 482 of Cr.P.C. are distinct and different than the powers of compounding of offence under Section 320 of Cr.P.C. In the matter of ***Gian Singh vs. State of Punjab reported in (2013) 10 SCC 303***, the circumstances in which criminal proceedings in non compoundable case can be quashed when there is settlement between the parties, is considered by the Honourable Apex Court and the legal

position is summarized in the following words :-

> "The position that emerges from the above discussion can be summarized thus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under

special statutes like the Prevention of Corruption Act, or the offences committed by public servants while working in that capacity, etc,: cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavor stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding or continuation of the criminal proceeding would tantamount to

abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) as in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

9] The aspect of quashing the proceeding for the offence punishable under Section 307 of IPC came for consideration before the Honourable Apex Court in the matter of ***"Dimpey Gujral W/o Vivek Gujral and others V/s Union Territory through Administrator, U.T. Chandigarh and others"*** reported in ***AIR 2013 SC 518,*** the Honourable Apex court, has observed thus in para 5.

"5. In light of the above observations of this court in Gian Singh, we feel that this is a case where the continuation of criminal proceedings would tantamount to abuse of process of law because the alleged offences are not heinous offences showing extreme depravity nor are they against the society. They are offences of a personal nature and burying them would bring about peace and amity between the two sides. In the circumstances of the case, FIR No. 163 dated 26/10/2006 registered under Sections 147, 148, 149, 323, 307, 452 and 506

of the IPC at Police Station Sector 3, Chandigarh and all consequential proceedings arising therefrom including the final report presented under Section 173 of the Code and charges framed by the trial court are hereby quashed."

10] Learned counsel for the applicants/accused has relied upon the judgment in the matter of ***Narinder Singh and others Vs. State of Punjab and another***, reported at ***(2014) 6 SCC 466***, wherein, the question for consideration was, whether FIR in offence punishable under Section 307 of IPC can be quashed due to settlement of parties. The Honourable Apex Court, after considering the entire law on this aspect has held that in cases where 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 further held that the High Court can quash the FIR if the chances of conviction are remote and bleak. Similarly, factors such as intervention of the elders of the village in the matter, resulting in the parties burying their hatchets for deciding to live peacefully are also stated to be relevant for quashing the proceedings, though the offence is alleged to be punishable under Section 307 of the IPC. In that matter, the Honourable Apex Court, accepting the compromise

between the parties, quashed the criminal proceeding.

11] Keeping in mind these guidelines, let us examine, the case in hand. Duly sworn testimonies of respondent No.2/informant Hanumant Satyabhan Kale as well as applicants/accused persons do show that the elders in village have intervened in the matter, resulting in amicable settlement of differences between the parties. Affidavit of Narhari Kale – Brother of respondent No.2/informant Hanumant Satyabhan Kale do show that elders in the village as well as he himself had intervened in the matter for achieving amicable settlement and now both the parties are residing in peaceful manner in village Padegaon. There is no reason to disbelieve the same.

12] In the case in hand, the investigation is at initial stage. In fact, after an interim order passed by this court, as seen from the papers of investigation supplied to us by the learned APP, there is no further investigation in the matter. Allegations in the FIR are to the effect that both applicants/accused forcibly administered poison to respondent No.2/informant Hanumant Satyabhan Kale in the field at Padegaon on 24.1.2014 at 8.30 a.m. The FIR shows that the informant/respondent No.2 informed about this incident to his brother Narhari Kale, by making a telephonic call and then Narhari came to the

spot and took the informant/respondent No.2 Hanumant to the hospital at Gangakhed and then to the hospital at Ambejogai. Statement of respondent No.2/informant Hanumant Satyabhan Kale came to be recorded on 31.1.2014, which was treated as FIR. However, though this statement was available with police right from 31.1.2014, the offence came to be registered on 6.2.2014. The papers of investigation do not reflect any reason for this delay. Why Narhari Kale – brother of informant, who was knowing about the incident right from 24.1.2014 has not lodged report to the police is also a fact totally unexplained in the papers of investigation. The spot panchanama shows that nothing objectionable was found on the spot. The bottle of poison allegedlly administered to respondent No.2/informant Hanumant Satyabhan Kale came to be seized from applicant No.2-Uttam on 18.3.2014. In the wake of amicable settlement arrived at between the parties and on the background of this factual position reflected from the papers of investigation, it is seen that the chances of conviction are very remote and bleak. Considering the fact that accused persons as well as informant are relatives residing in the same village, we are of the considered view that the settlement between the parties is going to result in harmony between them and improvement in their future relationship. At this juncture, it is necessary to refer to the ruling in the matter of Yogendra Yadav and

others Vs. State of Jharkhand and others reported in (2014)9 SCC 653, wherein, the Honourable Apex Court was pleased to quash Case No. 155 of 2004 at Police Station, Meharma, registered under Sections 341, 323, 324, 504 and 307 read with 34 of IPC, as the parties therein had amicably settled the matter, by contending that now there is harmonious relationship between the two sides and that they are living peacefully. Therefore, the peculiar facts of the present case require us to accept the contention of the parties that for securing the ends of justice and in order to prevent the abuse of process of court, the FIR in question needs to be quashed and set aside. Hence the order :-

[a] The application is allowed in terms of prayer clause (D). Crime No. 39 of 2014, for the offences punishable U/s 307, 323, 504 r/w 34 of IPC, registered at Police Station, Padegaon, Taluka Gangakhed, District Parbhani on dated 6.2.2014, on the basis of FIR of respondent No.2/informant Hanumant Satyabhan Kale r/o. Padegaon, is quashed and set aside.

[b] Rule made absolute in above terms.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-