

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 21 OF 2013

Shri Arjun Masurkar,
s/o Shri Laxman Masurkar,
Major of age,
r/o H.No.20, Assodem,
Khotodem, Sateri, Goa. ... Appellant.

V e r s u s

1. State of Goa,
(Collem Police Station)
10, Collem Goa Sanguem
South Goa.
2. Public Prosecutor,
Through its office at
High Court Complex,
Altinho-Panaji Goa. ... Respondents

Mr. P. Lotlikar, Advocate for the appellant.

Mr. M.A. Amonkar, APP for the State/respondents.

Coram: K. L. WADANE, J.

Judgment reserved on : 21/09/2015

Judgment pronounced on :23/09/2015

ORAL JUDGMENT :

Heard Mr. Lotlikar, learned counsel appearing for the appellant and Mr. Amonkar, learned Additional Public Prosecutor appearing for respondents.

2. The present appeal is filed by the appellant against the

judgment and order dated 24.1.2013 passed by the learned Additional Sessions Judge, Fast Track Court-I, South Goa, Margao in Sessions Case No.10/2011. By the said judgment, the learned Trial Judge has convicted the appellant for offence punishable under Section 326 of the Indian Penal Code and has sentenced the appellant to undergo imprisonment for a term of five years and to pay compensation of Rs. 50,000/- to his wife in default to undergo further rigorous imprisonment for a period of six months. However, the trial Court has acquitted the appellant for the offence punishable under Section 307 of the Indian Penal Code.

3. The brief facts of the case may be summarised as under:-

On 4.7.2000 at about 18.15 hours at Masandiwada, Mollem, Sanguem, Goa, the appellant brutally assaulted his wife - Smt. Geeta Masurkar with an iron rod, slaps, kicks and fist blows on her head and other parts of her body. Thereafter the appellant fled away from the spot of incident. The report was lodged of the incident to the Police Station, Collem. Crime No. 22/2010 for the offence punishable under Sections, 326 and 307 of the Indian Penal Code was registered. During the investigation, the Investigating Officer prepared spot panchanama and other usual formalities and filed Charge-sheet before the Court. Thereafter the Sessions Judge has recorded the evidence and convicted the accused as stated in paragraph 2 of the judgment.

4. The present appeal is admitted by this Court on 22.4.2013 and the matter was fixed for final hearing. During the pendency of the appeal, the appellant has moved application contending that both the parties are agreed and assured that henceforth they would maintain healthy relationship with each other. It is further contended that presently, the appellant and his wife have no grudge between them and wants permission of this Hon'ble Court to compound the offence in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure. The appellant has been charged for the offences which are non-compoundable and the same cannot be compounded by the Judicial Magistrate First class under Section 320 of the Code of Criminal Procedure. Therefore, the appellant has moved the present application/petition.

5. After perusing the entire record and after going through the entire evidence oral as well as documentary and Criminal Misc. Application No.166/2015, it appears that there was dispute between appellant and his wife on the grounds mentioned detailed in the judgment passed by the trial Court. The alleged offence committed by the appellant/accused is admittedly not an heinous and serious offence. The Apex Court in the case of **Gian Singh V/s State of Punjab and Another, reported in (2012) 10 SCC 303** has held at para 61 thus :-

“61. The position that emerges from the above discussion can be summarised 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 plenitude with no statutory limitation but it has to be exercised in accord with the guideline 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 F.I.R 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 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 flavour 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, 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 would tantamount to abuse of process of law despite settlement and compromise between the victim and 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) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal

proceeding.”

4. Taking note of the above observations, considering the facts and circumstances of the present case and taking into account compromise between parties particularly when they are close relatives i.e husband and wife and to meet the ends of justice, I am of the opinion that the appellant and respondent no.3 can be permitted to compound the offences. Therefore, the application filed by the appellant and respondent no.3 jointly signed by both parties dated 17.07.2015 is hereby allowed and the judgment passed by the Sessions Judge is quashed and set aside. The appellant is acquitted for the offence punishable under Section 326 of the Indian Penal Code in Sessions Case No. 10/2011.

The appeal stands disposed of accordingly.

K. L. WADANE, J

mukund