

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 65 OF 2015

1. Mr. Abdul Manan Neamati,
son of Haji Abdul Hai,
aged 22 years, Afghan Nationality,
R/o Near Cidade De Goa Hotel,
Donapaula Goa.
N/o Taimani Farah- 1st District,
Kabul, Afghanistan.
2. Mr. Naqib Watanwal,
Son of Mohammad Hashim Khan,
Aged 20 years, Afghan Nationality,
r/o Near Cidade De Goa Hotel,
Donapaula Goa.
N/o Taimani Frah-1st District,
Kabul, Afghanistan.
3. Mr. Mayiullah Azizi,
S/o Abdul Maik,
23 years, Afghan Nationality,
r/o Near Cidade De Goa Hotel,
Donapaula Goa.
N/o Taimani Frah-3rd District,
Kabul, Afghanistan.
4. Mr. Shahmahmood Bahbodi,
Son of Haji Mohammad Zahir,
Aged 21 years, Afghan Nationality,
R/o Nobel Shelter, Caranzalem Tiswadi Goa.
N/o Khoshal Meena, Kabul, Afghanistan.
5. Mr. Masood Haider,
S/o Ghulam Haider,
20 years, Afghan Nationality,
R/o Near Cidade De Goa Hotel,
Donapaula Goa.
N/o Mazar-re-Sharif, Darwaza E Shadyan,
Afghanistan.
6. Mr. Mansoor Ahmed,
S/o Abdul Ghafoor,
21 years, Afghan Nationality,

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R/o Behind DMC College,
Mapusa Goa.
N/o Dist. II, Share-New, Kandhar, Afghanistan.

7. Mr. Azamattullah Barak,
S/o Haji Hidayattullah,
24 years, Afghan Nationality,
R/o H. No.378, Durgawadi,
Taleigao Goa.
N/o Shikarpoor Bazar,
Kandhar, Afghanistan. .. Petitioners

V e r s u s

1. State of Goa,
Through Public Prosecutor,
High Court Complex,
Panaji Goa.
2. Mr. Abdul Wahid,
Son of Abdul Zahir,
Aged 21 years,
R/o Flat No.8-S2, Rosary Apartment,
Miramar, Panaji Goa.
3. Ahmad,
Son of Ahmad Jaber,
Aged 22 years,
R/o Flat No.8-S2, Rosary Apartments,
Miramar Goa.
4. Islamuddin Salimee,
Son of Haji Abdul Hai,
aged 19 years,
R/o C 1, Block C, Sand Dunes Building,
Miramar, Panaji Goa. ... Respondents

Mr. Gaurish Agni, Advocate for the petitioners.

Mr. S. R. Rivonkar, Public Prosecutor for respondent no.1.

Mr. P. Arolkar, Advocate for respondent nos. 2 to 4.

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**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Date :- 16th June, 2015

ORAL JUDGMENT (Per K. L. Wadane, J)

Heard Mr. G. Agni, learned counsel appearing for the petitioners, Mr. S. R. Rivonkar, learned Public Prosecutor appearing for respondent no.1 and Mr. P. Arolkar, learned counsel appearing for respondent nos. 2 to 4.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The present petition is filed by the petitioners/accused nos. 1 to 7 invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code for compounding of the offence and quashing and setting aside the charge sheet dated 20.12.2014 pending before the Judicial Magistrate First Class, Panaji.

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5. The brief facts of the case may be stated as follows :

The petitioners are the original accused while respondent nos. 2 to 4 are the original complainant/victims in Criminal Case No. IPC/45/15/D pending before the Judicial Magistrate First Class, Panaji.

The petitioners are natives of Afghanistan and presently on an educational Visa and they are taking education in Dhempe college at Miramar.

The respondent no.2 lodged a complaint dated 10.07.2014 alleging that on account of the college elections of choosing a leader amongst Afghanistan students in Dhempe college, there was tussle between the petitioners and respondent nos. 2 to 4 and allegedly assaulted respondent nos. 2 to 4. After the receipt of the FIR, the Investigating Officer has carried out as usual investigation and submitted a charge sheet bearing No. 183/14 dated 20.12.2014 before the Judicial Magistrate First Class, Panaji for the offences punishable under Sections 143, 147, 448 and 307 read with 149 of Indian Penal Code. Upon filing of the charge sheet, the same was registered as Criminal Case No. IPC/45/15/D.

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Before the committal of the case to the Sessions Court, the petitioners and respondent nos. 2 to 4 arrived at an amicable settlement. Therefore, respondent no.2 filed an application dated 13.4.2015 for compounding of the offence jointly along with the petitioners. The learned Judicial Magistrate First Class, Panaji, without deciding the said application committed the case to the Sessions Court for trial and after committal, the case was registered as Sessions Case No. 19/15.

6. During the course of the hearing, the learned Additional Sessions Judge, by order dated 12.05.2015 dropped the charge under Section 307 of the Indian Penal Code and altered the same to Section 324 of the Indian Penal Code and sent the matter back to the Court of Judicial Magistrate First Class, for framing the charge and trial in accordance with law.

7. The petitioners have 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 Criminal Procedure Code. Therefore, the petitioners have filed the present petition.

8. From the record, it is seen that there was quarrel and

dispute between two groups of the students studying in Dhempe college and the incident occurred on account of elections and choosing a leader amongst the students of Afghanistan. Since the complainant and the petitioners/accused have arrived at compromise, they have accordingly moved an application dated 13.4.2015 and inspite of deciding the said application, learned Judicial Magistrate First Class, has committed the case to the Sessions Court without passing any order on the said application. The alleged offence committed by the petitioners/accused is admittedly not an heinous and serious offence of mental depravity, murder or rape or dacoity or the offence under special statutes like Prevention of Corruption Act. The offence levelled against the accused persons are not private in nature and have no serious impact on the society. 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

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within its jurisdiction to quash the criminal proceeding.”

Taking note of the above observations, we are of the opinion that the petitioners and respondent nos. 2 to 4 can be permitted to compound the offences. Therefore, the application filed by respondent no.2 and the petitioners jointly dated 13.04.2015 is hereby allowed and the charge sheet No. 183/2014 and proceedings in Criminal Case No. IPC/45/15/D pending before the Judicial Magistrate First Class, Panaji are hereby quashed and set aside. Rule is made absolute in above terms. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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