

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 74 OF 2015

1. Mr. Minguel Santan Cruz @ Philip

46 years of age,
R/O. House No.163,
Saibawado Diwar,
Tiswadi, Goa.

2. Miss Diana Cruz,

23 years of age,
R/o. House No.163,
Saibawado Diwar,
Tiswadi, Goa.

3. Miss Nazia Cruz,

21 years of age,
R/o. House No.163,
Saibawado Diwar,
Tiswadi, Goa.

4. Mr. Jason D'Costa,

19 years of age,
Saibawada Diwar, Ilhas, Goa,
n/o Goudhinowado, Majorda,
Salcete, Goa.

..... Petitioners

V e r s u s

1. Public Prosecutor,

High Court of Bombay,
at Panaji, Goa.

2. Police Inspector,
Old Goa Police Station,
Goa Police. Ponda Goa.

3. Mr. Reshant Harmalkar,
27 years of age,
Businessman,
R/o. House No, 412/G,
Santabhat, Goltim,
Diwar, Ilhas, Goa.

4. Avinash Cabral,
31 years of age,
Businessman,
R/O. House no,146,
Morod Diwar,
Tiswadi Goa.

..... Respondents

Shri Aires Rodrigues, Advocate for the Petitioners.

Shri S. R. Rivankar, Public Prosecutor for Respondents no.1 and 2.

Shri S. Shet, Advocate for Respondents no.3 and 4.

CORAM: C. V. BHADANG, J.
DATE: 09TH JULY, 2015.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith.

2. Mr. Rivakar, learned Public Prosecutor waives service on behalf of respondents no.1 and 2. and Mr. Shet waives service on behalf of respondent nos. 3 and 4.

3. Heard finally by consent of the parties.

4. By this petition under section 482 of Cr.P.C., the petitioners, who are the accused in Criminal Case No. IPC/8/2015 pending before the learned Judicial Magistrate First Class , “D” Court, Panaji are seeking quashing of the charge sheet.

5. The brief facts are that the complainant/injured Avinash Cabral is in the business of pisciculture. The petitioners also belong to the fishermen community. The incident in question is alleged to have occurred on 12/9/2014 at about 19.30 hours in front of Avinash Bar. It is said that Avinash along with his friend one R. Harmalkar (complainant) were standing in front of the bar when the petitioner no.1 along with his son Neon Cruz his two daughters namely, Diana Cruz and Nazia Cruz came there and there was an altercation between Avinash and the petitioners. Further according to the complaint, the petitioner no.1 assaulted Avinash by means of a knife. The other accused assaulted the complainant with first blows and slaps when the friend of Avinash intervened, the petitioners/accused fled away.

6. On the basis of a complaint lodged by Reshant

Harmalkar an offence punishable under sections 143, 147, 148, 324 and 506 r/w 149 of I.P.C came to be registered and on investigation the petitioners have been charge sheeted under sections 143, 147, 148, 324, 506 r/w 149 IPC, which is pending before the learned Magistrate being Criminal Case No. IPC/08/2015.

7. It is submitted on behalf of the petitioners that some respectable members from the community have intervened and the parties have amicably settled their disputes and differences and the petitioners as well as the complainant, who is the respondent no.3 and the injured no.4 propose to stay in harmony. It is therefore, submitted that no purpose would be served by continuing the prosecution and the same needs to be quashed. The respondents no.3 and 4 have filed separate affidavits confirming that the parties have not only buried their hatchet but are intending to reside in harmony. Thus, the respondents no. 3 and 4, have no objection for quashing of the charge sheet.

8. It is submitted by Shri Rivankar, the learned Public Prosecutor that in view of the fact that the parties have amicably settled the disputes and differences, appropriate orders be passed.

9. I have heard Shri Rodrigues, the learned counsel for the petitioners, Shri Rivankar, the learned Public Prosecutor for the respondents no.1 and 2 and Shri Shet, the learned counsel for respondents no.3 and 4. The petitioners and the respondents no.3 and 4 are personally present before the Court and admit the correctness of the petition and the affidavits.

10. The Hon'ble Apex Court in the case of *Gian Singh Vs. State of Punjab reported in (2012) 10 SCC 303*, has inter alia held that the High Court can exercise powers under section 482 of Cr. P.C for quashing of the complaint where the parties have settled their disputes. Such power can be exercised in appropriate cases depending upon the facts and circumstances of each case. It has been held that normally such power can be exercised where the offences alleged against the petitioners are not serious or heinous or one showing metal depravity, such as murder, rape, dacoity etc. or under special statutes like Prevention of Corruption Act or offences committed by public servants. The Court can exercise powers under section 482 Cr. P.C. in appropriate cases, in respect of offences which do not involve any public law element. While exercising such power the Court

would have regard to the nature and gravity of the crime.

11. In a recent decision in the case of *Narinder Singh Vs. State of Punjab* reported in (2014) 6 SCC 466, the offence sought to be quashed was punishable under section 307 of I.P.C.. The Hon'ble Apex Court held thus in para 33 of the judgment:

“We have gone through the FIR as well as which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz. “respectable persons have been trying for a compromise up till now, which could not be finalized.” This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between the parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. 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 chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings. We, taking all these factors into consideration cumulatively, are of the opinion that the compromise between the parties be accepted and the criminal proceedings rising out of FIR No.121 dated 14/7/2010 registered with Police Station LOPOKE, District Amritsar Rural be quashed. We order accordingly.

12. A perusal of the Hurt Certificate in this case shows that there is single incised wound and the offence under which the petitioners are charge sheeted are under sections 143, 147, 148, 324 and section 506 r/w 149 IPC. The criminal case is at a preliminary stage, for framing charge.

13. The petitioners have deposited an amount of Rs.15,000/- (Rupees Fifteen thousand only) with the Goa State Legal Services Authority as a matter of remorse.

14. On hearing the learned counsel for the petitioners, the respondent nos 3 and 4 and the learned Public Prosecutor for respondents no.1 and 2, I find that the impugned charge sheet can be quashed as the offence alleged against the petitioners cannot be said

to be either heinous or involving an element of mental depravity. In such circumstances, the following order is passed:

15. ORDER:

The charge sheet and the consequent criminal case no. IPC/08/2015 pending on the file of the learned Judicial Magistrate First Class “D” Court at Panaji is hereby quashed.

Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-