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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 979 OF 2015

Shri Jagdish Balu Gaikar & Ors.

..Petitioners

Vs.

The State of Maharashtra & Ors.

..Respondents.

Mr. Ganesh Bhujbal for Petitioners.

Mr. Prashant D. Patil for Respondent Nos.2 & 3.

Mrs. Sangeeta D. Shinde, APP for Respondent No.1-State.

**CORAM: B.P. DHARMADHIKARI &
A.S. GADKARI, JJ.**

DATE : 21st July 2015.

P.C.

Heard Mr. Bhujbal, learned Counsel for the petitioners, Mr. Patil, learned Counsel for respondent nos.2 and 3 and learned APP for the State.

2 The petitioners and the respondent nos.2 and 3 jointly request this Court to record settlement and to quash and set aside the proceedings of Sessions Case No.37 of 2005 pending before the Sessions Court of Kalyan where trial is for offences punishable under Sections 307, 324, 143,

147, 148, 149, 504 and 506 of Indian Penal Code. The said proceeding arises out of C.R. No.1-94/2004 registered with Kalyan Taluka Police Station.

3 Mr. Bhujbal for the Petitioners submits that on 14.10.2004, the deceased Ashok Dhumal son of Gangaram filed a complaint which resulted in the registration of above mentioned crimes in various sections. Shortly thereafter the other group (petitioners) also filed a complaint on 15.10.2004 and on that basis the offences punishable under Section 324, 504 and 506 read with Section 34 of Indian Penal Code came to be registered against the respondent nos.2 and 3 and Gangaram father of Ashok Dhumal.

4 Mr Bhujbal submits that a quarrel took place on the eve of election and later on due to mediation the dispute was resolved. Accordingly, on 3.3.2013 in RCC No.557 of 2004 the Special Court, Mahalokadalat has disposed of the said criminal case after recording compounding. In addition, he points out that the complainant Ashok Dhumal has expired way back in 2009 and the matter is pending since 2004 without any progress. In this situation, the chances of conviction do not exist. He is placing reliance on the judgment of the Apex Court in the case

of *Narinder Singh & Ors. Vs. State of Punjab & Anr. [(2014) 6 SCC 466]* and particularly para-29.6.

5 Mr. Patil, learned Counsel for the respondent nos.2 and 3 supports the arguments of Advocate Shri Bhujbal. He states that Ashok Dhumal has already expired and in a counter case filed by the petitioners, the matter has been compromised. He therefore does not oppose the prayer for quashing and setting aside the Sessions's trial.

6 Learned APP for the State has invited our attention to the fact that the offence is registered under Section 307 of Indian Penal Code and as such compounding is not permitted. It is further submitted that in this situation, this Court cannot quash and set aside the trial. The trial must be permitted to continue and reach its logical ends.

7 We have perused the judgment of the Hon'ble Apex Court in the case of *Narinder Singh & Ors. Vs. State of Punjab & Anr. (supra)*. The Apex Court has held that the offence under Section 307 of Indian Penal Code falls in the category of heinous and serious offences and is to be treated generally as a crime against the society. However, it has also

observed that mention of Section 307 itself in a complaint/FIR cannot be a ground to deny exercise of its jurisdiction by the High Court under Section 482 of Cr. P.C. Quashing of proceeding depend on the facts and circumstances of each case. The Hon'ble Apex Court has thereafter looked into the facts of the matter before it and found that there were no chances of conviction in the matter. It is in this situation, in the light of the settlement and finding that there are no chances of any conviction that the Hon'ble Apex Court proceeded to quash and set aside the FIR.

8 In the matter before us, the fact that the complainant Ashok Gangaram Dhumal who filed a complaint on 14.10.2004 has expired, is not in dispute. The statements given by him to the Police show that about 9 persons named therein armed with swords, iron pipe, cable, wooden poll etc. came to his house. When he attempted to enter inside his own house as he was frightened, he was abused and threatened. He was fallen down and a blow of sword was inflicted on his leg. He was also beaten by stick, iron rod and cable. When his wife Sou. Reena fell on his person to protect him, blows were also given with stick on her right hand and back. When his father Gangaram came to rescue him, a blow of sword was also given on head of his father. Other people also inflicted blows on his hand and back

with stick and iron pipe. When other residents of the locality came there to rescue, they were also threatened and abused. They were also threatened with life.

9 RCC No.557 of 2004 which has been compounded in Mahalokadalat was registered for offence punishable under Sections 324, 504 and 506 read with Section 34 of Indian Penal Code.

10 The C.R. No.I-94/2004 with which we are concerned, in addition to Section 307 of Indian Penal Code, is also for offence punishable under Sections 324, 143, 147, 148, 149, 504 and 506 of Indian Penal Code. Sessions Case No.37 of 2005 is for trial of petitioners in relation to these offences.

11 The fact that the complainant Ashok Dhumal has expired may not therefore itself be sufficient to conclude that the prosecution may not succeed. His father Gangaram was attacked on his head with a dangerous weapon like sword, his wife who attempted to rescue him was also beaten with stick. Prosecution thus has injured victims as witnesses.

12 Moreover, the Sections 143, 147, 148 and 149 of Indian Penal Code appear in Chapter-VIII of IPC which deal with offences against the public tranquility. Section 143 prescribes punishment for being a member of unlawful assembly. Section 147 is punishment for rioting, Section 148 is for rioting armed with deadly weapon and Section 149 provides that every member of unlawful assembly guilty of offence committed in prosecution of common object.

13 It is therefore obvious that the offences allegedly committed by the present petitioners are not purely of private nature and a public law element is involved in it. The State Government is attempting to demonstrate that the petitioners are guilty of offence against public tranquility. In this situation, when the offence is expressly against the society and public at large, it is apparent that the prayer for setting aside the Sessions Case No.37 of 2005 or C.R. No.I-94/2004 is erroneous and misconceived.

14 It is clarified that the observations made hereinabove are only for considering the possibility of recording settlement in the matter. The same cannot eclipse merits of the matter or evidence which may come

during the trial before the Sessions Court. The Sessions Court is free to arrive at its own finding in accordance with law and uninfluenced by our observations.

15 With above observations, the criminal writ petition no.979 of 2015 is dismissed, with no order as to costs.

(A.S. GADKARI,J.)

(B.P. DHARMADHIKARI,J.)