

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 715 OF 2016

1. Gangadhar s/o Haribhau Andhure
age 54 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.
2. Uttam s/o haribhau Andhure
age 64 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.
3. Bhagwan s/o Haribhau Andhure
age 60 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.
4. Rambhau s/o Uttam Andhure
age 35 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.
5. Bharat s/o Uttam Andhure
age 30 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.
6. Santosh s/o Uttam Andhure
age 37 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.

.. APPLICANTS

VERSUS

1. The State of Maharashtra
2. Ashok s/o Narayan Andhure
age 45 years, occ. Agriculture
r/o Wahegaon, Tq. Gangapur
Dist. Aurangabad.

.. RESPONDENTS

Mr. N.S. Ghanekar, advocate for applicants.
Mr. S.P. Deshmukh, APP for the State.
Mr. K.N. Shaikh, advocate for respondent no. 2.

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**CORAM : R.M. BORDE &
K. L. WADANE, JJ.
DATE : 15th APRIL, 2016.**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

2. This is an application seeking quashment of the criminal proceeding in Sessions Case No. 311/2012 under sections 307, 325, 326, 143, 147, 148, 149, 504 and 506 r/w section 34 of the Indian Penal Code, pending before the Additional Sessions Judge, Vijapur, District Aurangabad.

3. Complainant Ashok alleges that accused / applicants herein launched assault on his person as well as on the person of his brother Sanjay. As a result of assault launched by accused, both the brothers sustained grievous injuries and were required to be admitted to the hospital. After due investigation, charge sheet has been presented and charges are framed against accused.

4. Accused persons as well as complainant and his brother who is another victim of the attack have presented affidavit duly verified before the Oath Officer. Both the victims have stated in their affidavit that since the accused and the injured witnesses are residing in the same village and are related to each other, they have decided to settle their differences amicably. Reliance is placed on a judgment in the matter of Narinder Singh & others. Vs. State of Punjab and another reported in **2014 Cri. L.J. 2436**. In

identical set of facts, the Honourable Supreme Court permitted the parties to enter into compromise. In paragraphs 28 and 29 of the judgment, it is observed thus :

28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307, IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307, IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of section 307, IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

29. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceeding/investigation. Of course, it would

be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounden duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.

5. Taking into consideration the totality of circumstances and the fact that since the injured witness and the injured complainant have decided to sort out their differences with the accused, there is no chance of prosecution succeeding at the trial and securing conviction of accused. In the facts and circumstances of the case, it is desirable that the proceeding initiated in pursuance to lodging of First Information Report as well as proceeding of sessions case pending before the Court shall be quashed and, those are accordingly quashed.

6. It must be noted that accused have launched attack on the complainant and the injured witness and tried to take their life. On the basis of information lodged by the informant the police machinery was

moved and after due investigation, charge sheet has been presented. The learned Magistrate has committed the case to the Court of Sessions for trial. In the circumstances, while exercising jurisdiction under section 484 of the Code of Criminal Procedure in directing quashment of the proceedings of the sessions case, we deem it appropriate to direct accused to deposit cost of Rs. 50,000/- in the Court. The amount of cost shall be deposited within a period of four weeks with the High Court Legal Services Sub-Committee at Aurangabad. Rule made absolute accordingly.

(K. L. WADANE)
JUDGE

(R. M. BORDE)
JUDGE

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