

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

CRIMINAL APPLICATION NO. 970 OF 2016

- 1 Ramkishan s/o Shankar Bidkar,
Age : Major, Occupation : Agri,
R/o Dautpur, Tq.Parali,
District Beed.
- 2 Digambar s/o Vithal Ibitwar,
Age : Major, Occupation : Agri,
R/o Dautpur, Tq.Parali,
District Beed.
- 3 Harichandra s/o Dhondiba Kukade,
Age : Major, Occupation : Agri,
R/o Dautpur, Tq.Parali,
District Beed.

...PETITIONERS/ APPLICANTS

-VERSUS-

- 1 The State of Maharashtra.
Through Police Inspector,
Police Station, Parali,
Tq.Parali, District Beed.
- 2 Bhiva s/o Dnyanoba Bidkar,
Age : Major, Occupation : Agri,
R/o Dautpur, Tq.Parali,
District Beed.

...RESPONDENTS

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Advocate for Petitioners/ Applicants : Shri Thorat Nanabhau R.
APP for Respondent 1/ State : Shri N.T.Bhagat.
Advocate for Respondent 2 : Shri R.D.Thorat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th June, 2016

P.C. :

1 The Petitioners are before this Court being aggrieved by the order dated 27.10.2015 passed by the learned Magistrate in RCC No.215/2009, thereby declining to compound the offence.

2 Respondent No.2 had filed the First Information Report on 11.07.2009 before the concerned Police Station alleging that the Petitioners had tried to steal the hand-rilling pipe which is an object costing about Rs.15,000/-. It belonged to the Thermal Project at Parli Vaijanath, where Respondent No.2 was working as a Project Manager. He had seen the Petitioners stealing the pipe and he was successful in apprehending the Petitioners with the aid of his General Manager Mr.Gujar, Engineer Mr.Chate and two guards Mr.Kendre and Mr.Lokhande. After the Petitioners were caught and were being taken to the Police Station, one of them tried to hit Respondent No.2 with the rod. He evaded the said attempt, but was hit on his finger of the right hand.

3 During the proceedings before the learned Magistrate, an application Exhibit-103 was filed jointly by the Petitioners and Respondent No.2/ original Complainant stating that the matter is resolved and the offence be compounded. By the impugned order, the learned Magistrate

has refused to allow the said application on the ground that the offence attracts Section 382 of the Indian Penal Code and is not compoundable.

4 I have considered the submissions of the learned Advocates.

5 The Honourable Supreme Court (a three judges' Bench) in the matter of *Gian Singh vs. State of Punjab*, **(2012) 10 SCC 303**, held that the power of this Court under Section 482 of the Code of Criminal Procedure is to be used sparingly and in most appropriate cases. The Honourable Apex Court laid down the law that in the offences which are grave and heinous in character like murder, rape, dacoity, offences under the Prevention of Corruption Act and such other offences which are likely to create similar danger to the society and endanger the citizens, this Court should refrain from compounding such offences.

6 Section 382 of the Indian Penal Code is attracted in matters where preparation for theft and preparation for causing death or hurt to any person so as to succeed in committing such theft and in order to effect his escape. Such offences are punishable with rigorous imprisonment for a term which may extend to 10 years as well as with fine.

7 In the given case, it is apparent from the First Information

Report that none of the Petitioners were armed. The three persons upon entering the boiler area zero meter, found an object which is narrated as “hand-rilling” and the said object was attempted to be stolen. Since they were apprehended and were being taken to the Police Station, in order to escape from the clutches of the people who had apprehended them, they attempted to strike at Respondent No.2, who was hurt on the finger of his right hand.

8 Considering the above, I find that an order for compounding the offence could be passed in this matter. Respondent No.2/ original Complainant has filed an affidavit dated 13.04.2016 indicating that he has no objection for the quashing of the proceedings before the learned Magistrate in RCC No.215/2009.

9 In the light of the above and the affidavit filed in the Court by Respondent No.2/ original Complainant (Bhima Dnyanoba Bidkar) and upon considering the law as is laid down in *Gian Singh (supra)*, this Criminal Application is allowed in terms of prayer clauses (C) and (D) which read as under:-

“(C) *That, the impugned order dated 27.10.2015 passed by the Judicial Magistrate First Class, Parali, Tq.Parali, Dist.Beed in RCC No.215/2009 may kindly be quashed and or set aside and for the said purpose necessary orders be passed.*

(D) *Kindly quash and set aside the RCC No.215/2009 pending before the Judicial Magistrate First Class, Parali and FIR bearing Crime No.134/2009 registered with Parali Police Station.”*

kps

(RAVINDRA V. GHUGE, J.)