

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 41 OF 2016**

1. Mahesh Korgaonkar,
major in age,
r/o H.No. 3/39, Karaswada,
Mapusa, Bardez Goa.
 2. Santosh Korgaonkar,
major in age,
r/o H.No.3/39, Karaswada,
Mapusa, Bardez Goa.
 3. Bhalchandra Pol,
major in age,
r/o H.No.295/2, Livrament Wado,
Sangolda, Bardez Goa.
 4. Rupesh Raut,
major in age,
r/o H. No.153, Karaswada,
Mapusa, Bardez Goa.
 5. Tulshidas Korgaonkar,
major in age,
r/o H.No.3/39, Karaswada,
Mapusa, Bardez Goa.
- Petitioners

Versus

1. State of Goa,
through the Public Prosecutor,
High Court,
Panaji Goa.
2. The Police Inspector,
Panaji Police Station,
Dist. North Goa, Goa

3. Vikram Salgaonkar,
major in age,
r/o Flat No.4, Shanta Niwas,
St. Inez, Panaji Goa.

... Respondents

Mr. Vibhav Rajiv Amonkar, Advocate for the petitioners.

Mr. M. Amonkar, Addl. Public Prosecutor for the respondent nos.1 and 2.

Mr. Parikshit Sawant, Advocate for the respondent no.3.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 30th March, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. Vibhav Amonkar, learned counsel appearing for the petitioners, Mr. M. Amonkar, learned Addl. Public Prosecutor appearing for the respondent nos.1 and 2 and Mr. Parikshit Sawant, learned counsel appearing for the respondent no.3.

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

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

4. The above petition seeks to quash and set aside the charge- sheet filed against the petitioners under Sections 143, 147 and 149 of the Indian Penal Code whereby apparently there was a scuffle between the petitioners and the respondent no.3 and FIR came to be registered.

5. During the course of the hearing of the above petition, it is pointed out by the learned counsel appearing for the respective parties that the scuffle which was the subject matter of the FIR was on account of misunderstanding between the petitioners and the respondent no.3 and a settlement has been arrived at between the parties which has been jointly filed before the learned J.M.F.C. The learned counsel appearing for the respondent no.3 has also filed an affidavit inter-alia confirming that such settlement has been arrived at and the respondent no.3 being the complainant does not desire to pursue the said complaint. The said affidavit is taken on record and marked 'X' for identification.

6. Mr. M. Amonkar, learned Addl. Public Prosecutor appearing for the respondent nos. 1 and 2 submits that only because the aforesaid Sections were not compoundable, the petition came to

be filed before this Court though the remaining Sections have been compounded before the learned J.M.F.C.

7. On perusal of the said affidavit and the averments made in the petition stand uncontroverted and as such, we find that there is no chance of recording a conviction of the petitioners and consequently proceeding with the trial is destined to be futile in the facts of the present case. In fact, the Apex Court in the judgment reported in **(2012) 12 SCC 401** in the case of **Jayrajsinh Digvijaysinh Rana V/s State of Gujarat and another**, the Apex Court has observed at para 12 thus :-

“12. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power under Section 482 of the Code even in offences which are not compoundable under Section 320, may quash the prosecution. However, as observed in *Shiji*, the power under Section 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be

nothing but an abuse of the process of law. In other words: (SCC p. 713, para 18)

“18..... the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.”

Thus, in the present case in view of the settlement between the parties and the circumstances referred to in the petition, it would be appropriate to quash the charge -sheet by exercising powers under Section 482 of the Criminal Procedure Code.

8. Hence, looking into the affidavit filed by the respondent no.3 and the uncontroverted allegations made in the petition, we find that the charge- sheet filed against the petitioners bearing No. 75/2011 deserves to be quashed and set aside. Hence, Rule is made absolute in terms of prayer clause (a) with no order as to costs.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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