

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.33 OF 2016

Mr. Karan Girkar & Ors.Applicants
V/s.
Mr. Swapnil Jadhav & Anr.Respondents.

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Mr. S.B.Shelar, Advocate for the Applicants.
Ms. Supriya Mahadik, Advocate for the Respondent No.1.
Mr. F.R.Shaikh, APP for the Respondent-State.

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**CORAM : RANJIT MORE &
A. K. MENON, JJ.**

DATE : 19TH JANUARY, 2016.

P.C.:

Heard learned counsel for the respective parties and the
learned APP for the State.

2 This Application is filed under Section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the proceedings of the Sessions Case No.381 of 2014 pending on the file of the learned Sessions Judge, Sessions Court at Greater Bombay. The said case arises out of the registration of the F.I.R. No.294 of 2013 by Bhoiwada Police Station at Bombay at the instance of the Respondent No.1 for the offences punishable under Section 304 II, 143, 144, 147, 148,149 and

324 of the Indian Penal Code, 1860. After completion of investigation, charge-sheet was filed in the Court of the Metropolitan Magistrate, 29th Court, Dadar, Bombay against the Accused for the offences punishable under Section 304(II), 143, 144, 147, 148, 149 and 324 of the Indian Penal Code, 1860. Since the offence under Section 304(II) of the Indian Penal Code, 1860 was exclusively triable by the Sessions Court, the learned Magistrate subsequently committed the case to the Court of Sessions. Pending trial of the subject sessions case, parties settled their disputes amicably and have approached this Court for quashing the same by consent.

3 Respondent No.1 has filed affidavit dated 15.1.2016. In paragraph 3, he has given no objection to quash the proceedings of the subject Sessions Case and the subject F.I.R. The two victims namely Vijay Dagdu Jadhav and Vikas Manohar Jadhav have filed separate affidavit dated 19.1.2016 and in paragraph 3 of their respective affidavits, they have given 'no objection' to quash the proceedings of the subject Sessions Case and the subject F.I.R. Respondent No.1 as well as injured eye witnesses/victims namely Vijay Dagdu Jadhav and Vikas Manohar Jadhav are present in the Court. On specific query, they state that they confirm contents of the affidavit. They state that affidavits are voluntary

without there being any coercion or force. They also state that they have no objection to quash the proceedings of the subject Sessions Case and the subject F.I.R.

4 We have also perused the charge-sheet. On 16.12.2013 at about 10.45 p.m., Respondent No.1-Complainant saw that there was altercation between one Vishal Girkar and Akshay More. When the Respondent No.1 asked them why they are quarreling, Vishal Girkar pushed him and assaulted Akshay More. Akshay More in turn slapped Vishal Girkar. During the incident, Respondent No.1's father started pacifying quarreling persons. When the Respondent No.1's father tried to intervene, Vishal Girkar pushed him and this was done despite respondent no.1 telling Girkar that his father is heart patient. Father of the Respondent No.1 was thereafter taken to home and thereafter to the Hospital where he died at 1 a.m. in the next morning. We have perused the Post Mortem report of the Respondent No.1's father. Report shows that there are no external as well as internal injuries. There is nothing on record to show that there is proximity between the act of the accused Vishal Girkar namely, pushing and death of the Respondent No.1's father. In the circumstances, we find that case under Section 304(II) of the Indian Penal Code, 1860 is not made out.

5 It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Narinder Singh vs. State of Punjab** **[2014 AIR SCW 2065]**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened. However, at the same time, costs need to be saddled on the parties for using the police and judicial mechanism for settling their personal disputes.

6 Accordingly, the Application is allowed in terms of prayer clause (b) subject to payment of costs of Rs.5,000/- by each applicant to the “**Shanti Avedna Sadan**” an institution that takes care of the advanced and terminally ill cancer patients. The applicants shall pay the said costs and produce the receipt thereof on the file of this Court within a period of four weeks from today, failing which, the criminal application shall stand dismissed automatically without further reference to the Court.

7 Subject to above, the criminal application stands disposed of.

(A. K. MENON, J.)

(RANJIT MORE, J.)