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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.186 OF 2016

Divyeshvalji

..Petitioner.

V/s.

Union of India and Ors.

..Respondents.

Mr.S.R.Ganbavale for the petitioner.

Mr.K.V. Saste, APP for respondent-State.

Mr.Mehul Shah for respondent No.3.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 22ND FEBRUARY, 2016

P.C. :-

1. Heard learned counsel for the petitioner, learned counsel for the respondent No.3 and learned APP for the State.

2. The petition is filed under Article 226 of the Constitution of India and section 482 of the Criminal Procedure Code to quash and set aside the proceedings of Sessions Case No.2/2015 pending before the Sessions Court at Diu arising out of the F.I.R. bearing C.R.No.21/2014 for the offence under sections 506(2) and 307 read with section 34 of the Indian

Penal Code at the instance of respondent No.3.

3. The petitioner and respondent No.2 are the accused in Sessions Case No.2/2015 and Respondent No.3 is the complainant. The petitioner and respondent No.3 have approached for quashing the subject criminal case by consent.

4. Perusal of the complaint dated 23rd August, 2014 lodged by respondent No.3 Dhaval Upendrakumar reveals that there was a dispute regarding the land bearing PTS No.126/1 between the owner of the land and some instances of giving threats to the complainant took place prior to 23rd August, 2014. Proceedings under section 145 of the Criminal Procedure Code was also pending before the Sub-Divisional Magistrate and on that pretext police refused to take action. On the date of incident i.e. 23rd August, 2014 as the complainant was apprehending danger to his life on account of threats given, he was proceeding towards police station. While he parked his car and waiting for some work at the turning of Bhausarwada, Diu at about 5.00 p.m. the petitioner along with his associates travelling in car, saw him and then he raised the speed of his car and tried to dash his Toyato

Qualis car. As he had taken his car in the reverse direction the car hit the bonnet and bumper. He alleged that the petitioner had attempted to kill him and also cause damage to the car. He could somehow managed to escape and save himself, otherwise the petitioner would have killed him. On the basis of the complaint lodged, offence punishable under sections 308 and 506(2) read with 34 of the Indian Penal Code came to be registered. However, on completion of investigation, police filed charge-sheet making the petitioner and respondent No.2 as the accused to prosecute them for offence punishable under sections 307, 506(2) read with 34 of the Indian Penal Code.

5. It is the contention of the petitioner and respondent No.2 i.e. accused in the case, that the entire incident was the outcome of the civil dispute between the parties. Pending investigation, the accused and the complainant have amicably settled their dispute and in pursuance of said understanding, they have approached this Court for quashing the subject criminal case by consent. Respondent No.3 has filed an affidavit dated 27th January, 2016. In paragraph 7, he has stated that he has no objection if the subject criminal case is

quashed. Respondent No.3 is personally present before the Court. He is identified by his Advocate. On being questioned, respondent No.3 specifically stated that he has gone through the affidavit and has fully understood the contents thereof and has no objection if the subject criminal case is quashed. He also stated that he is giving no objection for quashing the subject criminal case out of free will and without there being any pressure or coercion.

6. The Apex Court in the case of ¹Narinder Singh and Others V/s. State of Punjab and Another has considered the scope of inherent powers of the High Court to quash criminal proceedings involving non-compoundable offences in view of compromise / settlement arrived at between the parties and made the following observations paragraph 29.6, which reads as under:-

“ 29.6 Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is

¹ (2014) 6 Supreme Court Cases 466

framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital / delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. "

7. Perusal of the above observation makes it clear that the offence under section 307 would not by itself be a ground to reject a petition for quashing even by consent of the complainant. The Apex Court further observed that the High Court would not rest its decision merely because there is a

mention of section 307 of the Indian Penal Code in the F.I.R. or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of section 307 of the Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under section 307 of the Indian Penal Code.

8. In order to ascertain as to whether prima facie case under section 307 of the Indian Penal Code is attracted in the matter, we have perused the F.I.R. The copy of the F.I.R. itself reveals that initially an offence was registered under section 308 of the Indian Penal Code i.e. attempt to commit culpable homicide. If we consider the allegations made in the F.I.R., we find that offence under section 307 of the Indian Penal Code is not attracted in the matter. In the light of the allegations made in the F.I.R. and evidence on record at the most, the accused could have been charge-sheeted for offence under section 308 of the Indian Penal Code. Offence under section 308 of the Indian Penal Code is punishable with maximum sentence of seven years or with fine. There is no evidence on record to prosecute the accused for commission of offence

under section 307 of the Indian Penal Code.

9. 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 personal in nature. There is no element of public law involved in the offence. The offence alleged cannot be said to have any serious impact on the society. In these circumstances, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. Therefore, having regard to the facts of the case, we are of the view that the incident in question occurred due to dispute on account of the land and the parties have settled their dispute and request for quashing of the proceedings by consent deserves to be allowed. However, at the same time, cost needs to be saddled as considerable time has been spent in investigation of the case by police.

10. Accordingly, the petition is made absolute in terms of prayer clause (d) subject to payment of costs of Rs.25,000/- to be paid by the petitioner to the NAAM

FOUNDATION, which is established to take initiative to prevent commission of suicide by farmers in drought affected areas and to provide financial assistance to family of those farmers who committed suicide in such areas. The amount be deposited with the State Bank of India, Bund Garden Branch, Pune in Account No.35226127148, IFSC Code-SBIN0006319 of *NAAM FOUNDATION* within a period of 4 weeks from today and thereafter produce the receipt thereof on the file of this petition, failing which, the writ petition shall stand dismissed automatically without further reference to the Court.

11. Subject to the above, the petition stands disposed of.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)