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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1340 OF 2016

1. Salauddin Shahbuddin Khan
Age: 43 years, Occ: Business,
Residing at Room No.503, 5th
floor, Mina Co-operative
Housing Society, L.B.S. Marg,
Kurla (E), Mumbai - 400 070.
2. Alimuddin Shahbuddin Khan
Age: 47 years, Occ: Business,
Residing at Room No.703, 7th
floor, Mina Co-operative
Housing Society, L.B.S. Marg,
Kurla (E), Mumbai - 400 070.
3. Kalimuddin Shahbuddin Khan
Age: 45 years, Occ: Business,
Residing at Room No.503, 5th
floor, Mina Co-operative
Housing Society, L.B.S. Marg,
Kurla (E), Mumbai - 400 070.

..Petitioners.

V/s.

1. State of Maharashtra
(Kurla police station)
2. Mohammed Adil Mohammed
Haddis Malik, Age: 45 years,
Occ: Business, Residing at
Room No. th Floor,
Mina Co-operative Housing
Society, L.B.S. Marg, Kurla (E),
Mumbai - 400 070.

..Respondents.

Mr.Hakim Salim for the petitioners.

Mrs.S.D. Shinde, APP for the respondent-State.

Mr.Waseem A. Siddique for respondent No.2.

CORAM : NARESH H.PATIL AND A.M.BADAR, JJ.

RESERVED ON : 11TH APRIL, 2016

PRONOUNCED ON : 20TH APRIL, 2016

JUDGMENT (PER A.M.BADAR, J.)

1. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, petitioners / accused in Sessions Case No.767 of 2013 for the offence punishable under sections 307, 326, 506 (II) read with 34 of the Indian Penal Code, 1860 and under sections 4 and 25 of the Arms Act are praying for quashing and setting aside the proceedings in the said Sessions Case pending on the file of learned Additional Sessions Judge, Greater Bombay, Mumbai.

2. Background facts leading to the registration of this Sessions Case are thus:-

Respondent No.2 Mohammed Adil is the informant / alleged victim at whose instance, F.I.R. bearing C.R. No.113/2013 for the offences punishable under sections 307,

326, 506(II) read with section 4 of the Indian Penal Code and under sections 4 and 25 of the Arms Act came to be registered with Kurla police station, Mumbai against present petitioners and investigation of the said offence has resulted in filing of charge-sheet against all petitioners in the Court of the learned Metropolitan Magistrate, 51st Court, Kurla, Mumbai. Accordingly criminal case No.1224/PW/2013 came to be registered and ultimately on 30th July, 2013, the learned Metropolitan Magistrate was pleased to commit the case to the Court of Sessions as offences alleged against present petitioners are exclusively triable by the Court of Sessions. Accordingly, the Sessions Case No.767/2013 came to be registered against present petitioners.

3. Learned Sessions Judge thereafter framed and explained the charge on 15th October, 2013 and petitioners pleaded not guilty. That is how trial for the offences punishable under section 307, 323, 506 (2) read with 34 of the Indian Penal Code, 1860 and under sections 4 and 25 of the Arms Act commenced against petitioners. It is seen from the record that by 15th June, 2015, evidence of in all six witnesses, including that of the informant / respondent No.2 Mohammed

Adil, Medical Officer Dr. Sheetal Gaikwad, panch witness and eye witnesses came to be recorded by the learned Sessions Judge. The Sessions Case, as stated by the parties, is now fixed for recording evidence of the Investigating Officer. At the concluding stage of the Sessions trial, present petition is filed by petitioners / accused with averment that original informant and petitioners have already resolved their dispute and, therefore, the proceedings of the Sessions trial needs to be quashed.

4. Heard learned counsel for the parties so also, learned APP appearing for the respondent-State.

5. Mr. Hakim Salim, learned counsel appearing for the petitioner vehemently argued that petitioners so also respondent No.2 / informant are residing in the same Co-operative Housing Society and they were having dispute over the parking slot which resulted in the alleged incident. He further argued that petitioners / accused and respondent No.2 / informant have reconciled the differences and entered into understanding dated 4th January, 2016. He further submits that petitioners and informant have executed another

memorandum of understanding dated 17th March, 2016 (Exhibit-C to the petition) and as such, proceedings against the petitioners if continued, will amount to abuse of process of the Court. It is further contended that the case cannot result in conviction as there are discrepancies in evidence of prosecution witnesses and alleged eye witness Israil Ahmed Ali Malik who is relative of the informant has admitted that he had not seen the petitioners / accused. Learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the matter of ¹**Yogendra Yadav and Ors. V/s. State of Jharkhand and Anr.** in order to buttress his contention that when the parties have amicably settled their dispute and when the victim has no objection, then even though evidence is recorded in the Sessions Case, the proceedings can be quashed.

6. Learned counsel appearing for respondent No.2 / informant has reiterated the submissions advanced by learned counsel for the petitioners and contended that due to amicable settlement between the parties and as they are residents of the same building, the proceedings in Sessions Case No.767/2013 needs to be quashed.

¹ (2014) 9 Supreme Court Cases 653

7. Mrs.Shinde, learned APP appearing for the State has vehemently opposed the petition by contending that the Sessions Case is at the fag end of the trial and only evidence of the Investigating Officer remained to be recorded. She contended that offences alleged against the petitioner are falling in the category of heinous and serious offence which is a crime against the society and, therefore, the petition deserves to be dismissed.

8. We have carefully considered the submissions advanced by the parties. We have carefully gone through the set of charge-sheet annexed to the petition, so also through the evidence of prosecution witnesses recorded before learned trial Court.

9. We have come across averments made by petitioners / accused in para 6 of the petition which reads thus:-

"The petitioner has not made any application to the Hon'ble Court or to the Supreme Court of India in respect of the subject matter of this petition. Earlier the petition

was filed but the same was withdrawn. At present no other petition is pending in any other Court or in the Supreme Court."

Perusal of this para goes to show that petitioners have faintly averred that they had filed a petition in respect of the same subject matter and same reliefs and it was withdrawn. We have also come across a copy of the order passed by this Court in the Criminal Writ Petition No.234 of 2016 filed on earlier occasion by the same petitioners. A copy of the order passed by this Court in Writ Petition No.234 of 2016 on record at page 186 goes to show that the said petition came to be withdrawn. As such, we have called for the record and proceedings of Criminal Writ Petition No.234 of 2016. Perusal of the record and proceedings of said Criminal Writ Petition No.234 of 2016 goes to show that present petitioners have filed that petition against the State as well as informant Mohammed Adil. We have carefully perused the pleadings in that Criminal Writ Petition No.234 of 2016. In the said earlier instituted writ petition, present petitioners had placed reliance on the fact that they have resolved their dispute with respondent No.2 / informant Mohammed Adil and contended that respondent No.2 Mohammed Adil does not

wish to prosecute the proceedings of the Sessions Case. This averment can be found in para 3 of the earlier instituted Criminal Writ Petition No.234 of 2016. In the said petition, petitioners have raised similar grounds as are raised in the instant petition. Grounds (a), (c), (d), (e) and (f) in earlier instituted petition by present petitioners as well as in the instant petition are almost ad-verbatim same. So far as ground (b) is concerned, similar contention is raised in both petitions by petitioners by stating that they and respondent No.2 / informant have reconciled their differences and executed memorandum thereof in writing. In the earlier instituted Criminal Writ Petition No.234 of 2016, petitioners have placed reliance on memorandum of understanding dated 4th January, 2016 and had placed on record said original memorandum of understanding on record page 183 in that writ petition. This can be found in ground (b). In the present petition, apart from relying on the said memorandum of understanding dated 4th January, 2016, petitioners are also relying on the subsequent memorandum of understanding dated 17th March, 2016 (Exhibit-C). Averments in both the memorandums of understanding i.e. dated 4th January, 2016 and 17th March, 2016 are virtually same. It is thus clear that present petition

as well as earlier writ petition instituted by present petitioners are based on same facts and claiming same reliefs. Even annexures to both the petitions are virtually the same. When the earlier petition was filed by present petitioners, evidence of six witnesses was already recorded by the learned Sessions Judge. As such, the stage of instituting the earlier petition and the present one is same. In the earlier instituted petition bearing No. 234 of 2016, similar prayer was made by petitioners praying quashing of the proceedings in Sessions Case No.767/2013 arising out of Crime No.113/2013 with Kurla police station, Mumbai. The same is the prayer in instant petition. In this backdrop, it needs to be mentioned here that earlier instituted petition bearing Criminal Writ Petition No.234 of 2016 was withdrawn by the petitioners on 4th February, 2016 unconditionally. The order dated 4th February, 2016 passed by this Court in earlier instituted suit i.e. Criminal Writ Petition No.234 of 2016 reads thus :-

“ Mr.Salim, learned Counsel for the Petitioners seeks leave to withdraw the Petition. Leave granted. Petition dismissed, as withdrawn. ”

10. We are at pains to note that in a casual manner,

petitioners have faintly averred in para 6 of the instant petition that earlier petition was filed but the same was withdrawn. Petitioners have thus suppressed the material facts regarding institution of petition based on same facts and for claiming same reliefs from this Court. Petitioners are invoking equitable jurisdiction of this Court by suppressing material facts. It is well settled that for claiming equitable reliefs, petitioners must approach the Court with clean hands. Hide and seek practice adopted by petitioners herein by making faint averment and that too in one sentence at the fag end of the pleadings needs to be deprecated. As petitioners had already filed criminal writ petition claiming similar reliefs on the same facts and the said petition has been withdrawn on 4th February, 2016, instant petition deserves to be dismissed. Even otherwise, as earlier petition has been withdrawn, this subsequent writ petition between the same parties on the same subject matter is not maintainable.

11. Apart from this, we are not inclined to quash the proceedings in Sessions Case No.767/2013 on merits also. It is seen from the F.I.R. Dated 24th April, 2013 lodged by respondent No.2 Mohammed Adil to the effect that he was

having shop block adjacent to shop block of present petitioners. F.I.R. reveals that present petitioners used to create obstacles in front of shop block and earlier, petitioners had assaulted respondent No.2 / informant Mohammed Adil. Petitioners, as seen from the F.I.R., are facing trial of other criminal case initiated at the instance of respondent No.2 Mohammed Adil in the Court of Metropolitan Magistrate, Kurla, Mumbai. F.I.R. Further shows that present petitioners used to threaten informant Mohammed Adil (Respondent No.2) for withdrawing the said criminal case and ultimately on 24th April, 2013 they had attempted to commit his murder by assaulting him by means of sword, iron rod and cricket bat. We have also perused the injury certificate wherein apart from other injuries, it is seen that respondent No.2 / informant has suffered deep incised wound of length of 10 cm. It is seen that weapons used in the offence are recovered at the instance of accused persons by resorting to the provisions of section 27 of the Evidence Act. There are some eye witnesses to the incident in question and their evidence is also recorded during trial. As reported by the learned APP, the trial is at the fag end waiting for recording of evidence of the Investigating Officer. Offences alleged against present petitioners, as seen

from the charges framed by the learned Sessions Judge, are under section 307, 326, 506 (II) read with 34 of the Indian Penal Code and under sections 4 and 25 of the Arms Act. The assault is said to be by means of dangerous weapons like sword, iron rod and cricket bat. In such a situation, though it is averred that parties have settled the matter amicably, we are not at all impressed and convinced that the same is for maintaining peace and tranquility in the society. Similar deed of settlement executed by the parties on earlier occasion is not accepted by the Co-ordinate Bench of this Court. In the matter of *Yogendra Yadav (supra)* relied upon by learned counsel for petitioners, the Hon'ble Supreme Court has held that High Court needs to exercise its discretion to quash proceedings considering the facts and circumstances of each case. It is clarified in the said judgment that offences involving moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. It is held therein that if such offences are quashed, it may send wrong signal to society. It is further held that however, when the High Court is convinced that the offences are entirely

personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In the instant case, the victim was assaulted in open place in presence of other persons and as such, it cannot be said that public peace or tranquility was not affected by the alleged act of petitioners / accused persons.

12. At this juncture, relevant portion of the guidelines given by the Hon'ble Apex Court in the case of ²**Narinder Singh v. State of Punjab** can be quoted with advantage. In para 29.6 the Hon'ble Apex Court has considered the circumstances in which prosecution in offence punishable under section 307 of the Indian Penal Code can be quashed. The relevant portion of the said guidelines reads thus:-

“29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is 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

² (2014) 6 SCC 466

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 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."

13. In the case in hand, petitioners are accused of an offence punishable under section 307 of the Indian Penal Code, which falls in the category of heinous and serious offence which is generally treated as a crime against the society and not against an individual alleged. As the trial is at the fag end, we wish to refrain ourselves from commenting any further on the merits of the matter but we make it clear in

no uncertain terms that present case is not a fit case to interfere in our equitable as well as extra-ordinary jurisdiction for quashing the proceedings of Sessions Case involving serious and heinous offence. It is well settled that inherent powers are to be exercised in rarest of rare cases and that too for preventing abuse of process of the Court and for securing the ends of justice. We are clear in our mind that these objective cannot be achieved by quashing the Sessions Case against present petitioners. As such, petitioners are not entitled to any reliefs in the instant petition. We propose to impose costs upon the petitioners for filing the instant petition despite the fact that their earlier instituted petition on same facts and for the same reliefs has already been withdrawn by them and for not making adequate pleading in that regard in the instant petition.

13. In the result, the petition is dismissed with costs quantified at Rs.10,000/-.

(A.M. BADAR, J.)

(NARESH H.PATIL, J.)