

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.396 OF 2016

Jamal Iqbal Shaikh & Anr. .. Applicants

V/s.

The State of Maharashtra & Ors. .. Respondents

Ms.Jyoti Chavan i/by Mr.Chaitanya Pendse for the applicants.

Dr.F.R. Shaikh, APP for Respondent No.1-State.

Mr.S.Mangaonkar for the Respondent Nos.2 & 3.

**CORAM : A.S.OKA &
A.A.SAYED,JJ.**

DATED : 13th JUNE 2016.

P.C.

1. Heard learned counsel appearing for the applicants and the learned counsel appearing for second and third respondents. Learned APP represents first respondent. Rule. Respondent waive service. Forthwith taken up for final hearing.

2. The first informant is the second respondent who is the elder brother of the third respondent. Prayer in this application under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is for quashing an offence registered under Sections 326, 323, 504 read with 34 of the Indian Penal Code. The applicants

and second and third respondent are relying upon a deed of settlement/consent terms between them, a copy of which is annexed as Exh-B. In the first information report filed by the second respondent who is the elder brother of the third respondent, he has stated that early morning on the fateful day, he left his house to attend duty. He came back at 3.30 p.m. to his house. While he was resting, at 5.35 p.m. he was woken up by his sister and was told that third respondent is being assaulted with a cricket bat by few persons. Therefore, he rushed to the spot. He found that the applicants were assaulting the third respondent. The first applicant assaulted the third respondent by a cricket bat. He stated that on his intervention, the first applicant stopped assaulting and ultimately ran away by living the cricket bat which was used in the offence. The second respondent stated that on inquiry it was revealed that when the applicants and others were playing a game of cricket, his brother the third respondent was washing a car. At that time, cricket ball hit him and therefore, he objected to the applicants and others playing the game of Cricket. It is alleged that on objection being raised by the third respondent, the applicants started assaulting the third respondent.

3. The second respondent has filed an affidavit in which

he has stated that family of the applicants has paid for expenditure incurred on the treatment on his brother. The third respondent-injured has filed an affidavit stating that he along with his brother has entered into an agreement with the applicants for settling the dispute. The age of the first applicant is 23 years and the age of the second respondent is 19 years. The applicants through their advocate have assured the Court that henceforth they will abide by the law and will continue to be law abiding citizens. We have perused the affidavits filed by the second and third respondents as well as settlement. We also have perused the injury certificate.

4. The learned counsel appearing for the applicants states that applicants will pay a sum of Rs.10,000/- each to Police Welfare Fund. We accept the said statement.

5. As stated earlier, the respective ages of the applicants are 23 and 19 years. At the time of the incident, the age of the third respondent was 21 years. Going by the case of second and third respondents, all started when a cricket ball hit the third respondent while the applicants and others were playing cricket. That led to the altercation between the third respondent and the applicants. Perhaps the tempers was very high. Obviously the applicants are

not criminals in that sense. We are of the view that considering the peculiar facts, the offence it is not against the society at large. Private dispute led to the commission of the alleged offence. The applicants have seen the reason and they have agreed to compensate even the police by paying donation of Rs.10,000/- each to Police Welfare Fund. Expenditure on Medical Treatment of the second respondent has been borne by the applicants. After having perused the injury certificate, we find that the offence under Section 326 of the Indian Penal Code is not made out.

6. Considering the peculiar facts and circumstances of the case, we are of the view that a case is made out for exercise extraordinary jurisdiction of this Court under Section 482 of the Cr.P.C.

7. Accordingly, we dispose of the application by passing the following order.

ORDER

(i) Rule is made absolute in terms of prayer clause (a) which reads thus:-

“That this Hon'ble Court be pleased to quash FIR bearing C.R.No.60 of 2016 registered at the instance of the Respondent No.2 by Respondent No.1 under Sections

326, 323, 504 r/w 34 of Indian Penal Code.”

(ii) We accept the statement made by the learned counsel appearing for the applicants that the applicants will pay donation of the Rs.10,000/- each to the Police Welfare Fund within a period of one month from today;

(iii) For reporting compliance regarding the payment the donation, the application shall be listed under the caption of 'Direction' on 28th July 2016.

(iv) The application disposed of on above terms.

(A.A. SAYED, J)

(A.S.OKA, J.)