IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1936 OF 2016

1. Mrs.Farida Aslam Khan,
2. Ms.Khushbu Aslam Khan,
3. Ms.Tabassum Aslam Khan,
All R/o.6/2, Gajanan Estate, Mohili
Village, Sakinaka Pipeline, Mumbai-400072 Petitioners

versus

1. The State of Maharashtra,
2. Mrs.Neelima Rajendra Dalvi,
R/o.B-308, Ankur Building, Gokuldham,
Goregaon (E), Mumbai-400065. Respondents

Mr.A.R.Maurya i/by ARM Legal for Petitioners.
Mr.K.V.Saste, APP, for State.
Mr.Shailendra Mishra with Sharad Rai for Respondent no.2.

WITH
CRIMINAL WRIT PETITION NO.1937 OF 2016

1. Mrs.Neelima Rajendra Dalvi,
2. Rajendra Dadabhai Dalvi,
3. Ms.Asavari Rajendra Dalvi,
All R/o.B-308, Ankur Building, Gokuldham,
Goregaon (E), Mumbai-400065. Petitioners

versus

1. The State of Maharashtra,
2. Mrs.Farida Aslam Khan,
R/o.6/2, Gajanan Estate, Mohili
Village, Sakinaka Pipeline, Mumbai-400072 Respondents

Mr.Shailendra Mishra i/by Sharad Rai for Petitioners.
Ms.M.M.Deshmukh, APP for State.
Mr.A.R.Maurya i/by ARM Legal for Respondent no.2.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.

Date of Reserving the Judgment : 5 July 2016
Date of Pronouncing the Judgment : 26 July 2016

JUDGMENT (Per : Prakash D. Naik, J.) :-

1. Rule. Rule is made returnable forthwith. Learned APP waives service for State. Mr.Shailendra Mishra and Mr.A.R.Maurya waive service for private Respondents respectively in these petitions.

2. Both the petitions involve connected issues and the same are disposed of by common judgment and order. The Petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India as well as inherent power under Section 482 of the Code of Criminal Procedure, 1973. The Petitioners have challenged the first information reports (FIRs) on the ground that there has been settlement between both the parties, who had agreed to quash the criminal proceedings by consent of each other.

3. Criminal Writ Petition No.1936 of 2016 assails FIR bearing CR No.28 of 2016 registered with Dindoshi Police Station for offences punishable under Sections 392, 448, 341, 323, 506, 427, 452 read with Section 34 of Indian Penal Code. The Petitioners are impleaded as accused in the said FIR which was registered at the instance of second Respondent.

4. Brief facts, as alleged in CR No.28 of 2016, are as follows :

(a) The first informant is residing at Room No.308, Ankur Building, Kanyapada, Goregaon (East), Mumbai along with her family since last five years. Since she had no premises of her own for the purpose of residence, the family was on the look out for the residential premises. They approached an estate agent Mr.Rana Singh for the said purpose;

(b) After interactions with the said estate agent, he represented that a premises viz Room No.308, Ankur Building, `B' Wing, Kanyapada, Goregaon (East), Mumbai is available and the said premises was shown to the complainant. He further represented that the premises belongs to his friend;

(c) The first informant then parted with an amount of Rs.3.25 lakh towards the rent for the aforesaid premises with an understanding that the said amount will be returned back when they would vacate the said premises. The first informant and

her family started occupying the said premises in August-2012. At that time Mr.Rana Singh had come with one person namely Aslam Shekh and intimated that he is the owner of the said room. The aforesaid amount was handed over to them and an agreement was executed on a stamp paper;

(d) In January-2015, Aslam Khan and his wife Farida Khan visited the complainant's house and threatened them for vacating the said room. Thereafter they repeatedly threatened the complainant and her family. In view of the said threats, a complaint was made to Dindoshi Police Station;

(e) On 12 January 2016, some persons entered into the room of the complainant and started assaulting her husband and daughter. One of them was Smt.Farida Khan. At that time, the Mangalsutra worn by the complainant was snatched by aforesaid lady. They also caused damage to the articles in the house. At that point of time, Farida Khan removed two bottles of phenyl from her purse and started consuming the same. One of the person accompanying her closed the doors from the outside and locked the same. The complainant's daughter gave a call to the Police Control Room and thereafter the Police visited the house and entered into the premises after breaking the lock. Hence, the aforesaid FIR was registered against the Petitioners in Criminal Writ Petition No.1936 of 2016.

5. The Petitioners in Criminal Writ Petition No.1937 of 2016 have sought to challenge the FIR registered against them vide CR No.27 of 2016 registered at the instance of second Respondent therein. The said FIR was registered on 12 January 2016 for offences under Sections 307, 336, 354, 323, 506(II) read with Section 34 of Indian Penal Code.

6. Brief facts, as alleged in CR No.27 of 2016, are as follows :

(a) The complainant Smt.Farida Khan is the resident of Gajanan Estate, Mohili Village, Saki Naka, Mumbai. She is residing at the aforesaid place along with her family. Prior to that she was occupying the premises at Ankur Building, Room No.B-308, Dindoshi, Goregaon (East), Mumbai. The said premises is owned by the complainant;

(b) The aforesaid premises was let out to Smt.Nilima Dalvi on rental basis and she was occupying the same with her family;

(c) On 12 January 2016, the complainant and others had visited the said premises for the purpose of demanding the rent. At that time, the accused were present in the house. During the course of discussion on the issue of rent, the accused along with accompanying persons assaulted the complainant.

One of the accused also touched her inappropriately and outraged her modesty. It is further alleged that one of the accused made her to drink phenyl and others instigated her. In view of the said incident, an FIR was registered by the second Respondent vide CR No.27 of 2016 with Dindoshi Police Station.

7. The Petitioners in both the petitions are accused. The complainant in CR No.28 of 2016 was impleaded as accused in CR No.27 of 2016 along with others and the complainant in CR No.27 of 2016 was impleaded as accused in CR No.28 of 2016 along with others. Learned advocates appearing for the Petitioners and the first informant in both the petitions have submitted that there is an amicable settlement between both the parties and hence the petitions are being filed for quashing the respective complaints by consent of both the parties. In the petitions it has been averred that cross cases are registered against each other by the parties involved herein. The common friends of both the parties had suggested amicable settlement as both are belonging to respected families and they have grown up daughters to be married soon. It is also stated that the parties have approached this Court for quashing the proceedings by consent with an undertaking that such act shall not be repeated in future. It is also mentioned that Petitioner no.1 in Writ Petition No.1936 of 2016 has returned the security deposit amount of Rs.3.25 lakhs to the second Respondent therein. it is

also mentioned that on receipt of the said amount, the second Respondent in the said petition had handed over actual physical and exclusive possession of the said premises to the Petitioner no.1, with an undertaking that the second Respondent shall have no right, title and/or whatsoever interest in the said premises. The Petitioners have shown concern for their grown up daughters which are yet to be married, and with a view to put an end to the disputes, have arrived at an amicable settlement.

8. The second Respondent in Writ Petition No.1936 of 2016 Smt.Nilima Dalvi has tendered an affidavit before the Court. It is stated that she is the complainant in CR No.28 of 2016. It is further stated that a cross FIR has been registered against her and family members. As the senior members of the society in the vicinity have intervened and had a joint meeting with the respective parties, it is decided to resolve their differences so as to maintain peace and harmony in the society and also to ensure the spirit of togetherness. It is also mentioned that the step to arrive at the settlement was taken also taking into consideration that the daughters of both the parties are yet to be married and their future should not be in jeopardy. The said complainant had also filed a suit in the Bombay City Civil Court which she is undertaking to withdraw with no claim of whatsoever nature. It is further stated that she has received Rs.3.25 lakhs which was parted by her while occupying the

premises and that they have settled their matter amicably and she has consented for quashing the FIR bearing CR No.28 of 2016 registered at her instance with Dindoshi Police Station.

9. The second Respondent in Writ Petition No.1937 of 2016 Smt.Farida Aslam Khan has also tendered an affidavit reiterating the stand of the aforesaid first informant. She has consented for quashing the FIR registered at her instance vide CR No.27 of 2016 with Dindoshi Police Station. Both the affidavits are taken on record and same are marked as "X" and "X-1" respectively for the purpose of identification.

10. We have perused the FIRs, the documents annexed to the petitions and the affidavits tendered by the first informants in respective FIRs. It is noticed that the dispute is arising out of premises which was rented out to one of the party. The factual aspect of the dispute relates to the issue of deposit amount being parted out by one of the party to the owner of the premises and demands made by other party for vacating the said premises. It is also noticed that one of them had filed a civil suit claiming certain rights in respect of subject premises. Therefore, the incidents which are subject matter of both the complaints had arisen on the ground of rights claimed by the parties in respect to the immovable property viz the residential premises.

11. On perusal of the FIRs, it can be seen that the parties have apparently exaggerated the allegations. In CR No.28 of 2016, it is alleged that the accused have committed an offence under Section 392 of Indian Penal Code (`IPC'). From the facts and material on record it cannot be said that the offence under Section 392 of IPC is prima facie made out. There is certainly no intention to commit the offence of robbery. The requisite ingredients to constitute the said offence are absent. In CR No.27 of 2016, the offence under Section 307 of IPC has been invoked. Learned APP had opposed the prayers of the Petitioners on the ground that serious charge under Section 307 of IPC has been invoked in CR No.27 of 2016. We are conscious of the fact that offence under Section 307 of IPC can be termed as a serious and/or heinous crime. However, in the present case, apparently, there is a exaggeration on the part of the complainant in CR No.27 of 2016. The incident had occurred in the house of accused therein. The incident is admittedly on account of premises belonging to the complainant was being occupied by the accused therein. The complainant stated that she had visited the said premises along with others for demanding the rent. No case was made out in the narration given by the complainant that accused was supposed to pay a particular rent and on the contrary, a deposit of Rs.3.25 lakh was parted by the family of Smt.Nilima Dalvi. It is pertinent to note that in the complaint of Smt.Nilima Dalvi registered vide CR No.28 of 2016, which was registered on the same day and

simultaneously it is stated that Smt.Farida Khan had visited her premises and had consumed phenyl from the bottles which she had carried along with her. The said stand was taken spontaneously and it cannot be said to be a defence which is after thought. There is no medical evidence to substantiate the fact that there was any attempt to kill the said victim by forcing her to consume phenyl and, therefore, invocation of Section 307 of IPC was unjustified. Learned APP has produced medical certificate which refers to simple injury sustained by Smt.Nilima Dalvi. The medical certificate of Smt.Farida Khan refers to consumption of phenyl by the victim. It is also stated that no proper history was presented apparently at the instance of parties. The said certificate do not state that there was likelihood of death on consumption of phenyl by the said victim. The medical certificates are taken on record and marked as "X-2 and X-3" for identification. There is no evidence placed on record even to show that there was any attempt to murder the victim and hence, prima facie, we are of the opinion that Section 307 of IPC ought not to have been invoked by the investigating agency.

12. We have perused the affidavits tendered by the first informant and heard the submissions of their respective counsel. It can be seen that the cause of dispute was property and the parties have amicably settled the dispute. It is noticed that two families were involved in the said offences, which does not have

any criminal history. It is pertinent to note that the investigating agency has recorded the statement of Smt.Nilima Dalvi who is an accused in CR No.27 of 2016. In the said statement recorded on 16 March 2016, she has stated that in the complaint lodged by Smt.Farida Khan, it is alleged that she was administered phenyl by her and her family members. However, on the contrary, Smt.Farida Khan and persons accompanying her entered her house and caused damage to the property as well as assaulted them. It is further stated that Smt.Farida Khan had consumed phenyl on her own from the bottle which she was carrying and lodged the false complaint. We have also noted the submissions made by the Petitioners that in both the cases, apart from other accused, their daughters are implicated as accused and that with a view to secure their future, the parties have settled the dispute being one of the grounds amongst others.

13. Learned counsel have placed reliance on the decision of **Narinder Singh and others Vs. State of Punjab and another**[1]. The Apex Court had examined the matter in the context of offence under Section 307 of IPC. It is observed that rival parties have amicably settled the disputes between themselves and buried the hatchet as parties were neighbours and they want to live like good neighbours. In paragraph 26 of the said decision, it has been observed as follows :

1 (2012)6-SCC-466

> *"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the Court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely, whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used, etc. On that basis, if it is found that there is a strong possibility of providing the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties."*

14. From the aforesaid observations it can be culled out that there is a tendency to give a slant of an offence under Section 307 of IPC in the dispute amongst the parties. Therefore, in case the FIR involves Section 307 of IPC, it could not be a ground to refuse to accept the settlement between the parties.

15. The Apex Court in the aforesaid decision, has summarised the approach to be adopted by the High Courts in entertaining petitions involving offence under Section 307 of IPC. In paragraph 29.6, the Apex Court has observed as follows :

> "*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 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/delicate 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 latter 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.*"

16. In the light of the aforesaid observations, we are of the opinion that provisions of Sections 307 and 392 of IPC were unjustified in the absence of requisite evidence. We have also

taken into consideration all other circumstances which are referred to hereinabove while entertaining these petitions. The Apex Court in the aforesaid decision has also referred to the decision in **Gian Singh Vs. State of Punjab and another**[2], which was delivered by a three Judge Bench. In the said decision, the Apex Court has observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim is settled, although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceeding will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored securing the ends of justice being the ultimate guiding factor. In paragraph 61 of the judgment in *Gian Singh (supra)*, the Apex Court has observed as follows :

> *"61. The position that emerges from the above discussion can be summarised thus; the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal Court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed.* ***However, before exercise of such power, the***

2 (2012)1--SCC-303

High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing criminal proceedings involving such offences. *But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.*"

(emphasis supplied)

17. In view of the aforesaid circumstances, we are of the opinion that the disputes which had arisen between the two families on account of the property, are of individual and private nature and it would be appropriate to exercise the power of quashing the said proceedings.

18. We, therefore, pass following order :

(a) Rule is made absolute;

(b) Criminal Writ Petition No.1936 of 2016 is allowed and thereby FIR registered vide CR No.28 of 2016 with Dindoshi Police Station on 12 January 2016 is quashed and set aside;

(c) Criminal Writ Petition No.1937 of 2016 is allowed and thereby FIR registered vide CR No.27 of 2016 with Dindoshi Police Station on 12 January 2016 is quashed and set aside;

(d) Parties to act on an ordinary copy of this order duly authenticated by registry of this Court.

(PRAKASH D. NAIK, J.) **(NARESH H. PATIL, J.)**

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