

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2232 OF 2016

Shivaji Nathuram Ambekar and others,
All R/o.Village Khandpal, Tal.Mangaon,
District Raigad

Petitioners

versus

1. The State of Maharashtra,
2. Swati Pandurang Gaikwad and others,
All R/o. Village Khandpal, Tal.Mangaon,
District Raigad

Respondents

AND

CRIMINAL WRIT PETITION NO.2233 OF 2016

Rohan Shridhar Thambe and others,
All R/o.Village Khandpal, Tal.Mangaon,
District Raigad

Petitioners

versus

1. The State of Maharashtra,
2. Shweta Sharad Ambekar and others,
All R/o.Village Khandpal, Tal.Mangaon,
District Raigad

Respondents

Mr.K.S.Patil i/by Ms.Heena P. Suvarnakar for Petitioners in WP No.2232 of 2016 and for Respondent nos.2 to 17 in WP No.2233 of 2016.

Mr.Ranjeet Patil for Petitioners in WP No.2233 of 2016 and for Respondent Nos.2 to 12 in WP No.2232 of 2016.

Mrs.S.D.Shinde, APP, for State.

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

DATE : 11 July 2016

PC :

1. Rule. Rule is made returnable forthwith. Learned APP waives service for State. Mr.K.S.Patil and Mr.Ranjeet Patil waives service for private Respondents in respective petitions.

2. The Petitioners in both the petitions have challenged the first information reports ('FIRs') registered against them. The petitions involve the issue of cross cases and hence the same are disposed of by common judgment and order.

3. The Petitioners in Criminal Writ Petition No.2232 of 2016 have challenged the FIR registered with Goregaon Police Station, District Raigad vide CR No.0023 of 2016 for offences punishable under Sections 147, 148, 149, 323, 354, 395, 504, 506 of Indian Penal Code ('IPC') read with Section 3(1)(10) and 3(1)(11) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Atrocities Act') and Section 37(1)(3), 135 of Bombay Police Act. The Petitioners are impleaded as accused in the said FIR which was lodged at the instance of Respondent no.2.

4. It is alleged in CR No.0023 of 2016 that there is a dispute between two communities in the village on account of water supply. On 19 May 2016, the complainant and others were assaulted by the accused. Some of them committed act of outraging modesty of women and also snatched a golden chain of the complainant. The victims were assaulted by stick and iron rod.

5. Criminal Writ Petition No.2233 of 2016 arises out of FIR registered with Goregaon Police Station, District Raigad vide CR No.24 of 2016. The Petitioners therein were impleaded as accused. The FIR was registered at the instance of Respondent no.2. Offences were registered under Sections 143, 147, 148, 149, 323, 354, 395, 504, 506 of IPC.

6. It is alleged in CR No.24 of 2016 that there is a dispute between two communities on account of water supply, which had resulted in the quarrel. On 19 May 2016, the accused had assaulted the complainant and others and also committed acts amounting to outraging modesty of women.

7. Learned counsel for the Petitioners as well as Respondents/first informants in both the petitions have submitted that the parties have amicably settled the dispute and do not wish to pursue the prosecution against each other. It was

submitted that both the groups want to live in harmony. The second Respondent in Writ Petition No.2232 of 2016 has tendered an affidavit dated 11 July 2016. In the said affidavit it is stated that she does not have any grievances against the Petitioners. Both the parties are residing in the same village and that they have amicably settled the disputes with the intervention of elders of the village. She has no objection for quashing the FIR. It is also stated that missing golden chain which was referred to in the FIR, was found at the place of incident after registration of FIR. Similarly, other victims/injured persons in CR No.0023 of 2016, which is subject matter of the said petition, who are impleaded as Respondent nos.3 to 12, have also tendered affidavit dated 11 July 2016 reiterating the submissions of the complainant. Both affidavits are taken on record and collectively marked as "X" for identification.

8. The second Respondent in Criminal Writ Petition No.2233 of 2016 has also tendered an affidavit stating that the dispute has been amicably settled between both the parties and she has no objection for quashing CR No.24 of 2016 which is lodged at her instance. Similarly, other victims/injured persons in CR No.24 of 2016 have also tendered affidavits with similar averments giving consent for quashing the FIR. The said affidavits are taken on record and marked collectively as "X-1" for identification.

9. We have perused the contents of the petition, documents annexed thereto and the affidavits tendered by the respective parties. It is noted that the dispute had arisen on account of water supply. The dispute is between two communities of the village. They intend to maintain harmonious relationship by keeping peace in the village. They have settled the dispute and have no objection for quashing the FIRs arising out of cross cases. It is also considered that there is no evidence to substantiate the charge under Section 395 of IPC. The requisite ingredients to constitute the said offence are absent. The complainant in CR No.0023 of 2016 has stated that missing golden chain referred in the FIR was found at the place of incident after registration of FIR. Taking into consideration factual aspects of the matter, we are inclined to allow the petitions and quash the impugned FIRs.

10. Reliance can be placed upon a decision of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another**¹, wherein the Apex Court has observed that High Court may exercise the power of quashing, in the event of amicable settlement between the parties.

11. Hence, we pass following order :

(a) Rule is made absolute;

¹ (2012)10-SCC-303

(b) Writ Petition No.2232 of 2016 is allowed and FIR bearing CR No.0023 of 2016 registered with Goregaon Police Station, District Raigad for offences punishable under Sections 395, 147, 148, 149, 354, 323, 504, 506 of Indian Penal Code, Section 3(1)(10) and 3(1)(11) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989 and Section 38(1)(3), 135 of Bombay Police Act, stands quashed and set aside;

(c) Writ Petition No.2233 of 2016 is allowed and FIR bearing CR No.0024 of 2016 registered with Goregaon Police Station, District Raigad for offences punishable under Sections 143,147, 148, 149, 395, 323, 354, 504, 506 of Indian Penal Code and Sections 37(1)(3), 135 of Bombay Police Act stands quashed and set aside;

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

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)