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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.864 OF 2016

Najim Mukhtar Aalam Shaikh & Ors. ...Applicants
vs.
State of Maharashtra & Anr. ...Respondents

Mr.Hemant Ingle i/b Mr.Prashant Goyal for the
applicants
Ms M.H.Mhatre, APP for the respondent No.1
Mr.V.Khobragade i/b Mr.Tushar Khandore for
respondent No.2

CORAM : A.S.OKA, &
 A.A.SAYED, JJ.
DATE : AUGUST 11, 2016

P.C.:

1 Rule. Learned APP waives service for the first respondent. Learned counsel for the second respondent waives service. Forthwith taken up for final hearing.

2 The prayer in this application under section 482 of the Code of Criminal Procedure,1973 is for quashing the FIR registered at the instance of the second respondent for the offences punishable under sections 323, 324 read with section 34 of the Indian Penal Code.

3 The incident occurred on 4th July 2016 at about 6.00 p.m. The second respondent is running a business of selling eatables on a handcart. At

about 10.30 p.m on that day, the present applicants came to the handcart of the second respondent. What transpired thereafter is recorded in the statement of the second respondent on the basis of which impugned FIR was registered. It is stated that after the applicants came back, they were under the influence of liquor. Thereafter, there was an altercation between the applicants and the injured person (Mr.Isak). The allegation is that by mistaking the second respondent as Isak, the applicants assaulted him by using a kitchen knife.

4 On the last date, we have perused the Injury Certificate of the second respondent and injured person (Mr.Isak). We are satisfied that an offence punishable under section 326 of the Indian Penal Code is not attracted.

5 The respective ages of the applicants are 20 and 21. The second respondent is also of 20 years of age. There is an affidavit filed by the second respondent consenting for quashing the proceedings on the ground that misunderstanding has been cleared at the intervention of the friends and family members.

6 The applicants have deposited a sum of Rs.25,000/- by way of donation with the Maharashtra State Legal Aid Services. A copy of the receipt of donation is taken on record.

7 The applicants and the second respondent are

young who are in early twenties. At the instance of the friends and family members, a settlement has been brought about. Looking to the nature of the allegations in the FIR, it cannot be said that same are of serious or heinous nature. Moreover, it cannot be said to be an offence against the society at large. Therefore, in view of the law laid down by the Apex Court in the case of Gian Singh versus State of Punjab and another¹, this is a fit case to exercise power under section 482 of the said Code.

8 Accordingly, we pass the following order:

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

"(a) This Hon'ble Court be pleased to quash and set aside the impugned FIR bearing C.R.No.277 of 2016 u/s. 323, 324 read with section 34 of the Indian Penal Code registered with Dadar Police Station, Dadar, Mumbai."

(II) All concerned to act upon an authenticated copy of this order.

(A.A.SAYED, J.)

(A.S.OKA, J.)