

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

CRIMINAL WRIT PETITION NO.2567 OF 2016

1. Shahnawaz Nurul Hassan Khan,
2. Sohail Sharfuddin Khan,
3. Shaukat Nurulhasan Khan,
4. Sharfuddin Nurulhasan Khan,
5. Saif Parvez Khan,
6. Sameer Sharfuddin Khan,
All r/o.Kurla West, Mukmbai-400 070.

Petitioners

versus

1. The State of Maharashtra,
2. Siya-Ul-Haq Nizamuddin Ansari,
R/o.Kurla West, Mumbai.

Respondents

AND

CRIMINAL WRIT PETITION NO.2681 OF 2016

1. Ziyaulhaque Nizamuddin Ansari,
2. Azhar Nizamuddin Ansari,
3. Nizamuddin Janmohd Ansari,
4. Naushadali Mohd. Isamil Khan,
5. Mohd. Salim Nazarali Mansuri,
6. Saddam Nizamuddin Ansari,
All r/o.Kurla West, Mumbai-400 070.

Petitioners

versus

1. The State of Maharashtra,
2. Shanawaz Noor Hassan Khan,
R/o.Kurla West, Mumbai.

Respondents

Ms.Anjali Patil with Vaishali Jadhav for Petitioners in WP No.2567 of 2016.

Mr.D.P.Adsule, APP, for State, in WP No.2567 of 2016.

Ms.Ruby Shaikh i/by Imran M. Shaikh for Petitioners in WP No.2681 of 2016.

Mr.K.V.Saste, APP, for State, in WP No.2681 of 2016.

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

Date of reserving the judgment : 11 August 2016

Date of pronouncing the judgment : 25 August 2016

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

1. Rule. Rule made returnable forthwith. Learned Assistant Public Prosecutors waive service in both petitions.

2. The Petitioners in both these petitions have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India and sought to challenge the first information reports (` FIRs') which are subject matter of the respective petitions. The parties in both the petitions have sought quashing of the impugned FIRs on the ground that there has been amicable settlement between them. The parties have lodged cross complaints against each other which are under challenge in the aforesaid petitions and hence the same can be disposed of by a common order.

3. Criminal Writ Petition No.2567 of 2016 assails FIR registered with Kurla Police Station vide CR No.267 of 2016. The FIR was

registered on 15 July 2016 at the instance of Respondent no.2 in the said petition for offences under Sections 143, 144, 147, 149, 324, 307 of Indian Penal Code (`IPC'). The Petitioners therein were impleaded as accused in the said FIR.

4. Brief facts, as alleged in FIR bearing CR No.267 of 2016 which is subject matter of Criminal Writ Petition No.2567 of 2016, are as follows :

(a) The complainant Zia-Ul-Haque Nizamuddin Ansari is residing at Room No.304, Building no.11, Kapadia Nagar, Kurla (W), Mumbai along with his family consisting of parents and brothers. The livelihood of the family is depending upon sale of spare parts of motor vehicles at CST Road, Kismat Nagar, Kurla (West), Mumbai;

(b) On 5 July 2016, the elder brother of the complainant namely Azharuddin Ansari was at the aforesaid shop premises. The complainant was at home. He received a telephonic call that his elder brother is being assaulted by some persons;

(c) The complainant proceeded to their shop premises and noticed that accused were assaulting Azharuddin, as he had refused to sell the spare parts at lower price, as demanded by the accused. The people tried to intervene in the quarrel but the accused kept on assaulting the brother of the complainant as well as complainant;

(d) The complainant fell on the ground during the assault by the accused and at that time the accused assaulted the

complainant by an iron spoon which is used for frying Potato-Vada. As a result of that, the complainant received injury to his finger. At the same time, accused poured the hot oil from the outlet of Vada-Pav upon complainant. As a result of that, he suffered severe burn injuries on his head, ear, hand and other parts of body. The accused then fled away from the scene of the offence;

(e) The complainant and his brother Azharuddin were then treated at Bhabha Hospital at Kurla and they were required to be admitted in the hospital for the purpose of treatment.

5. Petitioner no.6 was arrested in connection with CR No.267 of 2016 on 6 July 2016 and he was produced for remand before the Court of Metropolitan Magistrate, 51st Court, Kurla, Mumbai. In the said remand application it was stated that the victim had suffered burn injuries to the extent of about 50% on his face and other parts of body on account of hot oil which was poured upon him by the accused, and that the victim is taking treatment in intensive care unit. Other accused in the said FIR i.e. Petitioner nos.1 to 5 were shown as wanted accused. The arrested accused was produced for remand on 7 July 2016 and was remanded to police custody. A copy of the said remand application and order passed thereon has been annexed to the petition.

6. The first informant in CR No.267 of 2016 i.e. Respondent no.2 in Criminal Writ Petition No.2567 of 2016 forwarded a letter to the Senior Inspector of Police, Kurla Police Station on 12 July 2016. In the said letter, it was stated that he is the complainant in CR No.267

of 2016 which was registered for offences under Sections 307, 324, 143, 144, 147, 149 of IPC. It was mentioned that since he was in tremendous pain, he had given names of Shahnawaz, Sohail, Shaukat, father of Sohail, Saif and Sameer. There is no person known as Aatique being known to him. It was further stated that no incident as stated in the FIR, dated 5 July 2016, has occurred. It was stated that Shahnawaz fell down in front of his shop and sustained head injury and people had gathered. It was also mentioned that oil from Vada-Pav stall fell on him due to which he sustained burn injuries. On account of burn injuries, in a heat of anger, he registered the FIR. It was also mentioned that nobody is responsible for the injuries sustained by him, which was due to an accident and he has no complaint against anybody. The said letter dated 11 July 2016 is also annexed to this petition. It can be seen that the complainant in CR No.267 of 2016 has completely washed out his assertion which was made in the FIR.

7. The Respondent no.2 in Criminal Writ Petition No.2567 of 2016 has placed on record an affidavit sworn by him, which has been annexed to the petition. In the said affidavit it is stated by the second Respondent therein that he had forwarded his supplementary statement to the Senior Inspector of Police on 12 July 2016 stating that due to anger, he has given names of accused. It was further stated that no such incident has taken place on 5 July 2016 on which FIR came to be registered. It was reiterated that Petitioner no.1 fell down in front of his shop and sustained head injury and on account of that, he had abused the second Respondent, as a result of which people had gathered on the spot and in the crowded oil from Vada-Pav

stall fell upon him resulting into burn injuries. He has further asserted that nobody is responsible for the injuries sustained by him which had occurred due to accident and he has no complaint against anybody. In paragraph no.3 of the said affidavit it was mentioned that the accused are residing in the locality and carrying out business of selling spare parts of the cars, there is a case and a cross case between them and they have amicably settled the matter and do not wish to proceed against each other.

8. Criminal Writ Petition No.2681 of 2016 is challenging FIR registered with Kurla Police Station vide CR No.266 of 2016. The Petitioners in the said petition were impleaded as accused and the FIR was registered at the instance of Respondent no.2 Shahnawaz Noor Hasan Khan. The FIR was registered on 5 July 2016 for offences under Sections 143, 147, 148, 149, 324, 326 of IPC.

9. Brief facts, as stated in the FIR registered vide CR No.266 of 2016, are as follows :

(a) The complainant Sahanawaz Noor Hasan Khan is residing at Kamar Manzil, C.S.Road, Kurla (West), Mumbai along with his family consisting of his wife, sons and daughter;

(b) The younger brother of the complainant namely Shaukat Khan is the owner of a shop namely Super Automobile, at Pipewali Galli, at Kurla, Mumbai;

(c) On 5 July 2016, the complainant received a call from his brother Shaukat Khan stating that a quarrel is going on at Kismat

Nagar and he should come. The complainant, therefore, proceeded at the said place;

(d) The complainant noticed that quarrel was going on between his brother Shaukat, nephew Anas, his sons Arbaz and Sameer with Nizamuddin, Zia-Ul-Haq, Azharuddin, Sadda, Naushad and Salim. The complainant tried to be peacemaker;

(e) It is alleged that Zia-Ul-Haq assaulted the complainant by an iron spoon on his head as a result of which he sustained injury. Others were assaulted by bamboo sticks. During the scuffle, the accused Zia-Ul-Haq tried to pour hot oil from Vada-Pav stall on complainant's son and while doing so, he lost his control and the oil had spilled over his body. The complainant's son Arbaz also sustained injury to his finger on account of hot oil. The injured were treated at hospital and FIR was lodged by the complainant on 5 July 2016 vide CR No.266 of 2016.

10. In pursuance of registration of aforesaid FIR being CR No.266 of 2016, the accused Azhar Nizamuddin Ansari was arrested on 6 July 2016 and he was produced before the Court for remand on 7 July 2016. The prosecution case was narrated in the remand application, as reflected in the FIR. The accused was remanded to police custody. In the remand application, accused Nizamuddin, Saddam, Salim, Naushad and Zia-Ul-Haq were shown as wanted accused. The said remand application and the order passed thereon has been annexed to the petition. The medical certificate with regard to the treatment with regard to the examination of Zia-Ul-Haq are also on record.

11. The complainant in CR No.266 of 2016 forwarded a letter to the Senior Police of Inspector on 12 July 2016 stating that he was in tremendous pain and due to which he has given the names of Nizamuddin, Saddam, Salim, Naushad, Zia-Ul-Haq and others. It is further stated that no such incident, as stated in his statement dated 5 July 2016, has occurred. The complainant fell down in front of Bombay Automobile shop, which is the shop of Zia-Ul-Haq and sustained head injury and since Zia-Ul-Haq has abused him, the people had gathered and in the crowd, the oil from Vada-Pav stall fell on Zia-Ul-Haq resulting in burn injuries. In a heat of anger, he registered the FIR. Nobody is responsible for the injuries sustained by him, which had occurred accidentally. He sustained head injuries but he has no complaint against anybody as it was accidental. It was further mentioned that the said letter be treated as a supplementary statement. The letter has been annexed to the petition. From the contents of the said letter it is apparent that the complainant has denied his version and occurrence of incident dated 5 July 2016 as alleged in the FIR. It is pertinent to note that complainant in cross case i.e. Zia-Ul-Haq had also written identical letter on the same day taking a similar stand. It is clear that the respective complainants are denying the incident as a matter of strategy and a common stand is adopted by them in connivance with each other.

12. The complainant Shahnawaz Khan who had lodged FIR vide CR No.266 of 2016, which is the subject matter of challenge in Criminal Writ Petition No.2681 of 2016 and who has been impleaded as Respondent no.2 in the said petition, has tendered an affidavit before this Court. In the said affidavit it is stated that on 12 July 2016, he

has submitted the supplementary statement to Senior Inspector of Police giving explanation about reasons for giving the names of Petitioners-accused. He further averred that no such incident has taken place on 5 July 2016 as alleged in the FIR registered at his instance. He further stated that he fell down in front of his shop due to which he sustained head injury and nobody is responsible for the injuries sustained by him, which is accidental and that he has no complaint against anybody. In paragraph 3 of the affidavit, however, it is stated that the Petitioners are residing in the said locality and carrying on the business of selling spare parts of the cars. There is a case and a cross case between them. They have amicably settled the matter between them and do not wish to proceed with the complaint registered against each other. The said affidavit is taken on record. From the tenor of the affidavit, it is apparent that the complainant has taken a somersault and given complete go-bye to the contents of FIR lodged by him. It can also be inferred that the dispute is being settled because there are cross cases against each other.

13. Learned counsel appearing for both the parties in the aforesaid petitions have submitted that in view of settlement, the FIR in respective petitions may be quashed and set aside. It is submitted that the subject FIRs are the cross cases lodged by the parties against each other and since both the parties intends to put an end to their differences, the same may be quashed and set aside by consent. Learned counsel for the Petitioners relied upon a decision of the Apex Court in the case of **Narinder Singh and others Vs. State of Punjab and another**¹. Learned counsel placed reliance upon paragraphs 18 and 19 of the aforesaid judgment. It was submitted that on account

¹ (2014)6-SCC-466

of compromise, this Court in exercise of powers under Article 226 of the Constitution of India may quash and set aside the criminal proceedings.

14. We have perused the contents of the petition as well as documents annexed to the petitions. The parties have contended that there is a settlement and hence respective FIRs may be quashed and set aside. It is also noted that the complainant in CR No.267 of 2016 has forwarded a letter dated 11 July 2016 to the Senior Inspector of Police of the concerned police station wherein he has absolved the accused and tried to give an explanation to the injuries sustained by him and the person from other side. The complainant has completely denied the genesis of his FIR. On the face of the record, the contents of the said letter dated 11 July 2016 are concocted and after thought. It is pertinent to note that said contention is also reflected in the affidavit of the complainant which was filed in this Court to support the prayer of quashing of said FIR. Similarly, the complainant in the FIR registered vide CR No.266 of 2016 has also forwarded a letter dated 11 July 2016 to the Senior Inspector of Police of the concerned police station wherein he had taken an identical stand as that of the complainant in the cross complaint. The said version is also reiterated in the affidavit filed before this Court. It is apparent that the complainants in both the complaints have resiled from the contents of FIRs. An attempt is made to deny their own versions. The stand adopted by the complainants in their respective complaints is obviously by conniving with each other and, therefore, it cannot be said that the settlement made by them is genuine. Taking into consideration the conduct of

the parties, we are not inclined to exercise our power under Article 226 of the Constitution of India to entertain present petitions. Apart from the above observations, we were not inclined to grant prayers of the Petitioners taking into consideration the magnitude of offences committed by them.

15. In CR No.267 of 2016, which was registered primarily for the offence under Section 307 of IPC, the complainant/injured person had sustained serious injuries. It is his grievance in the FIR that the accused had poured hot oil on him with an intention to kill him. We have perused the medical certificates and it was noticed that the victim had sustained burn injuries on the vital parts of his body. The case registered vide CR No.266 of 2016 was primarily for the offence under Section 326 of IPC, is apparently being utilized for settling the dispute between the parties. The injured has also sustained injuries in the said incident. The settlement arrived at between the parties is to seek quashing of both the cases which are registered against each other. The most disturbing aspect of the matter is that the first informant in both the FIRs have discarded their own statements by writing letters to the police as well as by filing affidavits before this Court. We do not wish to permit the accused and the complainant to adopt such a stand and allow quashing of FIRs by consent on the ground of amicable settlement. It is pertinent to note that prayers for quashing are sought not only on the ground that there is a settlement but also by giving an explanation that the incident, as narrated in the respective FIRs, is false and incident as stated therein has never occurred. It would be dangerous to accept such a proposition wherein the complainants have agitated before this Court

that their own statements in the FIRs are false. On sustaining injuries, the complainants have set into motion the law and police machinery in exercise of their powers and being diligent, have registered FIRs against respective accused persons. How it can be digested that the complainants have withdraw their own versions which were spelt out in the complaints.

16. In the case of **Narinder Singh and others (supra)** which decision has been relied upon by learned counsel representing Petitioners in both the petitions, the Apex Court had considered whether prosecution initiated under Section 307 of IPC can be quashed and set aside on the ground of amicable settlement arrived at between the parties. The Apex Court has observed that *what is required to be seen is whether a prima facie offence under Section 307 of IPC is made out in case*. It is further observed that *if the crime committed by the accused is heinous, crime of serious nature, then it should be treated as a crime against society and not against an individual alone and it becomes solemn duty of the State to punish the crime doors. Even if there is a settlement/compromise between the perpetrators of the crime and the victim, that is of no consequence. In cases of the offences which are treated as offences against society, it becomes the duty of the State to punish such offenders. Thus, even when there is a settlement between the offender and victim, their will would not prevail, as in such cases, the matter is in public domain. The offender should be punished in order to deter others effectively, as it amounts to greatest good of the greatest number of persons in the society.*

17. In paragraph 19 of the judgment in **Narinder Singh and others (supra)**, the Apex Court has observed that while taking a call as to whether compromise in cases under Section 307 of IPC is concerned, the Court should go by nature of injuries sustained, the portion of the body where the injuries were inflicted (whether injuries are caused at the vital/delicate parts of the body and nature of use of weapons etc.). If the Court forms an opinion that the provisions of Section 307 of IPC were unnecessarily included in the charge sheet, the Court can accept the plea of compounding the offence based on the settlement between the parties. In the present case, it is not possible to give a finding that, prima facie, an offence under Section 307 of IPC is not made out.

18. In the case of **Gian Singh Vs. State of Punjab and another**², the Apex Court in paragraphs 58 and 61 has observed as follows :

*"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings 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. **No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the Court. In respect of serious offences like murder, rape, dacoity etc. or other offences of mental depravity under IPC or offences of moral turpitude under special***

² (2012)10-SCC-303

*statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. **Each case will depend on its own facts and no hard-and-fast category can be prescribed.**"*

(emphasis supplied)

"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 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)

19. We have taken into consideration the factual aspects referred to hereinabove, the medical certificates of the injured persons, the nature of injuries sustained by the victims/injured persons as well as mala fide conduct of the parties in resiling their own statements made before the police. The settlement is not genuine. the offences are not of a private nature. The accused have committed crime against society. The victim in one of the FIRs had sustained burn

injuries on vital parts of body. The act of accused is cruel. In view of the circumstances stated hereinabove, we are not inclined to allow the prayers of the Petitioners.

20. Hence, we pass following order :

(a) Criminal Writ Petition No.2567 of 2016 and Criminal Writ Petition No.2681 of 2016 stand dismissed;

(b) Rule stands discharged.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

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