

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

WRIT PETITION NO. 3953 OF 2016

Mr.Abdul Rashid Mohamada	... Petitioner.
Harun Khan	(Org. Accused)
V/s.	

The State of Maharashtra and Anr.	... Respondents.
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Mr. Sanjay A. Singh, Advocate for the Petitioner.
Mr. Sanjay Ramhersh Singh, for Respondent No.2.
Mr. S. V. Saste, APP for the State.

**WITH
WRIT PETITION NO. 3954 OF 2016**

Mr. Rafiqullah Abdul Mahbood Khan	... Petitioners.
& Anr.	(Org. Accused)
V/s.	

The State of Maharashtra and Anr.	... Respondents.
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Mr. Sanjay Ramhersh Singh, for Petitioners.
Mr. Sanjay A. Singh, Advocate for the Respondent No.2.
Mr. S. V. Saste, APP for the State.

**CORAM : V. M. KANADE AND
Ms.NUTAN D.SARDESSAI, JJ.**

DATE : 29th NOVEMBER, 2016

P.C. :

1 Writ Petition No. 3954 of 2016 is not on board.
Mentioned. Taken on board at the request of the learned
counsel appearing for the Petitioners therein.

2 Heard learned counsel appearing on behalf of the respective Petitioner (s), learned counsel appearing on behalf of respective Respondents and learned APP appearing on behalf of the State in both the petitions.

3 Both these writ petitions are filed by the respective petitioners for quashing the complaints/FIRs filed by them against each other.

4 Writ petition No. 3953 of 2016 is filed by the Petitioner - Abdul Rashid Khan for quashing the complaint / FIR filed by Respondent No.2- Rafiqullah Abdul Khan. It appears that the petitioner-accused in the said petition has entered the house of the complainant for giving an invitation card. There was some scuffle between them in which Respondent No.2-complainant-Rafiqullah Abdul Khan in the said petition received six injuries. As a result of assault by the petitioner-accused with a knife, Respondent No.2/complainant-Rafiqullah Abdul Khan received following injuries :

- 1) Bone depth incised wound with active active bleeding present over left lower chest in the region of 6th & 7th rib, puncturing the intercostal space, extending down in epigastric region on left side (measuring 6 x 3 x 4 cm).

- 2) 10 cm long full thickness tear present in left lobe of liver with 2 litre haemoperitoneum.
- 3) 5 x 5 cm perforation in body of stomach with mucosal protruding.
- 4) 11 x 0.5 x 1 cm incised sutured wound over face (jaw) extending from angle of mandible to left side of chin.
- 5) Multiple incised wound over bilateral upper limb.
- 6) Multiple abrasion over bilateral lower limb below knee.”

The offence punishable under section 326 read with 504 of the IPC was registered against the petitioner- Abdul Rashid Mohamada Harun Khan with the Sakinaka Police Station on 22.10.2016 vide FIR No. 562 of 2016.

5 Respondent No. 2 - Rafiqullah Abdul Mahbood Khan (the Petitioner in W.P. No. 3954 of 2016), is also alleged to have assaulted the petitioner with knife and the petitioner also received injuries. As a result, the offence punishable under sections 324, 504 read with 34 of the IPC was also registered

against Respondent No.2 with the Sakinaka Police Station on 22.10.2016 vide FIR No. 563 of 2016.

6 Learned counsel appearing on behalf of the petitioners submits that both the parties have amicably settled the dispute and now filed these petitions for quashing the complaint / FIR by consent, relying on the judgment of the Supreme Court in the case of **Narinder Singh & Ors. vs. State of Punjab & Anr.**, reported in 2014 AIR SCW 2065 and also on the judgment of the Apex Court in the case of **Gian Singh vs. State of Punjab & Anr.**, reported in (2012) 10 Supreme Court Cases 303. It is not possible to accept the submission of the learned counsel for the petitioner to quash the complaint/FIR by relying on the said judgments as both these judgments do not say, as a matter of rule when the complainant and the accused decide to settle the matter then, the complaint / FIR should be quashed. The Apex Court in the case of Gian Singh (supra) has observed in para 61 as under :

“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 F.I.R may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of 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.”

7 From the above observations of the Apex Court, it is apparent that if the court comes to the conclusion that the offence is of grievous nature and it is not merely a personal dispute or civil dispute then in such cases the court is not expected to exercise its writ jurisdiction for quashing the criminal complaint/ FIR. We are, therefore, not inclined to quash the complaints/ FIRs by consent of the parties.

8 The Apex Court in several cases has further observed that the court has to be very slow in exercising its writ jurisdiction for quashing the complaint/FIR. Since the police have not yet completed the investigation, the police has a power to investigate into the offence and find out the genesis of the

offence. Since the investigation is going on, we do not propose to quash the complaints/FIRs by consent of the parties.

9 Both the writ petitions are, therefore, dismissed. Needless to state that after chargesheet is filed, liberty is granted to the parties to file applications for discharge.

(Ms.NUTAN D.SARDESSAI,J)

(V.M.KANADE,J)

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