

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1816 OF 2017

Prashant @ Tushar Lalchand Bhamre,
Age- 33 Years, Occ-Private Class,
R/o. - Jaibhairav Nagar, Plot No.85,
Sakri Road, Dhule Dist.Dhule **APPLICANT**

VERSUS

1. The State of Maharashtra,
Through P.I., City Police Station,
Dhule, Dist. Dhule.
2. The Superintendent of Police
Dhule, Tq. & Dist. Dhule
3. Yoges s/o. Hanumant Bhokre,
Age: 20 Years, Occu-Education,
R/o. Plot No.107, Johrawali Society,
Dhule, Dist. Dhule. **RESPONDENTS**

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Mr.N.L.Choudhari, Advocate for Applicant
Mr.S.J.Salgare, APP for Respondent Nos.1 and
2/State.
Mr.R.S.Shinde, Advocate for respondent No.3.

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 21.04.2017
Pronounced on : 25.04.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. This Application is filed under

Section 482 of the Criminal Procedure Code with prayer to quash and set aside the criminal proceedings / FIR bearing Crime No.17/2017, registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 307, 323, 504, 506 of the Indian Penal Code.

2. The learned counsel appearing for the applicant submitted that the applicant is well-educated person and conducts private tuition at Pimpalner, District Dhule. Respondent no.3 herein i.e. informant-Yogesh Hunumant Bhokre filed First Information Report bearing Crime No.17/2017 for the offence punishable under Sections 307, 323, 504, 506 of the Indian Penal Code with Dhule City Police Station, Dhule, against the applicant. It is submitted that, with intervention of the senior persons residing in the vicinity wherein the houses of the applicant and respondent no.3 are situated;

they have decided amicably to settle the dispute in order to have peace and cordial relations between each other. It is submitted that, respondent no.3 has not suffered any grievous injuries and in the interest of justice keeping in view the judgment of the Supreme Court in the case of **Gian Singh Vs. State of Punjab and anr.**¹ when the informant i.e. victim and the offender have decided to bring amicable settlement, in that case, the possibility of conviction may be remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him. The learned counsel appearing for the applicant invites our attention to the contents of the compromise *pursis* and submits that the applicant and respondent no.3 have affirmed the compromise *pursis* and it is stated that the applicant and respondent no.3

1 2012 AIR SCW 5333

will reside peacefully and will not quarrel or create any dispute henceforth. There will not be any such incident in future. The applicant and respondent no.3 have no any grievance or objection, if the criminal proceedings are quashed.

3. The learned counsel appearing for respondent no.3 also submits that in the light of compromise between the applicant and respondent no.3, the application may be allowed.

4. The learned APP appearing for the respondent – State vehemently opposed the prayer and submits that there is criminal antecedent of the applicant. The applicant assaulted respondent no.3 by knife and tried to kill him. The offence is serious in nature. From the date of registration of the offence, the applicant has absconded. The injury is inflicted by the applicant on the

chest of respondent no.3, therefore, the injury is on vital part. The applicant is likely to cause disappearance of the evidence including knife used in the alleged commission of offence. The medical certificate of respondent no.3 is collected by the Investigating Officer. The possibility of indulgence of the accused in similar commission of the offences cannot be ruled out. The applicant has created fear in the mind of the school going students. Though the applicant applied for the anticipatory bail, the said application was withdrawn.

5. We have considered the submissions of the learned counsel appearing for the applicant, learned counsel appearing for respondent no.3, and the learned APP appearing for respondent – State. With their able assistance, we have carefully perused the contents of the FIR, contents of the application, and the joint compromise *pursis*

filed by the applicant and respondent no.3, and also the investigation papers, and we are of the opinion that, since the alleged offence is punishable under Section 307 of the Indian Penal Code and the injury inflicted by the applicant is on vital part i.e. chest of respondent no.3, and also there is no denial to the fact that earlier also the applicant was involved in the alleged commission of some other offence, in our opinion, the prayer of applicant to quash the FIR on the basis of amicable settlement cannot be acceded to.

6. We have carefully perused the injury certificate. There is stab injury over chest, and also there are more than four eye witnesses to the incident. It appears that, the incident had taken place at public place. The Supreme Court in the case of **Gian Singh Vs. State of Punjab and anr. [cited supra]** in para 54 of the judgment has observed that, 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 statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. The Supreme Court in the case of **Narinder Singh and others Vs. State of Punjab and another**² in para 29 has laid down the principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

"29. In view of the aforesaid discussion, we sum up and lay down

² [2014] 6 SCC 466

the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the

aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

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/delegate 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.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings / investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by

the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

7. In the aforesaid clause 29.6, the Supreme Court has considered the seriousness of the offence punishable under Section 307 of the IPC and observed that, the offence under said section is the crime against the society and not against the individual alone. However, merely because Section 307 of the IPC is mentioned in the FIR, cannot be a ground for not accepting prayer for quashing the FIR on the basis of the settlement. But, it would be open to the High Court to go by the nature of injury sustained, whether such injury inflicted on the vital/delegate parts of the body, nature of weapons used, medical

report in respect of injuries suffered by the victim. As already observed, in the present case, weapon used is a knife. The injury inflicted is on the chest of respondent no.3 by the applicant. The medical report clearly suggests that the said injury is on vital part and there are eye witnesses to the incident. It *prima facie* appears that, an incident has occurred at public place, wherein the witnesses had opportunity to witness the said incident. During the course of argument, the learned APP has pointed out that even earlier the applicant is made accused in some other offence.

8. In that view of the matter, keeping in view the guidelines laid down in the judgment of the Supreme Court in the case of Gian Singh Vs. State of Punjab and anr. [supra] and in the case of Narinder Singh and others Vs. State of Punjab and another [supra], we are not inclined to quash the FIR

on the basis of the compromise / settlement between the applicant and respondent no.3.

9. We have also considered the prayer of the applicant for quashing the FIR on merits. However, in the light of discussion in the foregoing paragraphs and upon perusal of the allegations in the FIR, an ingredients of the alleged offences have been attracted and alleged offences under Section 307 and other provisions of the Indian Penal Code are constituted and disclosed, we are not inclined to entertain the prayer, even on merits.

10. In that view of the matter, the application stands rejected. An observations made herein before are *prima facie* in nature and trial Court should not get influenced by the said observation.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE