

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

CRIMINAL APPLICATION NO. 1858 OF 2017

1. Abhijit S/o Bankat Pawar,
Age : 22 years, Occupation-Education,
2. Pramod Uddhav Pawar,
Age : 28 years, Occupation-Education,
3. Amol Mahadeo Jadhav,
Age : 30 years, Occupation-Agriculture,
4. Amol Haribhau @ Hariba Pawar,
Age : 24 years, Occupation-Driver,
5. Tanaji Vishwambhar Pawar,
Age : 24 years, Occupation-Agriculture,
6. Shubham Shivaji Gholap,
Age : 20 years, Occupation-Education,
7. Krushna Damodar Waghmare,
Age : 20 years, Occupation-Labour,
8. Sharad Haribhau @ Hariba Pawar,
Age : 22 years, Occupation-Agriculture,
9. Hanumant Vishnu Sadule,
Age : 22 years, Occupation-Labour,
10. Datta Mahadeo Jadhav,
Age : 32 years, Occupation-Agriculture,
11. Sham Shatragun Aakate,
Age : 20 years, Occupation-Education,
12. Shrikant Shatragun Aakate,
Age : 28 years, Occupation-Education,
13. Datta Vishnu Sadule,
Age : 27 years, Occupation-Labour,

14. Kuldeep Sandipan Pawar,
Age : 26 years, Occupation-Agriculture,

15. Ravi Baban Chavan,
Age : 26 years, Occupation-Labour,

All are R/o. Pus,Tq. Ambajogai,
Dist. Beed.

Applicants...

VERSUS

1. The State of Maharashtra,
Through Police Station, Bardapur,
Dist. Beed.

2. Raju Vishwanath Udar,
Age-22 years, Occupation-Business,
R/o. Pus, Tq. Ambajogai,
Dist. Beed.

... Respondents

(Respondent No. 2 is Orig. Informant)

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Mr Sudarshan J. Salunke, Advocate for the applicants
Mr A. R. Borulkar, APP for respondent/State
Mr S. A. Ambad, Advocate for respondent No. 2

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WITH

CRIMINAL APPLICATION NO. 1871 OF 2017

1. Vishwanath S/o. Kundlik Udar,
Age : 55 years, Occu. Labour & Agril.
R/o. Pus, Tq. Ambajogai, Dist. Beed.
2. Santosh S/o. Vishwanath Udar,
Age : 30 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
3. Bandu @ Banti S/o. Vishwanath Udar,
Age : 27 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.

4. Sachin S/o Vishwanath Udar,
Age : 25 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
5. Swapnil @ Raju S/o Vishwanath Udar,
Age : 23 years, Occu. Labour,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
6. Parmeshwar @ Bapu S/o Sitaram Udar,
Age : 40 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
7. Meghraj S/o Raosaheb Udar,
Age : 35 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
8. Atul S/o Prakash Udar,
Age : 30 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
9. Suryakant S/o Sitaram Udar,
Age : 35 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
10. Somnath S/o Uttam Udar,
Age : 38 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
11. Ravi S/o Raosaheb Udar,
Age : 30 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.
12. Honaji S/o Sudhakar Udar,
Age : 45 years, Occu. Labour & Agril.,
R/o. Pus, Tq. Ambajogai, Dist. Beed.

Applicants...

VERSUS

1. The State of Maharashtra,
Through Police Station Bardapur,
Dist. Beed.

2. Uddhav S/o Sahebrao Pawar,
Age : 58 years, Occu. Agril.
R/o. Pus, Tq. Ambajogai, Dist. Beed. **Respondents...**

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Mr S. A. Ambad, Advocate for the applicants
Mr A. R. Borulkar, APP for respondent/State
Mr S. J. Salunke, Advocate for respondent No. 2
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**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 07.09.2017.
PRONOUNCED ON : 14.09.2017.

JUDGMENT (Per A. M. Dhavale, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.
2. These two applications are filed by parties from counter cases for quashing of FIRs filed by them against each other.
3. By Criminal Application No. 1858 of 2017, 15 accused persons seek quashing of FIR bearing Crime No. 21/2017 dt. 16.03.2017 registered against them with Police Station Bardapur, Dist. Beed, for the offences punishable under Sections 324, 323, 504,

506, 143, 147, 148, 149 of the Indian Penal Code and Sections 3(1)(r)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

4. By Criminal Application No. 1871 of 2017, Vishwanath Udar, the applicant and 11 others, seek quashing of FIR bearing Crime No. 22/2017 dt. 18.03.2017 registered with Police Station Bardapur, Dist. Beed for the offences punishable under Sections 395, 397, 506 of the Indian Penal Code.

5. The parties from both the applications are seeking quashing of the FIRs on the ground of compromise arrived at between them outside the Court and affidavits to that effect are also placed on record. It is needless to state that, both the FIRs involve offences which are non-compoundable in nature and hence, the applicants are praying to invoke the powers u/s 482 of the Code of Criminal Procedure.

6. On 16.03.2017, at 05:52 pm, Raju Udar lodged FIR bearing C.R. No. 21/2017. As per the said FIR, on 16.03.2017 at 8:00 AM, he had gone to Milk Dairy in Lingayat Galli at Pus, Tq. Ambajogai, for selling milk. At that time, accused No. 1 - Abhijeet Pawar accosted him why he brought milk there as they were not accepting milk being

brought by the people belonging to 'Mahar-Mang' community and also said that, he should leave the spot. Accused No. 1 abused him in the name of his caste and, thereafter, assaulted him with fist blows & kick blows and also inflicted a blow of knife on the left arm of his hand. Thereafter, Pramod Uddhav Pawar and 12 others abused him in the name of his caste stating that, persons belonging to Mang community should not be allowed to reside there and they threatened him to kill. When he raised shouts, three persons namely Pandurang Kundlik Udar, Ravi Raosaheb Udar and Atul Prakash Udar intervened and rescued him. He then went to his house, narrated the incident to family members and lodged FIR. In this case, he has filed affidavit at Exh 'B' that the dispute between the parties is settled outside the court. Now there is no ill will or hatred against the accused or against any other person and in order to maintain cordial and harmonious relations in the village, it is necessary to bring the dispute between them to an end. He has stated that the said affidavit is filed without any fear or coercion. He has filed second affidavit stating that there were no utterances of words inviting the provisions of the Atrocities Act. Those were mentioned under mistake and heat of anger.

7. FIR bearing C.R. No. 22/2017 was filed by Uddhav Sahebrao Pawar on 18.03.2017 at 04.07 PM. It is counter FIR to FIR

bearing C.R. No. 21/2017. As per the said FIR, on 16.03.2017 at 9:00 PM, 12 persons including the informant from counter case i.e. Raju Udar armed with Sword, Axe, iron rod & a skythe, came to his house . One Parmeshwar attempted to kill him by inflicting a blow of sword but his brother Bankat held his hand. Thereafter, Santosh Udar robbed him at the instance of Swapnil @ Raju of his gold ring of 5 gms. Ravi & Meghraj rushed at his brother with iron rods and robbed him of Rs. 2,000/- and his brother of Rs. 3,000/-. When they raised shouts, some neighbours intervened and the accused persons fled away.

8. The law regarding quashing of FIRs involving non-compoundable offences on the ground of 'compromise' is very much crystallized in the judgments of **Narinder Singh & Ors. Vs State of Punjab & Anr. 2014 All MR (Cri) 1886 (S.C.)** and **Gian. Singh Versus State of Punjab & Another (2012) 10 SCC 303**. In case of Narinder Singh (supra), the guidelines are laid down as follows:

- (I) *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.*

(II) *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.

(III) *Such a power is not 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.*

(IV) *On the other, those criminal cases having overwhelmingly and pre-dominantly 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.*

(V) *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.*

(VI) *Offences under [Section 307](#) IPC would fall in the category of heinous and serious offences and therefore is 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 later 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.

- (VII) 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.

9. Insofar as serious offences are concerned (not covered by Section 320 of Cr.P.C.), quashing of criminal proceedings upon compromise is within the discretion of the High Court in exercise of powers u/s 482 of the Cr.P.C.

10. In the present case, Crime No. 22/2017 involves serious offences u/s 395 & 307 of the Indian Penal Code, however, the Court cannot be guided only by the provisions of Sections shown as offences by the police. On carefully considering the papers before us and the submissions made at the bar as well as the affidavits filed by the respondents, we find that both the parties were known to each other and the dispute between them occurred on some trivial issue. Though the offences under murder or dacoity or robbery are offences against public at large, we find hardly any substance to indicate the actual commission of such offences. In these cases, one Raju Udar had verbal altercation with Abhijit Bankat Pawar and Abhijit gave a blow of knife on Raju's arm. There is single injury and as per usual practice, several accused persons are roped in the offence in question.

The allegations of commission of offences under the provisions of the Atrocities Act are also nullified by the statements made by the informant on oath. Besides, the offences under the provisions of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act alleged are of verbal nature and not of serious nature. In order to counter it, another FIR came to be lodged in which offences of attempt to commit murder and charge of robbery are levelled but there is no injury at all showing any intention on the part of the accused therein to commit murder/grievous hurt. It is alleged that, there was robbery of gold ring of 5 gms and cash of Rs. 5000/- from two persons.

11. The affidavit of the informant discloses that, after the incident was over and the parties were calmed down, they came together and realized that they have made serious allegations against each other and some minor incidents are blown out of proportion. They have filed affidavits which completely nullify the allegations of attempt to commit murder or commission of robbery.

12. It is needless to state that, in the light of these affidavits, the possibility of conviction is remote and bleak.

13. We find that, both the parties not only belong to the same village but they belong to different communal groups. When the parties have amicably settled the dispute between them, the continuation of these proceedings would disturb the public peace in the village and it is in the interest of public at large that the dispute between the parties should be given a quietus. Though the allegations are serious, same are not supported by any medical evidence and the affidavits filed by the informant indicate that the complaints were false or small incidents have been blown out of proportion. Hence, the applications deserve to be disposed of by quashing both the FIRs.

14. We however find that, both the parties lodged FIRs against each other and wasted considerable period of police machinery and Court. Since the matters are settled, it will be proper to dispose them of by quashing the FIRs but in order to lessen such tendency of lodging false FIRs, it is necessary to impose exemplary costs upon the parties. Hence, the following order is passed.

ORDER

- (i) Both the Criminal Applications being Criminal Application No. 1858 of 2017 and Criminal Application No. 1871 of 2017 are allowed in terms of the compromise arrived at between the parties.

- (ii) FIR bearing Crime No. 21/2017 dt. 16.03.2017 registered against the applicants in Criminal Application No. 1858 of 2017 with Police Station Bardapur, Dist. Beed, for the offences punishable under Sections 324, 323, 504, 506, 143, 147, 148. 149 of the Indian Penal Code and Sections 3(1)(r)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, is quashed subject to payment of costs of Rs. 10,000/- to be payable by respondent No. 2-informant to the Maharashtra State Legal Services Authority.
- (iii) FIR bearing Crime No. 22/2017 dt. 18.03.2017 registered against the applicants in Criminal Application No. 1871 of 2017 with the Police Station Bardapur, Dist. Beed for the offences punishable under Sections 395, 397, 506 of the Indian Penal Code is quashed subject to payment of costs of Rs. 25,000/- to be payable by respondent No. 2 - informant to the Maharashtra State Legal Services Authority.

15. Rule made absolute in the above terms.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

sgp