

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3074 OF 2017

1. Waman Gorakh Dhaitadak
age 19 years, occ. agri.
2. Pralhad Babasaheb Dhaitadak
age 41 years, occ. agri.
3. Balasaheb Sunil Dhaitadak
age 45 years, occ. agri.
4. Pandurang Babasaheb Dhaitadak
age 44 years, occ. agri
5. Ajinath Eknath Dhaitadak
age 40 years, occ. agri
6. Gorakh Eknath Dhaitadak
age 43 years, occ. agri.
7. Raju Baburao Dhaitadak
age 42 years, occ. agri.
8. Narayan Baburao Dhaitadak
age 45 years, occ. agri.

All r/o Dhaitadakwadi, Tq. Pathardi
Dist. Ahmednagar

Applicants.

Versus

1. The State of Maharashtra
Through Investigation Officer,
Pathardi Police Station,
Tq. Pathardi, Dist. Ahmednagar
2. Savitra w/o Arjun Dhaitadak
age 25 years, occ. agri
r/o Dhaitadakwadi, Tq. Pathardi
Dist. Ahmednagar

Respondents

Mr. N.B. Narwade, advocate for applicants.
Mr. M.M. Nerlikar, A.P.P. for respondent no. 1.
Mr. V.B. Anjanwatikar, advocate for respondent no. 2.

**CORAM : R.M.BORDE &
A. M. DHAVAL, JJ.
DATE : 27th JUNE, 2017**

ORAL JUDGMENT: (PER R. M. BORDE, J.)

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.

2. This is an application seeking quashment of the criminal proceeding initiated at the instance of respondent no. 2 registered at Pathardi Police Station vide Crime No. 67/2016 for commission of offence punishable under sections 436 and 143 of the Indian Penal Code.

3. It is informed that the parties have settled their differences and have entered into compromise as a result of mediation of elders in the village. It appears on perusal of the draft compromise entered into between the parties on 13.06.2017 that a Regular Criminal Case is presented at the instance of applicants herein against the complainant and the parties have reached amicable settlement. The parties are related to each other. The parties have decided to amicably settle all pending disputes between them.

4. Accused and the complainant are present before the Court. The terms of settlement are duly verified by each of the accused and the complainant and the parties are identified by the respective counsel representing them. The terms of settlement are

read and recorded and marked 'X' for identification.

5. Though the offence alleged against the petitioners is of serious nature, since the parties are resident of the same village and are related to each other and they have decided to settle their differences and have further admitted to withdraw the cases lodged by them against each other, we are of the opinion that considering the parameters laid down in the matter of **Narinder Singh and others Vs. State of Punjab and another** reported in **(2014) 6 Supreme Court Cases 466**, the application can be disposed of in view of the settlement reached between the parties. In paragraph no. 31 of the judgment, the Honourable Apex Court has observed thus :

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

(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 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.

(iv) On the other, 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.

(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 to 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.

6. In the instant matter, apart from the fact that the parties are from same village and related to each other, in view of settlement reached between the parties, there is remote possibility of conviction and as such, it would not be in the interest of justice to continue the criminal case initiated by respondent/complainant and that, it would likely to cause prejudice to the accused. It also needs to be mentioned that settlement has been reached between the parties immediately after the alleged commission of offence and the matter is still under investigation. In this view of the matter, this Court would be at liberty to quash the criminal proceeding initiated against the accused/applicants herein in view of paragraph no. 31(viii) of the judgment in the matter of Narinder

Singh (Supra).

7. For the reasons recorded above, application is allowed. Criminal proceeding initiated against accused/applicants in view of registration of Crime No. 67/2016 at Pathardi police station for commission of offence punishable under section 436, 143 of the Indian Penal Code stands quashed. Rule made absolute.

(A.M. DHAVALÉ)
JUDGE

(R.M.BORDE)
JUDGE

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