

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

CRIMINAL APPLICATION NO.5164 OF 2017

1. Gangadhar Bapurao Ikkar,
Age 55 years, Occ. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani.
2. Ashok Dattrao Magar,
Age 25 years, Occu. Agriculture,
R/o Savangi, Taluka Manvat,
District Parbhani. ... **Applicants**

Versus

1. The State of Maharashtra
Through Police Inspector
Police Station, Bori,
Taluka Jintoor, District Parbhani.
2. Machhindra Bapurao Ikkar,
Age 52 years, Occu. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani. ... **Respondents**

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Mr. V.B.Jogdand, Advocate for Applicants
Mr. M.M.Nerlikar, APP for Respondent No.1 - State

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WITH

CRIMINAL APPLICATION NO.5508 OF 2017

1. Machhindra Bapurao Ikkar,
Age 52 years, Occ. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani.

2. Rameshwar Machhindra Ikkar,
Age 25 years, Occu. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani.

3. Parmeshwar Machhindra Ikkar,
Age 29 years, Occu. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani.

... **Applicants**

Versus

1. The State of Maharashtra
Through Police Inspector
Police Station, Bori,
Taluka Jintoor, District Parbhani.

2. Gangadhar Bapurao Ikkar,
Age 52 years, Occu. Agriculture,
R/o Hatta, Taluka Sailu,
District Parbhani.

... **Respondents**

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Mr. M.V.Salunke, Advocate for Applicants

Mr. M.M.Nerlikar, APP for Respondent No.1 - State

Mr. S.A.Gaikwad h/f Mr. V.B.Jogdand Patil, Advocate for
Respondent No.2

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

RESERVED ON : 27th November, 2017

PRONOUNCED ON : 05th December, 2017

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.

Heard finally with the consent of learned advocates for

the applicants, learned APP for Respondent No.1-State and learned advocate for Respondent No.2.

2. These applications have been filed under Section 482 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') for quashing C.R.No.133 of 2017 and 132 of 2017 respectively, registered with Bori Police Station. Since these crimes have been registered on a cross complaint as a result of the incident which has occurred at the same time and since the applicants are the accused and seeking to quash the respective crimes on the basis of a compromise arrived at between the parties, we propose to dispose of these applications by this common order.

3. In C.R.No.133 of 2017 for the offences punishable under Sections 307, 326, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.'), younger brother Machhindra is the informant whereas in C.R.No.132 of 2017 for the offences punishable under Sections 307, 452, 326, 324, 323, 504, 506 read with Section 34 of Indian Penal Code

elder brother Gangadhar is the informant. They are real brothers and possess land adjoining to each other. As usual there has been a boundary dispute between the two. When the tempers had risen, on 21.06.2017, Gangadhar and his son-in-law Ashok who are the applicants in Criminal Application No.5164 of 2017 on the one hand and Macchindra and his two sons who are the applicants in Cri.Appln.No.5508 of 2017, along with their associates involved in an altercation which ensued into assault on each other by using weapons like axe and iron rod. Machhindra sustained injury on the shoulder, forehead, hands and legs. Gangadhar also sustained injury on the head and both the knees and shin.

4. According to the learned advocates for both the sides, though the offences registered are serious and non-compoundable, the injured persons are near relatives and in the interest of everybody involved, they have arrived at an amicable settlement and desire to forget and forgive. They also referred to the affidavits filed by the injured persons. Then they referred to the

decisions in the case of ***Narinder Singh and others Vs. State of Punjab and another [AIR 2014 SC (Supp) 1839]*** and ***Gian Singh Vs. State of Punjab and another [(2012) 10 SCC page 303]***.

5. As against this, the learned APP opposed the applications and submitted that when the legislature has not made these serious offences to be compoundable, the powers of this Court under Section 482 should not be exercised to quash the proceeding on the ground of such compromise. The learned APP in support of his submissions referred to the decision in the case of ***State of Madhya Pradesh Vs. Deepak and others [AIR 2014 SC 3747]***.

6. We have carefully gone through the petitions, papers of the investigation and the affidavits of the respective injured persons. We have also carefully gone through the decisions cited on behalf of both the sides. There can be no dispute that what is specifically not permissible in law should not be done by invoking the powers under Section 482 of the Cr.P.C. However, the

law has been crystalized by the Supreme Court in the case of Gian Singh and Narinder Singh (supra). The paramount consideration is the nature and gravity of the crime and its social impact.

7. Bearing in mind these principles, what weighs with us is the fact that though there is a grievous injury sustained by Gangadhar in the form of fracture to a leg, there is no injury sustained by any of the injured persons which could be described as fatal. The injuries sustained by Gangadhar Bapurao Ikkar are as under :

i)	Contused lacerated wound	Right side of parietal region of head	Simple
ii)	Contused lacerated wound	Left frontal region of head	Simple
iii)	Contusion	Left knee joint	Grievous - fracture of patella
iv)	Contusion	Left ankle joint	Simple

The injuries sustained by his wife Radhabai Gangadhar Ikkar are as under :

i)	Crush Amputation	Distal phalanx of right ring finger	Simple
ii)	Contusion	Left hand wrist	Simple

iii)	Contusion	Back of left thigh	Simple
iv)	Contusion	Left knee joint	Simple

The injury sustained by Ayodhya Ashok Magar is as under :

i)	Contusion	Left hand thumb	Simple
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The injuries sustained by Ashok Dattarao Magar are as under :

i)	Contused lacerated wound	Left side of temporal region of head	Simple
ii)	Contusion	Left knee joint	Simple
iii)	Contusion	Left ankle joint	Simple

As regards the other party, Macchindra Bapurao Ikkar has sustained following injuries :

i)	Contusion	Left side of frontal region of head	Simple
ii)	Contusion	Left side of angle of Mandible	Simple
iii)	Contused lacerated wound	Left shoulder region	Simple
iv)	Contusion	Left scapular region	Simple
v)	Contusion	Left hand wrist	Simple

The injuries sustained by his son Parmeshwar Macchindra Ikkar are as under :

i)	Contusion	Right side of Mandibular	Simple
ii)	Contusion	Right shoulder region	Simple
iii)	Contusion	Left arm	Simple
iv)	Abrasion	Right hand middle finger	Simple

8. A bare look at all these injuries would clearly reveal that except a fracture sustained by Gangadhar of Patella, everybody has sustained only simple injuries. Besides even though weapon like axe has been used, it is apparent that the blade of the axe has not been used by either side else there would have been some cut injuries as well, which are conspicuously absent. There is also no material to show that any of these persons had sustained any injury which could have been fatal. Therefore, prima facie though the charges are grievous and even one injury is grievous in nature, the incident must have been a usual physical altercation in the family members. We are more than convinced that the fighting had no effect on the public and does not have

any potential of impacting the social structure.

9. In case of State of Madhya Pradesh Vs. Deepak (supra), the facts were entirely different. In that case, the accused had used a weapon like sword and the complainant had specifically alleged that the accused was having an intention to kill him and had given a blow of sword on his forehead questioning him as to why he (complainant) lodged the report against his (accused's) elder brother ? When such a matter was compromised and on the basis of such compromise the High Court had quashed the proceeding by invoking the powers under Section 482 of the Cr.P.C., it was held that the offence under Section 307 of the I.P.C. falls in the category of heinous and serious offences and cannot be treated as a private dispute between the parties and is a crime against the society. In the matter in hand, though the offences alleged are punishable under Section 307 of the I.P.C., as is mentioned above there is no grievous injury on any vital part of the body. Though the weapons used were axe, apparently its blades were not

used and except one fracture to the Patella of one person, there was no grievous injury sustained by anybody. Besides the fight had ensued as a result of a boundary dispute between the two brothers and they have filed cross complaints.

10. In view of such peculiar state of affairs, bearing in mind the principles in the case of Gian Singh and Narinder Singh (supra), we deem it appropriate to allow the parties to lead the life in a more secured environment rather than by allowing them to harbour hostility. In the peculiar facts and circumstances, the applications deserve to be allowed and the crimes deserve to be quashed on the basis of the compromise by invoking the powers under Section 482 of the Cr.P.C.

11. The applications are accordingly allowed. The FIRs in the applications are quashed. The rule is made absolute accordingly.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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vmk/-