

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPLICATION NO. 6603 OF 2016

1. Vaishali W/o Jagdish Nikam,
Age : 27 Years, Occ. Household,
R/o Ambar Hill Matajichi Bhimtekadi,
Jatwada Road, Aurangabad.
2. Jagdish S/o Sheknath Nikam,
Age : 33 Years, Occ. Business,
R/o As above.
3. Sidharth S/o Madhukar Ghansawant,
Age : 30 Years, Occ. Service,
R/o Galli No. 13, Gautam Nagar,
Ambedkar Chowk, CIDCO,
N-7, Aurangabad.
4. Laxmi Madhukar Ghansawant,
Age : 55 Years, Occ. Household,
R/o As above.

VERSES

1. The State of Maharashtra,
Through, Police Inspector,
Police Station, CIDCO,
Aurangabad, Tq. and Dist. Aurangabad.
2. Sindubai W/o Bhagwan Sapkal,
Age : 40 Years, Occ. Household,
R/o House No. 38/4, CIDCO,
N-9, Aurangabad,
Tq. and Dist. Aurangabad.

WITH

CRIMINAL APPLICATION NO.6009 OF 2016

1. Akshy @ Tinu S/o Bhagwan Sapkal,
Age : 19 Years, Occ. Education,
R/o House No. 38/4, CIDCO,
N-9, Aurangabad.

2. Sindubai W/o Bhagwan Sapkal,
Age : 40 Years, Occ. Household,
R/o House No. 38/4, CIDCO,
N-9, Aurangabad.
3. Manisha Bhagwan Sapkal,
Age : 24 Years, Occ. Education,
R/o Shivneri Colony,
H. No.38/4, CIDCO, N-9,
Aurangabad.

VERSES

1. The State of Maharashtra
2. Vaishali W/o Jagdish Nikam,
Age : 26 Years, Occ. Household,
R/o Shivnari Colony, CIDCO N-9,
Aurangabad,
3. Sanjay S/o Sudah Vedekar,
Age : 30 Years, Occ. Labour,
R/o Gautam Nagar, Pisadevi Road,
Gut No. 13, Aurangabad.

Advocate for Applicants :Mr. Nitin T. Tribhuwan
APP for Respondent No.1 : Mr. S. B. Yawalkar
Advocate for Applicant No. 2 : Mr. R. A. Jaiswal

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

DATE : 23RD FEBRUARY, 2017.

ORAL JUDGMENT : [PER S.S. SHINDE,J]

- 1] Criminal Application No.6603 of 2016 is filed with the following
substantive prayer :-

" B} The impugned FIR bearing its crime No.536 of 2015, registered with the police station, CIDCO, Aurangabad, Tal. And Dist. Aurangabad for an offence under Section 323, 354, 504, 506, 143 of Indian Penal Code may kindly be quashed and set aside to the extent of applicants"

Criminal Application No.6009 of 2016 is filed with the following substantive prayer :-

" B} That, proceeding in Sessions Case No. 204 of 2014 pending before learned Additional Sessions Judge, Aurangabad under section 307, 323, 504, 506 r/w. 34 of Indian Penal Code in Crime No. I-507 of 2015 registered with CIDCO Police Station may kindly be quashed and set aside."

2] Pursuant to notices issued to the respondents, respondent No.2 (informants in both the applications), have filed affidavits, stating therein that there is no previous enmity between the parties. The incidents took place on the spur of moment and in order to maintain good relations, with the intervention of relatives and respectable persons in the society, they have settled the dispute amicably and they have no objection to quash the FIRs, and the proceedings initiated pursuant to said FIRs.

3] They have stated that it is their voluntary act to enter into settlement, with the intervention of elderly and respectable person of the society. The parties are identified by the respective advocates appearing for them. The terms of affidavit are verified before the Registrar (Judicial) of this Court. It is stated in the report submitted by the Registrar (Judicial) that is voluntary act of the parties to verify the terms of affidavit, stating therein the settlement arrived between the parties. It is true that one of the alleged offence is punishable under Section 307 of IPC. However, on perusal of the investigation papers, and in particular, the Medical Certificate, the respondent No.3 in Criminal Application No. 6009 of 2016 has sustained simple injury.

4] The Honourable Apex Court in the matter of **Gian Singh Vs State of Punjab and another**¹ reported in The Apex Court, in paragraph No. 54 of said judgment has observed thus:-

“Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crimdoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of mortal turpitude under special statues, 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. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc, or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint of F.I.R. If it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

1. **2012(4) Bom.C.R.(Cri) 428**

5] The Supreme Court in the case of **Narinder Singh & others Vs. State of Punjab & another**¹ 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 Cr.P.C. The Hon'ble Supreme Court in the said case in para No.29 observed, thus:

“29. 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:

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.

1. (2014) 6 SCC 466

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, 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.

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 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.

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.”

6] Therefore, keeping in view of the exposition of law by the Honourable Apex Court in the matter of ***Gian Singh Vs. State of Punjab and another and Narinder Singh & others Vs. State of Punjab & another (supra)*** to prevent further abuse of process of law/court, we are inclined to accept the amicable settlement between the parties, since the same is arrived between the parties with the intervention of senior/respectable persons in the society.

7] The applicants/accused in both the applications, who are original accused, on interaction with them, also assures this court that henceforth they will not indulge into such type of criminal activities.

8] For the reasons aforesaid. The applications are allowed in terms of prayer clause (B) in both the applications. Rule made absolute to the above extent. Applications stand disposed of accordingly.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-