

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.55 OF 2017.

Smt. Anupama Rodrigues,
Major of age, Indian national,
Housewife, Resident of
2B F4, Models Millennium
Vistas, Caranzalem, Panaji Goa.

...Petitioner.

Versus

1. State of Goa,
Through the Public Prosecutor,
High Court of Bombay at Goa.

2. The Police Inspector,
Panaji Women Police Station
Panaji Goa.

3. Smt Payal Modi,
Major of age,
Indian National,
Businesswoman,
4F, F1/F2,
Models, Millennium Vistas
Caranzalem, Goa.

...Respondents.

Shri Kaif Noorani, Advocate for the petitioner.

Shri S. R. Rivankar, Public Prosecutor for the respondent no.1
and 2.

Ms. Falguni Brahmbhatt and Shri V. Amonkar, Advocates for
the respondent no. 3.

**Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.**

Date: 30th March, 2017.

JUDGMENT (Per Nutan D. Sardesai, J)

Heard Shri Kaif Noorani, learned Advocate for the

petitioner, Shri S. R. Rivankar, learned Public Prosecutor for the respondent nos.1 and 2 and Ms. Falguni Brahmbhatt with Shri V. Amonkar, learned Advocate for the respondent no.3.

2. Rule. Heard forthwith with the consent of the learned Counsels appearing for the parties.

3. The learned Public Prosecutor and learned Advocate waive notice on behalf of the respective respondents.

4. The petitioner seeks to quash the FIR bearing No. 4/2017 dated 3.3.2017 filed by the respondent no.3 before the respondent no.2 under Section 323 IPC read with Section 8(2) of the Goa Children's Act 2003 ("The Act" for short hereinafter). The petitioner and the respondent no.3 are neighbours who have been residing at the stated address since the last several years. The petitioner is taking exception to the impugned FIR on the ground that she and the respondent no.3 have amicably settled the dispute and differences that arose between them and therefore do not wish to proceed with the criminal investigation/prosecution any further. The petitioner and the respondent no.3 as neighbours do not wish to strain

their cordial relationships which exists between them and their family and maintain the harmony in the housing society where they live.

5. The respondent no.3 on 3.3.2017 had filed a complaint against her alleging that the petitioner had hit her son Vedant when he had gone downstairs to play with the son of the petitioner with a metal water bottle resulting in the respondent no.3's son getting a deep wound on his head and which would had to be stapled under local anaesthesia. She had obtained anticipatory bail from the Children's Court alongwith her husband and in the meantime the respondent no.3 had recorded her statement, that of the respondent no.3, her husband and both the children.

6. The petitioner and the respondent no.3 being neighbours share a cordial relationship with each other and the children involved in the purported incident who are otherwise friends meet and play with each other in the society regularly. The families of the petitioner and the respondent no.3 also enjoy the same social status and are both reputed. The petitioner approached the respondent no.3 to finally settle

the dispute who after understanding the correct factual position and keeping in mind their greater good of the children agreed to settle dispute and differences between themselves. The offence registered against the petitioner particularly under the Act is non-compoundable in terms of Section 320 CRPC and therefore the petitioner had been constrained to invoke the inherent jurisdiction of this Court under Section 482 CRPC and Article 226 of the Constitution of India to quash the FIR. The petitioner accordingly sought for a Writ of Certiorari or any appropriate writ calling for the records and quash the impugned FIR.

7. The respondent no.3 had filed her affidavit in which she conceded that she had filed the complaint against the petitioner before the respondent no.2 pursuant to which the FIR case came to be registered against the petitioner. She too reiterated that her relationship with the petitioner as neighbours was cordial and besides their children were friends. Moreover keeping the larger interest of the families and more particularly the children at heart, she and the petitioner had amicably settled the dispute that had arisen between them. She also reiterated in her affidavit that she had approached

the respondent no.2 to withdraw the complaint but was informed that as the FIR had been registered the case could not be closed and she would have to approach the Court for appropriate orders. She was unequivocally, undisputedly and unconditionally withdrawing the complaint against the petitioner and that she had amicably settled the dispute that had arisen between them and therefore did not wish to proceed further with the investigation in the FIR bearing no.4/2017 dated 3.3.2017 registered by the respondent no.2. She had no objection if this Court was pleased to quash and set aside the FIR.

8. Shri K. Noorani, learned Counsel appearing for the petitioner reiterated the contents of the petition and besides relied in **Hussain Siddiqui and another Vs. State of Goa and others, (Criminal Writ Petition No. 157 of 2015)** to which one of us (F.M. Reis, J) was a party and wherein a similar case involving an offence under Section 8 of the Act was involved when this Court had considered the judgment of the Hon'ble Apex Court in **Yogendra Yadav and others Vs. State of Jharkhand and another, [(2014)9 SCC 653]** in turn referring to its earlier decision in **Gian Singh Vs State of**

Punjab, [(2012)10 SCC 303] and quashed the FIR. Shri S. R. Rivankar, learned Public Prosecutor for the respondent no.1 conceded in fairness looking to the factual matrix and that the parties had amicably settled the dispute between themselves and giving weightage to the judgments of the Hon'ble Supreme Court in **Gian Singh** and **Yogendra Yadav** (supra), that this Hon'ble Court could pass the appropriate orders in the circumstances.

9. We have considered the circumstances of the case as set out in the petition and otherwise canvassed on behalf of the petitioner. We have also considered the affidavit filed by the respondent no.3 who has by and large substantially agreed that the parties have amicably settled the dispute between themselves and that the respondent no.3 as the original complainant does not wish to proceed with the FIR and as she wants to maintain cordial relationship not only with the petitioner residing in the same society but also on account of friendly relationships shared by their respective children and to keep harmony between them.

10. The Hon'ble Supreme Court in **Yogendra Yadav**

(surpa) has inter alia held that except the offences which are of a grave nature such as rape, murder, etc other offences can be allowed to be compounded/quashed, in view of the amicable settlement between the parties. It is further held that prosecution involving such offences, which are personal to the parties, not involving public law element can be put to an end, as a continuation of the prosecution in such cases would be lame and an exercise in futility. The consideration of restoration of peace and better relations between the parties also arise in such cases. The Hon'ble Apex Court in turn has referred to its earlier decision in the case of **Gian Singh** (supra).

11. We find from the material on record that the petitioner and the respondent no.3 have amicably settled their dispute and as they want to restore their cordial relationship and harmony while living in the same colony between themselves. It is also otherwise born out from the affidavit of the respondent no.3 that her child and that of the petitioner also enjoys friendly relationship and who play with each other on a regular basis and moreover her son had sustained minor injuries in the course of the scuffle which took place between

the two children. Considering the circumstances and the nature of the offence under Section 8 of the Act read with Section 323 IPC as alleged against the petitioner, it cannot at all be said to be either heinous and/or involving public law element. Settlement in the circumstances would be in the best interest of the parties so as to restore peace and this Court can justifiably rise to the occasion to exercise its jurisdiction to quash the proceedings.

12. In the circumstances, therefore, we pass the following:-

ORDER

- (i) Rule is made absolute in terms of prayer clause(a).
- (ii) Petition stands disposed off accordingly.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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