

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.79 OF 2017

Menino Camilo Fernandes,
Major of age,
R/o. H. No. 53, Villa Nova,
Vanelim, Colva, Salcette, Goa.

... Petitioner

Versus

1. The State of Goa
Through Senior Police Inspector,
Colva Police Station, Colva, Goa.

2. Jose Dias,
Major of Age,
R/o. H. No. 195, 2nd Ward,
Colva, Salcette - Goa

3. Jaison Dias,
Major of Age,
R/o. H.No.195, 2nd Ward,
Colva, Salcette- Goa.

... Respondents.

Ms. M. Furtado , Advocate for the petitioner.

Shri P. Faldessai, Additional Public Prosecutor for the respondent no.1.

Shri Pavithran A.V., Advocate for the respondents no.2 and 3.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 3rd May, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Ms. M. Furtado, learned Advocate for the petitioner, Shri P. Faldessai, learned Additional Public Prosecutor for the respondent no.1 and Shri Pavithran A.V., learned Advocate

for the respondents no.2 and 3.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate appearing for the respective parties. Shri P. Faldessai, learned Additional Public Prosecutor waives service on behalf of the respondent no.1. Shri Pavithran A.V., learned Advocate waives service on behalf of the respondents no.2 and 3.

4. The petitioner has taken exception to the Crime no.183 of 2011 registered with the Colva Police Station for the offence punishable under Section 323 IPC and under Section 8(2) of The Goa Children's Act, 2003. The petitioner had been arraigned as an accused and sought for quashing of the FIR and the Chargesheet by invoking the writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India and Section 482 Cr.P.C.

5. It was the case of the petitioner that he has a son aged 17 years while the respondent no.2 has a son i.e. the respondent no.3 aged 20 years. The petitioner and the respondents no.2 and 3 have amicably settled the dispute and differences that arose between them and mutually did not wish that the criminal

investigation / prosecution proceeded any further. The petitioner and the respondents no.2 and 3 were residents of the same village, did not wish to strain the cordial relation that exists between them and their families and maintain harmony in the neighbourhood that they live in by not proceeding any further with the impugned F.I.R. and Chargesheet. The petitioner was thus invoking the inherent powers of this Court under Section 482 Cr.P.C.

6. In the brief facts, the respondent no.2 had filed the complaint against him alleging that the petitioner had hit the respondent no.3, then aged 14 years, when he went for football practice at the village playground, where the son of the petitioner, then aged 11 years was also playing with his friend. The respondent no.1 had registered the FIR based on the said complaint. The police had carried out the necessary investigation and filed a Chargesheet before the Children's Court which came to be registered as a Special Case No.38 of 2012. The charge was framed and the trial began and the prosecution examined the complainant.

7. The respondent no.1 had registered the FIR pursuant to the complaint filed by the respondent no.2 which was purely due to misunderstanding and misapprehension. The son of the petitioner

and that of the respondent no.2 had now grown up and were young students and sharing a very cordial friendship. The petitioner and the respondents no.2 and 3 being neighbors were also sharing a very cordial relationship with each other and their children were friends who met regularly and roamed around together. Hence, in order to finally settle the dispute, the petitioner approached the respondent no.2, who after understanding the correct factual position and keeping in mind the greater good of the children agreed to settle the disputes and differences between themselves. The offence under the Children's Act was not compoundable in nature and therefore the petitioner and the respondents no.2 and 3 were unable to file an appropriate application before the Children's Court for compounding the offences under Section 320 Cr.P.C. and thus invoking the inherent powers of this Court under Section 482 Cr.P.C.

8. Heard Ms. M. Furtado, learned Advocate for the petitioner, Shri P. Faldessai, learned Additional Public Prosecutor for the respondent no.1 and Shri Pavithran A.V., learned Advocate for the respondents no.2 and 3. Besides, we have also examined the records being the final report revealing that an offence was registered against the petitioner under Section 323 Cr.P.C. which is compoundable in nature and Section 8(2) of The Goa Children's

Act, 2003 which is non-compoundable in nature. We have examined the Hurt Certificate which reveals that the respondent no.3 had apparently suffered simple injuries in the course of the alleged scuffle which took place between the petitioner and the respondent no.3. We have also examined the accompanying statements which prima facie indicate that they were informed about the said assault by the petitioner on the person of the respondent no.3. Be that as it may, the respondents no.2 and 3 have placed their affidavit on record reiterating that the complaint was filed against the petitioner pursuant to which the FIR came to be registered and a Chargesheet filed against him before the Children's Court. However, they were neighbours residing in the same village and their children were friends apart from that the families now sharing cordial relationship with each other. Therefore, keeping the interest of the families and more particularly that the children of the petitioner and the respondents no.2 and 3 had amicably settled their dispute that had arisen between them, he was unequivocally withdrawing his complaint filed against the petitioner on account of the settlement of the dispute between them and hence had no objection if this Hon'ble Court quashed and set aside the FIR and the Chargesheet filed before the Children's Court.

9. We have also considered the judgment in "**Gian Singh**

v/s. State of Punjab and another”[(2012) 10 SCC 303] and that in **“Yogendra Yadav and others Vs. State of Jharkhand and another”** [(2014)9 SCC 653].

10. **Yogendra Yadav** (supra), considered the question whether the quashing of non-compoundable offences in view of the compromise between the parties could be permitted in exercise of the powers under Section 482 of Cr. P C. Their Lordships held that the High Court can quash a criminal proceeding in exercise of its discretionary power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. Further this would depend on the facts and circumstances of each case. Offences which involve moral turpitude, grave offences like, rape, murder etc cannot be effaced by quashing the proceedings because they will have harmful effect on the society. Such offences cannot be said to be restricted to two individual or two groups. If such offences are quashed, it may send a wrong signal to the society. However, when the High Court was convinced that the offences are entirely personal in nature and therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure the ends of justice, it

may quash the same. In such cases, the prosecution become a lame prosecution and pursuing such lame prosecution becomes a waste of time and energy and also likely to unsettle the compromise and obstruct the restoration of peace. On the facts it was held that though offences under Sections 326 and 307 are non-compoundable, but considering the compromise petition filed by the parties in the lower Court and the fact that they were neighbours and that there was harmonious relationship between the two sides and that they were living peacefully, the pending proceedings were directed to be quashed.

11. In **Gian Singh** (supra), the Apex Court had observed at paragraph 58 that:

Paragraph 58:- where the High Court quashes a criminal proceedings having regard to the fact that the dispute between the offender and the victim is not settled although the 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.”

12. We are therefore inclined to accept the affidavit filed by the respondents no.2 and 3 and as no purpose would be achieved

by continuation of the prosecution which would be a lame prosecution involving wastage of the Court time. Having thus considered the factual matrix and that the parties have amicably resolved the dispute between themselves and looking to the tenor of offences coupled with Section 8(2) of The Goa Children's Act, 2003 and applying the ratio in **Gian Singh** and **Yogendra Yadav** (supra), in the result, we pass following

ORDER

- i) The petition is allowed in terms of prayer clause (a) whereby the FIR no.183/2011 and Chargesheet bearing No.33/2012 and the Special Case No.38 of 2012 pending before the Children's Court are quashed and set aside.
- (ii) Rule is made absolute.
- (iii) The petition stands disposed off. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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