

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO. 2761 OF 2016**

|                                    |               |
|------------------------------------|---------------|
| Mr. Nilesh Prakash Yewale and ors. | ..Petitioners |
| Versus                             |               |
| The State of Maharashtra and ors.  | ..Respondents |

Mr. N. R. Pandey, advocate for the petitioners.  
Mr. K. V. Saste, APP for the State.  
Mr. B. V. Tiwari, advocate for the respondent Nos. 2 and 3.

**CORAM : RANJIT MORE &  
PRAKASH D. NAIK, JJ.**

**DATE : 11<sup>th</sup> OCTOBER, 2017.**

**P. C. :**

Heard learned counsel for the petitioners, learned counsel for the respondent Nos. 2 and 3 and learned APP for the State.

2. The petition is filed for quashing and setting-aside the proceedings of the S.C.No.52 of 2016 pending on the file of learned Session Judge, 39<sup>th</sup> Court at Mumbai. The said case arises out of registration of FIR bearing CR No. 118 of 2015 with Kanjurmarg Police Station, at the instance of the complainant/respondent No.2 for the offences punishable under Sections 354 and 325 of the Indian Penal Code, 1860 (for short "the IPC"). However, at the time of filing charge-sheet, the police applied Section 307 of the IPC.

3. Pending trial, the parties have settled their dispute amicably with the help and intervention of family members, elders and well-wishers and in pursuance of an understanding arrived at between them, they have approached this Court for quashing the proceedings of the subject criminal case by consent. The aggrieved parties viz. respondent No.2 and her father – respondent No.3 have filed a common affidavit dated 26<sup>th</sup> September, 2016. In paragraph 6, they have given their consent and willingness for quashing the proceedings of the subject criminal case. Both the respondent Nos.2 and 3 are present before this Court. On being questioned, they specifically stated that they have gone through the affidavit and petition as well and have fully understood the contents thereof. They further confirmed that they have given no objection for quashing the proceedings of the subject criminal case out of free will and without there being any pressure or coercion.

4. It is true that the offence under Section 307 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph 28 of **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]** wherein the Apex Court has held as under:

*“28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another*

*person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provisions of Section 307 IPC would not, by itself be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge-sheet, the court can accept the plea*

*of compounding of the offence based on settlement between the parties.”*

5. The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR/Charge-sheet if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

6. In the instant case, the FIR revealed that the respondent No.3 was assaulted by fist blows which resulted in nasal fracture and injury below the eye. We have also perused the medical certificate in respect of the injuries sustained by the respondent No.3. From the perusal of the same, it is abundantly clear that the offence under Section 307 is not made out. Consequently, we find that no purpose would be served by continuing with the prosecution.

7. In the backdrop of above facts and circumstances and especially in view of law laid down by the Apex Court in the case of **Narinder Singh (supra)**, we find that no purpose would be served by

keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interests of justice, the criminal proceedings are required to be quashed. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

8. Accordingly, the petition is allowed in terms of prayer clause (a). As a condition precedent for this order to take effect, the petitioners shall pay costs of Rs.25,000/- (Cost of Rs.5000/- to be paid by each of the five petitioners) to Tata Memorial Cancer Hospital, Mumbai, for the use of its philanthropic purposes and produce copy of the receipt on the file of this petition within a period of four weeks from today, failing which, the petition shall stand dismissed automatically without further reference to the Court.

9. Subject to above, the writ petition stands disposed off.

**(PRAKASH D. NAIK, J.)**

**[RANJIT MORE, J.]**