

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 900 OF 2017**

Rizwaan Usman Lakdawala & Ors

..Applicants

Vs.

The State of Maharashtra & Anr

..Respondents

**WITH
CRIMINAL APPLICATION NO.907 OF 2017**

Mustafa Hamza Soni & Ors

..Applicants

Vs.

The State of Maharashtra & Anr

..Respondents

Mr. Gaurang C. Jhaveri i/b Mr. Amey Deshpande for the Applicants in Criminal Application No.907 of 2017 and for the Respondent No.2 in Criminal Application No.900 of 2017

Mr. A. K. Millwala for the Applicants in Criminal Application No.900 of 2017 and for the Respondent No.2 in Criminal Application No.907 of 2017

Mr. J. P. Yagnik APP for the Respondent State in Criminal Application No.907 of 2017

Mrs. M. M. Deshmukh Addl. PP for the Respondent State

**CORAM :R. M. SAVANT, &
SANDEEP K. SHINDE, JJ
DATE : 4th SEPTEMBER, 2017**

P.C.

1 The above Criminal Applications have been filed for quashing the proceedings in Sessions Case No.396 of 2017 (Criminal Application No.900 of 2017) arisen out of FIR No.183 of 2017 and FIR No.184 of 2016 (subject matter of Criminal Application No.907 of 2017). The said FIRs have arisen out of the cross complaints made by the parties. The cross complaints have arisen

out of a dispute between the parties as regards parking space on the road outside the building wherein the parties are residing.

2 In so far as FIR No.183 of 2016 is concerned, the same has been filed by One Juzer Abbas Rajokotwala and FIR No.184 of 2016 is filed by Sarfaraz Usman Lakdawala. In so far as FIR No.183 of 2016 is concerned, the same is registered with Byculla Police Station for offences punishable under Sections 307, 324, 504, 506(2), 143, 144, 147, 148 and 149 of the Indian Penal Code. In so far as FIR No.184 of 2016 is concerned, the same is registered under Section 324, 143, 147, 149 and 427 of the Indian Penal Code. In so far as the FIR No.183 of 2016 is concerned, the charge sheet has been filed wherein the recovery of a knife which is 7 inches in length and which is having 5 inches grip therefore totally admeasuring 1 foot. With the assistance of the Learned Counsel for the parties, we have perused the injury certificates issued by the JJ group of Hospitals in respect of the injured persons. The said injury certificates except in respect of injury to one Siraj Arsiwala who is shown to have incised wound over base of right thumb on medial side, the injuries to the other injured persons can be said to be simple injuries. As indicated above the scuffle took place on account of the dispute relating to parking outside the building wherein the parties are residing.

3 On behalf of the injured persons affidavits have been filed which are annexed to the Criminal Application No.900 of 2017 at pages 90 to 99.

The said affidavits are inter alia of Mustafa Soni, Juzer Rajkotwala, Hussain Ibrahim Kargoonwala, Siraj Arsiwala and Abdul Qadir Gogawala. The said affidavits are identical in their contents, hence reference would be made to the affidavit of Mustafa Soni. In the context of the relief sought in the above Criminal Application, paragraphs, 3, 4, 6 and 7 of the said affidavit are material and are reproduced hereinunder:

3 I also state that the grievances which were represented before the SBUT trust have been redressed by them and that as of now there are no grievances or disputes left pending.

4 I also state that due to this redressal of grievances, I affirm that the complaint is now amicably settled and that criminal proceedings may please be quashed.

6 I affirm that I have no objection whatsoever if the High Court quashes and sets aside the FIR and related criminal proceedings, which will be in interest of justice and peace.

7 If required, I will remain present before the High Court to state that I have consented for quashing to this FIR and that I have no objection if the FIR 183/2016 at Byculla Police Station is quashed and set aside.

A reading of the said affidavits filed by the injured persons as also by the first informant Juzer Rajkotwala exfacie discloses that the parties have resolved their dispute and that they are not desirous of proceeding with the Criminal case as also the FIR No.184 of 2016.

4 A useful reference could be made to the judgment of the Apex Court in the matter of **Narinder Singh & Ors Vs. State of Punjab & Anr.**¹ In the said case the Apex Court in paragraph 31 has laid down the guide lines for exercise of powers under Section 482 of the Cr.PC in the matter of quashing the proceedings. Having regard to the facts of the instant case, wherein as indicated above the Accused have been charged with the offence punishable under Section 307 of the Indian Penal Code, clause (VI) of paragraph 31 of the said judgment is relevant and is reproduced hereinunder:

31. 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.

(I).....

(II).....

(III).....

(IV).....

(V).....

(VI) Offences under Section 307, Indian Penal Code, 1860 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, Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether

1 2014 AIR SCW 2065

incorporation of 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. Medial 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 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.

5 Hence in so far as offences punishable under Section 307 are concerned, the test laid down by the judgment in Narinder Singh's case (supra) have to be satisfied. In the instant case, as indicated above though recovery of a knife has been made, the injuries sustained by the injured persons cannot be said to be of a serious nature so as to dis-entitle the accused to the relief of quashment of the proceedings. It would also have to be borne in mind that there are cross FIRs lodged by the parties which in our view, would also one of the relevant circumstances for the exercise of power under Section 482 especially having regard to the fact that the parties have now settled their disputes which is exemplified by the affidavits filed by the injured including the first informant.

6 The first informant Juzer Rajkotwala is personally present in court and is identified by the Learned Counsel Mr. Jhaveri appearing for him. He is also identified by his Adhar Card No.863822087606 . When put in the box and queried he states that the affidavit at page 92 is his and he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him. He further states that he is not desirous of prosecuting the accused.

 The injured Mr. Mustafa Soni is personally present in court and is identified by the Learned Counsel Mr. Jhaveri appearing for him. He is also identified by his Adhar Card No.292103689771. When put in the box and queried he states that the affidavit at page 90 is his and he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him.

 The injured Mr. Husain Ibrahim Khargoonwala is personally present in court and is identified by the Learned Counsel Mr. Jhaveri appearing for him. He is also identified by his Pan Card No. AWMPK6661P. When put in the box and queried he states that the affidavit at page 94 is his and he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him.

 The injured Mr. Siraj Arsiwala is personally present in court and is identified by the Learned Counsel Mr. Jhaveri appearing for him. He is also

identified by his Adhar Card No.634580937059. When put in the box and queried he states that the affidavit at page 96 is his and he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him.

The injured Mr. Abdul Qadir Gogawala is personally present in court and is identified by the Learned Counsel Mr. Jhaveri appearing for him. He is also identified by his Pan Card No. ANYPG0953F . When put in the box and queried he states that the affidavit at page 92 is his and he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him.

7 In so far as Criminal Application No.907 of 2017 is concerned, the first informant Mr. Sarfarz Lakdawala is personally present in court and is identified by the Learned Counsel Mr. Millwala appearing for him. He is also identified by his Adhar Card No.419056974057. When put in the box and queried he states that he has filed the said affidavit of his own free will and volition and that the contents of the affidavit are acceptable to him.

8 In the light of the affidavits as above and having regard to the judgment of the Apex Court in Narinder Singh & Ors (Supra), in our view there is no impediment in quashing the proceeding and FIR No.184 of 2016 as no useful purpose would be served by keeping the proceeding pending as

chances of securing the conviction are remote. The Criminal Applications are accordingly allowed and made absolute in terms of prayer clause (A). The Applicants in both the Criminal Applications to cumulatively pay costs of Rs.50,000/- to be deposited with the Tata Memorial Hospital, Parel Mumbai, within 6 weeks from date and the receipt to be filed in the registry. The Criminal Applications are accordingly disposed of.

9 Both the Learned Counsel Mr. Jhaveri and Mr. Millwala states that they would be filing their vakalatnama for the Respondents in the respective applications during the course of the week. Undertaking accepted.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]