

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3804 OF 2017

Jabirali Shaukatali Qureshi and Others. ..Petitioners.

Versus

State of Maharashtra & Another. ..Respondents.

Mr. R. B. Mungekar for the Petitioners.

Mr. A. S. Pai, APP for the State.

Mr. M. Imran Farooqui for Respondent No. 2.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.

Date : **November 30, 2017.**

P. C. :

1. On the oral request of the learned Counsel for the Petitioner, leave to amend is granted. Necessary amendment be carried out forthwith.

2. Heard the learned Counsel appearing for the respective parties. By this petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioners are seeking to quash and set aside the proceedings of criminal case bearing CC. No. 1887/PW/2017 pending on the file of the learned Additional Chief Metropolitan Magistrate, 9th Court at Bandra Mumbai. The said case is an offshoot of one FIR registered at the instance of Respondent No. 2 with Mahim Police Station, being CR. No. 100 of 2017 for the offence punishable under sections 307, 326, 324, 323 read with 34 of the Indian Penal Code, 1860.

3. The learned Counsel appearing for the respective parties

submitted that pending trial of the afore-stated criminal case, at the intervention of elders, friends and well-wishers, the parties have amicably settled all the disputes and differences between themselves and pursuant to the understanding arrived at between them, parties have approached to this Court for quashing the subject criminal case by consent.

4. Respondent No. 2 (the informant) as well as the persons injured in the said crime, namely, Naim Shaikh, Nadim Shaikh, Salim Shaikh and Juman Shaikh have filed their individual separate affidavits dated 18th September 2017. In the said affidavits, they have given their no objection for quashing the subject criminal case.

5. Respondent No.2 and the injured persons are personally present before this Court. On specific query made by us, they submitted that they have made the said affidavits on their own and without there being any pressure or undue influence. They re-iterated before us that they have no objection to quash the proceedings of the subject criminal case.

6. 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 a 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 provision 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 injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that 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."

. 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.

7. So far as the present case is concerned, we have gone through the charge-sheet and medical certificates annexed thereto and we find that no case is made out for levelling the allegation of commission of the offence punishable under section 307 of IPC.

8. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the subject criminal proceedings pending except ultimately burdening the Criminal Courts which are already overburdened.

9. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the subject criminal proceedings. Accordingly, **petition is allowed in terms of prayer clause (a)** and the proceedings of CC. No. 1887/PW/2017 pending on the file of learned Additional Chief Metropolitan Magistrate, 9th Court at Bandra, Mubmai are hereby quashed and set aside subject to payment of cost of Rs.10,000/- by the Petitioners, which shall be paid to **“Tata Memorial Hospital”** an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said cost and produce the receipt thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]