

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 609 OF 2018

- 1) Shaikh Mustakin Shaikh Tukadu,
Age 40 years, Occupation Business,
- 2) Shaikh Wasim Shaikh Mustakin,
Age 21 years, Occupation Business,
- 3) Shaikh Altaf Shaikh Mustakin,
Age 19 years, Occupation Business,
- 4) Shaikh Manjoor Shaikh Maksud,
Age 22 years, Occupation Business,
- 5) Shaikh Awan Shaikh Sattar,
Age 21 years, Occupation Business,
- 6) Shaikh Juber Shaikh Maheboob,
Age 25 years, Occupation Business,
- 7) Shaikh Akil @ Sandya Shaikh Nisar,
Age 28 years, Occupation Business,
- 8) Shaikh Maksood Shaikh Tukadu,
Age 50 years, Occupation Business,

All R/o. Momin Ali Tq. Chopda
District Jalgaon.

.. Applicants

VS.

- 1) The State of Maharashtra,
Through its City Police Station,
Chopda Tq. Choda Dist. Jalgaon.
- 2) Shaikh Arif Shaikh Maheboob,
Age 39 years, Occupation Business,
R/o Momin Ali, Chopda Tq. Chopda
District Jalgaon.

.. Respondents

Mr. V. P. Patil, Advocate for the applicants.
Mr. D. R. Kale, Additional Public Prosecutor for respondent
No.1 / State.
Mr. D. B. Rode, Advocate for respondent No.2.

WITH

CRIMINAL APPLICATION NO. 610 OF 2018

- 1) Shaikh Arif Shaikh Maheboob,
Age 39 years, Occupation Business,,
- 2) Shaikh Ibrahim Shaikh Imam,
Age 24 years, Occupation Business,
- 3) Shaikh Ismail Shaikh Imam,
Age 28 years, Occupation Business,
- 4) Shahid Khan Sadik Khan,
Age 22 years, Occupation Business,
- 5) Sabir Khan Sadik Khan,
Age 19 years, Occupation Business,
- 6) Sadik Khan Wajid Khan,
Age 50 years, Occupation Business,
- 7) Shaikh Harun Shaikh Imam,
Age 30 years, Occupation Business,
- 8) Shaikh Firoj Shaikh Maheboob,
Age 35 years, Occupation Business,
- 9) Shaikh Rizwan Shaikh Yunus,
Age 21 years, Occupation Business,

All R/o. Momin Ali, Tq. Chopda
District Jalgaon.

.. Applicants

VS.

- 1) The State of Maharashtra,
Through its City Police Station,
Chopda Tq. Choda Dist. Jalgaon.

- 2) Shaikh Wasim Shaikh Mustakin,
Age 21 years, Occupation Business,
R/o Momin Ali, Chopda Tq.Chopda
District Jalgaon. .. Respondents

Mr. V. P. Patil, Advocate for the applicants.
Mr. R. B. Bagul, Addl. Public Prosecutor for respondent
No.1 / State.
Mr. D. B. Rode, Advocate for respondent No.2.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI. JJ
DATE : 13-03-2018.**

ORAL ORDER (Per Smt. Vibha Kankanwadi. J.)

1. Both these applications have been filed for invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure in order to quash the First Information (hereinafter referred as "FIR") lodged against each other.

2. **The facts giving rise to Criminal Application No.609 of 2018 are -**

The applicants are the accused persons in the FIR lodged by respondent No.2 vide Crime No. 154 of 2017 dated 29-12-2017 for the offence punishable under Section 307, 324, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code, registered with City Police Station, Chopda Tq. Chopda Dist. Jalgaon.

3. It has been contended by the applicants that, a quarrel took

place at about 2.00 p.m. to 2.30 p.m. on 27-12-2017 between the brother of the informant and some other accused. At that time the applicants have intervened in the matter and tried to settle down the same. However, the informant took the matter otherwise and lodged FIR against them. FIR is also lodged against informant and others in respect of the same incident. It is stated that, now a compromise has taken place between the parties as they are the neighbours. The informant has no objection to quash the FIR.

4. The fact giving rise to Criminal Application No. 610 of 2018 are -

The applicants are the accused persons against whom the FIR has been lodged by respondent No.2 vide Crime No. 02 of 2018 dated 01-01-2018 for the offence punishable under Section 326, 143, 144, 147, 148, 149, 504, 506 of Indian Penal Code with City Police Station Chopda Tq. Chopda Dist. Jalgaon. The applicants in this case also have come with a same story stating that the quarrel was going on in which the applicants have intervened, however the other informant took it otherwise and it resulted in lodging the FIR against each other. The original informant in this case also has no objection to quash and set aside the FIR.

5. The respondent No.2 and the injured persons in both the cases have filed affidavit stating that they have no objection for quashing

the FIR as their dispute interse has been resolved. They have undertaken not to indulge in similar activity and would keep good behaviour.

6. Both the applications have been objected by the State stating that the entire machinery has been used by both the informants. Furthermore, the informant and injured had received serious injuries therefore it was the offence against State.

7. Heard all the concerned advocates who have made submissions in support of their respective contentions.

8. It is to be noted that, in the FIR bearing Crime No. 154 of 2017 it has been alleged that the dispute triggered because a six year old boy urinated near the water storage near the house. When the informant i.e. respondent No.2 in Criminal Application No. 609 of 2018 tried to intervene stating that the persons who have gathered raised dispute on trifle grounds and then the quarrel triggered of further. It is stated that one of the accused had lifted 2 kilogram iron weight and had assaulted injured Shahid Khan. The said blow was received by Shahid Khan on his head. It is also alleged that, the accused persons therein had used wooden sticks. Thus it can be seen that the starting point of the dispute was very much trifle.

9. The story in Criminal Application No. 610 of 2018 i.e. Crime

No. 02 of 2018 shows that, when the informant came out of the house, already many people had gathered and were abusing the informant. The abuse was under the impression that, he was the cause for driving one Faridabi out of her house. He was justifying himself by showing that he has not done anything yet he was assaulted by means of wooden stick on his head. Therefore, perusal of the said FIR also would show that the reason for the quarrel was rather trifle in nature.

10. Now both the informants and the injured persons in both the cases have settled their dispute. They are neighbours and want to keep good relations with each other; which is a welcoming step. It is also in the interest of the peace in the society. A three Judge Bench of this High Court in *Abasaheb Yadav Honmane Versus The State of Maharashtra*, reported in *2008(2) Mh.L.J., 856*, dealt with the inherent power of the High Court under Section 482 of the Code vis a vis the express bar for compounding of the non-compoundable offences in Section 320 (9) of the Code of Criminal Procedure. It has been observed in the said case that,

"14. The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even inter-changeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the

only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order. Edmund Davies, J. (Smith and Hogan Criminal Law, 5th Edition) has said :

"It seems to me that accordingly every Court sentence should primarily be surveyed in the light of one test: is that the best thing to do in the interest of the community ? –always remembering, of course, that the convicted person, despite his wrongdoing remains a member of the community."

After considering the above said observations Hon'ble Apex Court in *Gian Singh Versus State of Punjab and Another*, reported in (2012) 10 Supreme Court Cases 303, has laid down the following ratio;

"51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the

Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 of the IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner. "

"52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the

victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code. "

"53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, nothing in this Code which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code. "

"54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the

process of any court or (ii) to secure the ends of justice, is a sine qua non. "

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection. "

"56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided. "

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is

not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. "

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although 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. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in

law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed. ”

Further after referring to various other decisions it has been held that,

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or

complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony

relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding. ”

11. Therefore, taking into consideration the observations above and when now the parties have resolved their dispute, want to have cordial relations, we find this is to be a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. At the same time we find that, both the parties have utilized the police machinery for their interest, and therefore, we would like to impose cost on the applicants and also conditions.

With these observations, we proceed to pass following order.

ORDER

- 1) Both the applications are hereby allowed.
- 2) The First Information Reports bearing Crime No. 154 of 2017 dated 29-12-2017 registered for the offence punishable under Section 307, 324, 143, 147, 148, 149, 323, 504, 506 of Indian Penal code and Crime No. 02 of 2018 dated 01-01-2018 for the offence punishable under Section 326, 143, 144, 147, 148, 149, 504, 506 of Indian Penal code, filed with City Police Station, Chopda Tq. Chopda Dist. Jalgaon are hereby quashed and set aside.
- 3) All the applicants and respondent No.2 should deposit amount of Rs.1,000/- each (one thousand) with the High Court Legal Services Sub-Committee, Aurangabad, with four (04) weeks from the date of this order.
- 4) The applicants in both the cases, respondent No.2 in both the cases and the respective injured should file an undertaking within four (04) weeks from this date, in this Court, that they would keep good behaviour and will not indulge in any criminal activity. They would maintain cordial relations with each other and would participate in the peace maintaining programs undertaken by City Police Station, Chopda Tq. Chopda Dist. Jalgaon.
- 5) The Police Inspector of City Police Station, Chopda Tq. Chopda Dist. Jalgaon should take note of this order and allow the applicants to participate in peace maintaining programs

conducted in his Police Station. He should certify about the participation of these persons every month. Such endeavour should be undertaken for a period of two (02) years.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

vjg/-.