

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 626 OF 2018**

- 1] Bal @ Shailesh s/o Sandeep Pathade,  
Age : 22 Years, Occu : Business,  
R/o Dhimber Galli, Begampura,  
Aurangabad.
  - 2] Shubham s/o Gulabrao Kundhare,  
Age : 23 Years, Occu : Business,  
R/o Dhimber Galli, Begampura,  
Aurangabad.
  - 3] Mangesh Raju Pathade,  
Age : 31 Years, Occu : Business,  
R/o Dhimber Galli, Begampura,  
Aurangabad.
  - 4] Raj s/o Nagesh Kunjale,  
Age : 31 Years, Occu : Business,  
R/o Dhimber Galli, Begampura,  
Aurangabad.
  - 5] Girish @ Akshay s/o Babasaheb Patil,  
Age : 25 Years, Occu: Business,  
R/o Padegaon, Aurangabad.
  - 6] Sagar s/o Jayraj Dongare,  
Age : 21 Years, Occu : Education,  
R/o Begampura, Aurangabad.
- ...Applicants.

Versus

- 1] The State of Maharashtra  
(Through Begampura Police Station  
Aurangabad)
- 2] Akbar Gabru Shaikh,  
Age : 35 Years, Occu : Business,

R/o Begampura, Jaising Pura,  
Aurangabad.  
3] Arshad Gabru Shaikh,  
Age : 21 Years, Occu : Business,  
R/o Begampura, Jaisingpura,  
Aurangabad.

...Respondents

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Mr. Akshay Kulkarni Adv. H/F Adv. N. S. Ghanekar for applicants.  
Mr. K. S. Patil, Addl. Public Prosecutor, for respondent No. 1/  
State.

Mr. G. B. Patankar Adv. For respondent No. 2.

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**CORAM : PRASANNA B. VARALE &  
SMT.VIBHA KANKANWADI. JJ.**

**DATE : 21-03-2018.**

**JUDGMENT : [Per Smt. Vibha Kankanwadi, J]**

- (1) Present application has been filed invoking the inherent powers of this Court U/s 482 of Code of Criminal Procedure for quashing First Information Report.
- (2) The respondent No. 2 had lodged First Information Report with Begampura Police Station, Aurangabad vide CR No. 28/2018 contending that he and his brother i.e. Applicant No. 2 run a hotel by name Hind Hotel in Jaisingpura, Begampura, Aurangabad. When both of them were in their hotel at about 9.30 PM on 9.2.1018, at that time 4 persons by name Bal Pathade, Subham, Mangesh and Raj came for dinner. They had their dinner. But, they started going without paying for the food. When the respondent No. 2 asked them for money, at that time these persons told him as to whether he does not recognize them and nobody in that area ask money for the food from

them. Upon saying so they left. When the respondent No. 2 was intending to lodge a report about the same with the police, the other persons gave advice to him not to lodge report and therefore, he had not lodged any report about the same.

- (3) Informant further contends that when the informant was in his hotel at about 9.30 PM on 10.2.2018 the said 4 persons alongwith 2 others i.e. Girish Patil, Sagar and 3 to 4 unknown persons came to hotel and started asking informant as to whether he was intending to lodge report against them in police. He was threatened with dire consequences. The articles in the hotel were damaged by those persons. When both the respondent Nos. 2 and 3 were requesting them, at that time, the accused Bal Pathade i.e. Applicant No. 1 assaulted respondent No. 3 by means of iron rod on head. The other persons assaulted by kicks and blows and abused. The respondent No. 3 became unconscious. He was then taken to Ghati Hospital and informant then lodged a report about the incident on 11.2.2018. The applicants have contended that the incident took place on trifle ground and the nature of allegations had not attracted the ingredients of Sec. 307 of Indian Penal Code. There was no previous enmity or dispute between them. Now, the parties have settled their dispute and they want to maintain brotherly relation. The proceedings against them will be abuse of process, sheer waste of time and therefore, they have prayed

for quashing of the First Information Report.

- (4) The settlement deed has been produced at Exh. B on record and it has been signed by applicants as well as respondent Nos. 2 and 3. It has been stated that the parties have settled the matter amicably and the respondent No. 2 want to withdraw the report filed against the applicants.
- (5) The learned Addl. Public Prosecutor has objected for the quashing up of the First information Report stating that because of the acts of the applicants the businessman in the vicinity are under fear. However, as regards applicant No. 1 is concerned, he is involved in CR No. 201/2015 registered with Phulambri Police Station for the offence punishable U/s 395 of Indian Penal Code.
- (6) It appears from the prosecution papers that the substantial part of the investigation is over. The injury certificate of respondent No. 3 shows that he had sustained 2 injuries 1) Blunt trauma on the chest and 2) continuous lacerated wound on right temporal scalp. It is stated that both the injuries are possible with hard and blunt object and the nature of the said injuries was simple. We do not want to go further and have scrutiny as to whether on the basis of the said medical report, offence U/s 307 of IPC can be made out. What it prima facie appears that the side of injury chosen was head. It appears from the prosecution papers that the said weapon is not

yet recovered.

- (7) Now, the parties have settled their dispute amicably. They want to maintain good relations. As regards pendency of another offence against applicant No. 1 is concerned, it is from different Police Station and that can not adversely affect the settlement that has been arrived at between the present applicants and respondent No. 2 and 3. In **Parbatbhai Aahir @ Parbatbhai Bhimsinghbhai Karmur and Ors. V/s State of Gujarat and Anr., [(2017) 9 Supreme Court Cases 641] (Three Judges Bench)** it has been observed that “Sec. 482 of Code of Criminal Procedure is prefaced with an overriding provision. The statute saves inherent power of the High Court, as a Superior Court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. In the some cases the broad principles are emerged from the precedents i.e. various earlier pronouncements of the Hon’ble Supreme Court have been summarized which are as follows :

*(1) Section 82 of CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any Court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court.*

*(2) The invocation of the jurisdiction of the High Court to quash a first information report or a*

*criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compound an offence. While compounding an offence, the power of the Court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

*(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

*(4) While the inherent power of the High Court has a wide ambit and plentitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any Court.*

*(5) The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

*(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot approximately be quashed though the victim or*

*the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*

*(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.*

*(8) Criminal cases involving offences which arise from commercial, financial mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

*(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

*(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or*

*economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

- (8) Though in the present case, the Hon’ble Supreme Court refused to exercise the inherent powers, but the factors for the refusal were different. We are required to consider the broad principles that have been laid down. 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, 5<sup>th</sup> 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.”*

- (9) 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-dominantly 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. ”*

- (10) It is to be noted that when the parties have settled the matter, possibility of turning witnesses hostile in such matters can not be ruled out. If the parties i.e. witnesses turn hostile, then it would be a sheer wastage of judicial hours and therefore, on these grounds also the ends of justice required that we should exercise our inherent powers in this case. The age group of the applicants is from 21 to 31 and therefore, possibility of incident getting triggered of due to heat of passion can not be ruled out. However, at the same time, while considering the settlement between the parties we would like to impose cost for utilizing the entire machinery by the applicants as well as respondent No. 1 and 2. Conditions are also imposed with a

view to check the further conduct on the part of the parties for some period. With these observations we proceed to pass following order;

ORDER

- (i) The application is hereby allowed.
- (ii) The First Information Report CR No. 28/18 registered with Begampura Police Station, Aurangabad for the offences U/s 307, 143, 145, 147 and 149 and 427 of Indian Penal Code and 135 of Bombay Police Act is hereby quashed and set aside on condition that the applicant Nos. 1 to 6 and respondent No. 2 and 3 should pay an amount of Rs. 1,000/- each in the High Court Legal Services Sub-Committee at Aurangabad within a period of 4 weeks from the date of this order.
- (iii) Applicant Nos. 1 to 6 and respondent Nos. 2 and 3 should visit Matoshri Old Age Home at Nakshatrawadi, Paithan Road and give amenity services and help the old age persons residing there, on every Sunday between 10 AM to 6 PM for a period of one year from the date of this order.
- (iv) The applicant No. 1 to 6 and respondent Nos.

2 and 3 should obtain necessary certificate about rendering the services in the said institution from the head of the institution and submit monthly report to this Court.

- (v) Any non-observance of the condition may amount to revocation of the order of quashing of the report.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

**(PRASANNA B. VARALE)**  
**JUDGE**

*ggd/-.*