

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 394 OF 2018

- 1) Vaijnath Laxman Phad,
 Age 36 years, Occ.Agri.& Business,
 R/o Prashant Nagar, Ambajogai
 Tq. Ambajogai Dist. Beed.
 - 2) Jaiprakash @ Balu Ramdhan Wonwane,
 Age 40 years, Occ.Agri.& Business,
 R/o Dighol Amba Tq. Ambajogai.
 Now At Present In front of Yogeshwari
 Mahavidyalaya Tq. Ambajogai
 Dist. Beed.
 - 3) Deepak @ Pintu Vasantrao Shinde,
 Age 33 years, Occ. Social Work,
 R/o Village Chanai Tq. Ambajogai
 Dist. Beed.
 - 4) Umesh Dattatraya Pokharkar,
 Age 26 years, Occ. Business,
 R/o "Pokharkar Niwas", Kala
 Maroti, Khadakpura, Ambajogai
 Dist. Beed.
 - 5) Deepak Sunil Lamture,
 Age 29 years, Occ. Business,
 R/o Bank Colony, Ambajogai
 Tq. Ambajogai Dist. Beed.
 - 6) Rajendra Dattatraya Pokharkar,
 Age 30 years, Occ. Business,
 R/o "Pokharkar Niwas", Kala
 Maroti, Khadakpura, Ambajogai
 Tq. Ambajogai Dist. Beed.
 - 7) Prasad Vasant Patait,
 Age 26 years, Occ. Business,
 R/o Bankat Galli, Ambajogai
 Tq. Ambajogai Dist. Beed.
- .. Petitioners.

VS.

- 1) The State of Maharashtra,
Through The Police Inspector,
Ambajogai City Police Station
Ambajogai Dist. Beed.
- 2) Pavan Giridharilal Bharadiya,
Age 30 years, Occ. Business,
R/o Omshanti Colony, Ambajogai
Tq. Ambajogai Dist. Beed. .. Respondents

Mr. P. N. Nagargoje, Advocate for petitioners.
Mr. S. W. Munde, Additional Public Prosecutor for
respondent No. 1 / State.
Mr. N. S. Desale, Advocate for respondent No.2.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 06-04-2018**

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

1. Present petition has been filed for quashing of First Information Report (hereinafter referred to as 'FIR') by invoking the inherent powers of this Court under Section 226, 227, 14 and 21 of the Constitution of India.

2. The respondent No.2 who is a businessman resides at Ambajogai. He has lodged a report with Ambajogai City Police Station stating that,

He runs business by name 'Sadanand Construction', which is in a construction business. The construction activities of apartments

was going on since 2013 at Jogaiwadi. He was under financial constraints, and therefore, took hand loans from, petitioner No.4 to the tune of Rs.12,00,000/-, petitioner No.2 to the tune of Rs.6,00,000/-, petitioner No.1 to the tune of Rs.2,00,000/- and petitioner No.3 to the tune of Rs.2,00,000/-. He had also given two cheques in the name of D. G. Pokharkar Firm towards the repayment of the loan of petitioner No.4. He says that, he was giving interest on the said amount. According to him he has repaid all the amounts taken by him from all these petitioners. Thereafter, four months prior to 17-02-2018 petitioner No.4 started saying that, he has repaid only the principle amount, however the interest amount i.e. Rs.15,00,000/- plus Rs.8,00,000/- i.e. total amount of Rs.23,00,000/- is due from the informant to him. The petitioner No.4 used to get him frequent calls and demand the amount. After a month thereafter petitioner No.4 met him and told that now the interest amount has gone up to Rs.45,00,000/-. He threatened that, if the amount is not given, he would kill the informant and his family members. Due to fear informant did not disclose the fact to his family members. Similarly petitioner No.3 also started demanding interest amount. Informant gave him cheque but it did not honoured, therefore he started demanding that the informant should execute agreement for specific performance of a flat. Due to fear the informant executed earnest note on 24-05-2017 in presence of

two witnesses. In spite of that, petitioner No.3 started saying that the interest amount Rs.4,00,000/- is still outstanding. He asked informant to change the earnest amount and it should be for Rs.9,00,000/-. He had also given threat to kidnap him and kill his family. He was not ready for the execution of the earnest note but he was forcibly taken by petitioner No.3 on 25-05-2017 within the premises of District Court, Ambajogai and he got executed earnest note/ agreement for specific performance in respect of flat No. 306 from Sadanand Apartment. In spite of this, again petitioner No.3 started giving threats to the informant. However, petitioner No.3 had not returned the cheque which was issued from the account of the informant's wife. An SMS was received from the bank stating that a cheque has been received for encashment. All the petitioner No.1 to 4 were continuously contacting the informant and demanding him amount. Petitioner No.4 had called him on 01-02-2018 along with flat papers. All the papers were taken away from him forcibly under threat. On the next day again petitioner No.4 gave a phone call and asked him to come out of the house. When he went out of the house, petitioner No.4 was along with petitioner No.5 and 7, they all had forcibly made the informant sit in the car and took him to the Sub-Registrar's Office. They got forcible registration of two flats done. He was threatened that, unless he returns interest amount of Rs.30,00,000/-, they will not execute any

document in return of the sale deeds those were made on that day. Due to fear informant went to Manjarsumba, Tulajapur, Solapur, Satara, Sangli, Bhore, Saswad. He had also given a message to his wife that, he is committing suicide, but then he went to house of one Roshan Ratilal Kunkulol on 05-02-2018. Roshan Kunkulol asked him to stay with him and return to Ambajogai on 09-02-2018, and thereafter, he has lodged the report on 17-02-2018.

3. On the basis of the report lodged by respondent No.2, offence vide Crime No. 89 of 2018 was registered for the offence punishable under Section 384, 385, 386, 504, 506 read with 34 of the Indian Penal Code, against all the petitioners.

4. Now the petitioners and respondent No.2 have come before this Court stating that the dispute between them has been amicably settled. The entire monetary transaction between petitioners and respondent No.2, being commercial transaction and has been fully and finally settled, the informant is not desirous of proceeding ahead with the matter. They therefore prayed for quashing and setting aside the report.

5. Affidavit-in-reply has been filed by respondent No.2 wherein it is stated that the informant and petitioners are longstanding friends and the crime was registered out of misunderstanding. He has no objection to quash the FIR.

6. Heard learned Advocate Mr. P. N. Nagargoje for petitioners, Advocate Mr. N. S. Desale for respondent No.2 and Mr. S. W. Munde, learned Addl. Public Prosecutor for respondent No.1-State.

7. It is to be noted from the entire contents of the FIR that, there was commercial transaction between informant and present petitioners. The sequences of events those have been given by informant also show that each of the petitioner No.1 to 4 had extended the amount independently to the informant. Even if it is accepted that, they were demanding the amount, it was for their own cause and not for each other. Under such circumstance invoking of Section 34 of the Indian Penal Code against all the petitioners is rather a misconception. Now the parties have settled the matter and they want to keep good relation with each other.

8. 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-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. "

Therefore, taking into consideration the above ratio we find that, this is a fit case where the inherent power of this Court should be exercised in order to secure the ends of justice.

9. At the cost of repetition we would like to say that, exercise of power under Section 482 of the Code in this case is in the interest of

the petitioners and informant. If the said power is not exercised, the possibility of conviction would be reduced and even the judicial machinery would be required to waste its time. However, while allowing the petition for quashing the FIR we want to impose certain conditions because petitioners as well respondent No.2 have utilized the entire police machinery. Hence, following order.

ORDER

- 1) The petition is allowed.
- 2) The FIR bearing No.89 of 2018 lodged with Ambajogai City Police Station Tq. Ambajogai Dist. Beed is hereby quashed and set aside on condition that ;
 - i) The petitioners and informant-respondent No.2, each one of them, should undertake to bear the expenses of a girl who is economically backward and studying in 12th Science from Yogeshwari Mahavidyalaya, Ambajogai, Parli Road, Ambajogai Dist. Beed.
 - ii) They should approach Principal, Dr. V. S. Hambe with a request to choose a girl for each of them studying in 12th Science in the said college whose expenses they will bear for the entire academic year 2018-2019.
 - iii) After spending the amount for the entire academic year, they should obtain certificate to that effect from Principal and produce it before this Court. Such task shall be undertaken by them for next two (02) academic years.
 - iv) Apart from that, they should also give community

service at Manavlok (Marathwada Navnirman Lokayat), Post Box – 23, Ring Road, Ambajogai Tq. Ambajogai Dist. Beed, run by Mr. Aniket Dwarkadas Lohiya, by visiting twice in one month.

v) Such services be given by them for a period of next two (02) years starting from date of this order.

vi) Certificate to that effect be obtained from concerned official from Manavlok (Marathwada Navnirman Lokayat), Ambajogai.

3) Undertaking in respect of ready to abide above said conditions be filed by petitioners and respondent No.2 in this Court within four (04) weeks from the date of this order.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

vj gawade/-.