

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 445 OF 2018

- 1) Vikki @ Omkar s/o Santosh Naikwadi,
Age 23 years, Occupation Student,
R/o. Navlewadi Tq. Akole,
Dist. Ahmednagar.
- 2) Tushar s/o Annasaheb Waluj,
Age 20 years, Occupation Student,
R/o. Navlewadi Tq. Akole,
Dist. Ahmednagar.
- 3) Yogesh s/o Vikas Navale,
Age 23 years, Occupation Student,
R/o. Navlewadi Tq. Akole,
Dist. Ahmednagar.
- 4) Dhananjay s/o Subhash Gaikwad,
Age 22 years, Occupation Student,
R/o. Dhumalwadi Road, Akole,
Ahmednagar Tq. Dist. Ahmednagar.
- 5) Jayram s/o Mhatarba Karanjekar,
Age 37 years, Occupation Labour,
R/o. Ghulewadi, Akole, Ahmednagar
Tq. Dist. Ahmednagar. .. Petitioners.

VS.

- 1) The State of Maharashtra,
Through In-charge Police Station
Officer, Sangamner Police Station
Tq. and Dist. Ahmednagar.
- 2) Chaitanya s/o Subhash Mandlik,
Age 21 years, Occupation Student,
R/o. Raytewadi Shiwar, Sangamner
Tq. and Dist. Ahmednagar. .. Respondents

Mr. P. R. Katneshwarkar, Advocate holding for Mr. P. M. Nagargoje,
Advocate for petitioners.
Mr. R. B. Bagul, Additional Public Prosecutor for respdt.No.1/State.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 07-04-2018**

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

1. Present petition has been filed for invoking inherent powers of this Court under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure for quashing First Information Report (hereinafter referred as 'FIR') lodged at the instance of respondent No.2 with Sangamner City Police Station, Sangamner.

2. The applicants have contended that, a crime has been registered on the basis of FIR given by respondent No.2- informant against them. It has been stated in the information that, informant had gone to hotel Status on Sangamner-Nashik road for dinner at about 12.15 a.m. on 24-08-2016. The said hotel belongs to his friend Rahul Suresh Ahirrao. As was too late for him and there was no preparation of food at that time in the hotel, he and his friend Rahul went to Jammu - Punjab Dhaba, near Haribaba Mandir, opposite to hotel Green Park on the same road, in his Maruti Alto car. They parked the car in front of the hotel and were talking in the car itself. At that time a person came behind the car and urinated.

Thereafter, he knocked at the driver's seat glass. Rahul was on the driver seat. They all got down from the car and told that person that since he is in drunken state, he should go away. That person did not listen to them and started threatening that he will call his friends and kill them. At that time another person was with him. Those persons told the informant and his friend that they will return within few minutes. Informant and his friend then started taking dinner in the Dhaba. Around 12.45 a.m. certain persons got down from Maruti Suzuki Ritz Car and two motorcycles. There were four to five persons having wooden sticks in their hands. They started abusing the informant and his friend. When it was pointed out to them that these are the two persons, those persons started assaulting informant and his friend by means of wooden log and kicks and fists blows. One of the person while abusing gave threats that he would finish off them and took out a knife and stabbed on the stomach of Rahul. The stab wounds given twice on his stomach and one near the chest on right side. The informant was assaulted by wooden log on his back and both hands. The owner of the Dhaba Mangesh Rambhau Kandekar and six employees put end to the incident and then took injured Rahul to Dr. Sainath Hospital, Sangamner. Stitches were given to the injury by Dr. Karpe and he was asked to shift to Suvichar Hospital, Nashik. The ambulance was made available and accordingly Rahul was shifted to Suvichar Hospital,

Nashik. Thereafter informant made enquiry with hotel owner and came to know that the person who stabbed Rahul was Dhananjay Subhash Gaikwad and the others were Jairam Mhatarba Karanjekar, Vikki @ Omkar Santosh Naikwadi, Yogesh Vikas Navle and two unknown persons. While Rahul was taking treatment in ICU, informant went to Police Station and lodged the report.

3. On the basis of the said report offence punishable under Section 307, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code came to be registered vide Crime No. 227 of 2016 with Sangamner City Police Station District Ahmednagar.

4. It will not be out of place to mention here that, now the investigation is over and charge-sheet has been filed before Judicial Magistrate, First Class, Sangamber Dist. Ahmednagar.

5. Now the petitioners have come with a case that, petitioners No.1 to 3 and 5 have been released on bail and petitioner No.4 is still behind bar. The copy of the charge-sheet is made available to the petitioners. The dispute between the two group started due to minor issue. The petitioners and other persons including respondent No.2 have decided with a free and valid will to withdraw all the matters filed against each other, and therefore, the petitioners have filed the petition for quashing all FIR on the basis of compromise between them. It is stated that the FIR was lodged due to

misunderstanding and in fact there was a free fight between the petitioners and other persons. The respondent No.2 has decided not to persuade his complaint and he has also declared that he will not depose the false and frivolous allegations against the petitioners. It is stated that, *prima facie* the said FIR appears to be false. The knife which has been recovered by the Investigation Officer was referred to the Chemical Analysis, however the report is inconclusive. The petitioners No.1 to 4 are students and were aged 21 at the relevant time. They have no criminal antecedents and they are giving undertaking that, they will not commit similar offence in future. It is also stated that, no useful purpose would be served by continuing the prosecution for the said FIR as nothing survives therefor. They have, therefore, prayed for quashing of the FIR, and the charge-sheet.

6. The affidavit of compromise has been produced by respondent No.2 giving his nod for quashing of the FIR.

7. Heard Mr. P. R. Katneshwarkar, learned Advocate instructed by Mr. P. M. Nagargoje, Advocate for petitioners, Mr. R. B. Bagul, learned Additional Public Prosecutor for respondent No.1. Perused the documents on record.

8. It has been submitted by learned advocate appearing for the petitioners that, the parties have compromised the matter. The

dispute had started on trifle ground and in fact it was a free fight. The knife which has been recovered was sent for chemical analysis and the report is showing that result is inconclusive. When it has been decided by the parties to maintain good relations and due to the intervention by elderly persons they have decided to resolve the dispute. It is just and proper to quash the FIR. He also pointed out that except petitioner No.5, the other petitioners are very young persons and it appears that incident got triggered due to passion.

9. He relied on the decision in, *Narinder Singh and others Versus State of Punjab and Another*, (2014) 6 Supreme Court Cases 466. In this case the principle laid down in *Gian Singh Versus State of Punjab* (2012) 10 Supreme Court Cases 303, have been reiterated and it has been observed that, "when the opinion is formed that continuation of the proceedings would be an abuse of process of Court and in order to secure the ends of justice then this Court should exercise its inherent powers under Section 482 of the Code of Criminal Procedure." He also relied on the decision of this Court in Criminal Application No. 468 of 2018, decided on 07-03-2018 (Sheikh Sohel Sheikh Ayyub and Another Versus State of Maharashtra and Another), wherein this Court had quashed the FIR in which the offence was registered under Section 307, 504 read with 34 of the Indian Penal Code, relying upon the decision in Gian Singh's case.

10. The learned Addl. Public Prosecutor strongly opposed the petition on the ground that. now the entire investigation is over and a charge-sheet is filed. The perusal of the injury certificate would show that, serious injuries were caused to Rahul. Merely because the petitioners and respondent No.2 had decided to put an end to their dispute, such serious offence cannot be allowed to be compromised.

11. At the outset we are required to take into consideration the facts involved in this case. Since the entire facts narrated in FIR have been already narrated earlier, we do not want to reiterate it again. The only fact that is required to be harped upon is, in the FIR the informant has come with a case that, he was not at all knowing the petitioners prior to the date of the incident. He has also stated that, his friend was assaulted by means of knife, twice the stab injuries were given in his stomach and one towards left side of the stomach and one is towards right side of the chest. He says that, he had received only covert injuries though he was assaulted by means of wooden log. He has stated that, he came to know about the names of the petitioners on inquiry with the hotel owner i.e. Dhaba owner.

12. If we peruse the affidavit of compromise it has been stated that, petitioner No.1 to 4 and respondent No.2 had met in intra

college activities, and therefore there was friendship in between them, though they were resident of different places. Thus it can be seen that it is a total somersault. When he says in the FIR that the assailants were totally unknown, now he is coming with a case of friendship, due to intra college activities.

13. If we peruse the statement of Rahul, the injured, he says that petitioner No.4 was the regular customer of his hotel namely Status. The petitioner No.4 who is accused No.1 used to visit hotel of Rahul for drinking liquor and twice or thrice, though he had consumed liquor and had meal, petitioner No.4 had not paid the bill and therefore he was driven out by Rahul. Thereafter, he had refused to serve him meals and liquor. This shows that, Rahul was knowing petitioner No.4 since prior to the incident also. He says that, petitioner No.4 is the person who had urinated near their vehicle and then had given threat before he left the place, and then brought other persons. He has in clear terms stated that, petitioner No.4 is the person who had stabbed him thrice in stomach and one in right side of the chest. If we consider the injury certificate that has been issued by Suvichar Hospital, it runs as follows ;

- 1) Multiple small bowel injuries,
- 2) Injury to mesentery,
- 3) Hemoperitoneum,
- 4) Stab injuries to bilateral para-umbilical region, 2 x 1 x 8 cm (up to small bowel)

- 5) Stab injury to Lt. Illiac region, 3 x 1 x 3 cm.,
- 6) Stab injury to Rt axillary region, 3 x 1 x 3 cm.,
- 7) Lt Intra scapular region contusion, laceration ++
- 8) Lt Cervical region laceration ++

Thus, it is to be noted at this stage, the statements of these two witnesses together with medical certificate has some nexus.

14. Since the entire investigation is over and charge-sheet is filed, we are also required to consider the other material that has been collected as evidence by the investigating agency. As per the FIR the entire incident has taken place in the Dhaba. The owner and other employees of Dhaba had intervened the dispute thereafter had made arrangements to shift Rahul to hospital. The statements of the owner and waiters working in the hotel have been recorded. All of them have stated that the incident has taken place as narrated in the FIR. They have further disclosed that, after the informant and his friend were assaulted, the assailants started to run away and one of the person fell down in a ditch near road. He was taken out from the ditch by the employees of the hotel. At that time it was noticed that, said person had received injury to his ear. That means, there are eyewitnesses to the incident also.

15. The ratio laid down in Gian Singh's case as well as Narinder Singh's case (Supra) cannot be disputed. However, in these cases itself the Hon'ble Supreme Court has carved out those cases which

are of serious nature. The observations in Narinder Singh's case are as follows ;

"22. Thus, we find that in certain circumstances, this Court has approved the quashing of proceedings under section 307 IPC whereas in some other cases, it is held that as the offence is of serious nature such proceedings cannot be quashed. Though in each of the aforesaid cases the view taken by this Court may be justified on its own facts, at the same time this Court owes an explanation as to why two different approaches are adopted in various cases. The law declared by this Court in the form of judgments becomes binding precedent for the High Courts and the subordinate courts, to follow under Article 141 of the Constitution of India. Stare Decisis is the fundamental principle of judicial decision making which requires "certainty" too in law so that in a given set of facts the course of action which law shall take is discernible and predictable. Unless that is achieved, the very doctrine of stare decisis will lose its significance. The related objective of the doctrine of stare decisis is to put a curb on the personal preferences and priors of individual Judges. In a way, it achieves equality of treatment as well, inasmuch as two different persons faced with similar circumstances would be given identical treatment at the hands of law. It has, therefore, support from the human sense of justice as well. The force of precedent in the law is heightened, in the words of Karl Llewellyn, by "that curious, almost universal sense of justice which urges that all men are to be treated alike in like circumstances."

"23. As there is a close relation between the equality and justice, it should be clearly discernible as to how the two prosecutions under Section 307 IPC are different in nature and therefore are given different treatment. With this ideal objective in mind, we are proceeding to discuss the subject at length. It is for this reason we deem it appropriate to lay down some distinct, definite and clear guidelines which can be kept in mind by the High Courts to take a view as to under what circumstances it should accept the settlement between the parties and quash the proceedings and under what circumstances it should refrain from doing so. We make it clear that though there would be a general discussion in this behalf as well, the matter is examined in the context of offences under Section 307 IPC."

16. No doubt this Court in, Sheikh Sohel Sheikh Ayyub's case (Supra) had permitted the compromise and quashed the FIR but the facts of that case in respect of the injury that was sustained was different. Now merely because respondent No.2 has declared that he would not proceed with the complaint and will not depose in support of false complaint, this Court cannot give permission to have the FIR quash. In fact respondent No.2 cannot declare in such a manner. The said declaration amounts to that he is accepting that he had lodged a false report, when the evidence that has been collected is otherwise. In one of the recent Judgment, *Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur and Others Versus*

State of Gujarat and Another, (2017) 9 Supreme Court Cases 641, again the broad principles on the basis of precedents have been enumerated which are as follows ;

"(1) Section 482 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 recognises 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 compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. 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 plenitude 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 appropriately 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. "

17. Here the injury certificate shows that, there were stab wounds. Now though the Chemical Analyzer report state that it is inconclusive, it cannot be taken into consideration for the simple reason that there may be different reason for the said analysis for example belated transmission of the weapon by police authorities.

18. The other evidence that has been collected is also required to be noted. The site of the injury that has been chosen shows that, it was a narrow escape for Rahul. Another fact is that, when initially there was dispute after petitioner No.4 urinated, the dispute did not end there. Petitioner No.4 went and brought the other accused

persons with them and they were armed at that time, that means, it was with intention. Another factor to be noted from the affidavit of compromise is that, Rahul has been compensated by petitioner No.4. It is stated that, all the medical expenses of injured have been paid. Merely by paying the medical expenses if a person is allowed to get rid of the offences, then such fact cannot be said to be in the interest of justice. It would open a flood gate and parties will try to just pay off, may be under pressure or by putting pressure, for expense to those injured persons in order to secure compromise. We are definitely aware that with such kind of background there is likelihood of respondent No.2 and the injured turning hostile at the time of trial but still we do not find that this is a case where in order to secure the ends of justice we should permit the compromise and quash the FIR.

19. The case which has been brought before us is not a fit case where we should exercise our powers. In fact the powers under Section 482 of the Code of Criminal Procedure are required to be exercised very sparingly. We do not find any merit in the present petition, it deserves to be dismissed. Hence, the petition is dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

(PRASANNA B. VARALE)
JUDGE

vj gawade/-.