

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 955 OF 2018

- 1) Dilip s/o Govind Pawar,
Age 50 years, Occupation Milk
Business,
- 2) Itesh s/o Dilip Pawar,
Age 32 years, Occupation Milk
Business,
- 3) Nitin s/o Dilip Pawar,
Age 26 years, Occupation Milk
Business,
- 4) Satish s/o Dilip Pawar,
Age 28 years, Occupation Milk
Business,
- 5) Govind s/o Dulbhaji Pawar,
Age 70 years, Occupation Nil,

All R/o. Shirasgaon Tq. Shrirampur
Dist. Ahmednagar.

- 6) Dattatray @ Dattu s/o Rambhau
Sakhare, Age 48 years, Occupation
Cook, R/o Subhash Colony,
Shrirampur Tq. Shrirampur
Dist. Ahmednagar.

.. Applicants
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Shrirampur City Police Station,
Tq. Shrirampur Dist. Ahmednagar.
- 2) Sitaram s/o Raghunath Jadhav,
Age 47 years, Occupation Agri. & Labour,
R/o Shirasgaon Tq. Shrirampur
Dist. Ahmednagar.

.. Respondents

Mr. C. A. Jadhav, Advocate for the applicants.
Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for respondent
No.1 - State.
Mr. N. B. Narwade, Advocate for respondent No.2.

WITH

CRIMINAL APPLICATION NO. 963 OF 2018

- 1) Gitaram s/o Raghunath Jadhav,
Age 50 years, Occupation Agri. &
Labour,
- 2) Dipak s/o Gitaram Jadhav,
Age 35 years, Occupation Agri. &
Labour,
- 3) Sitaram s/o Raghunath Jadhav,
Age 47 years, Occupation Agri. &
Labour,
- 4) Dilip s/o Raghunath Jadhav,
Age 45 years, Occupation Agri. &
Labour,
- 5) Bhima s/o Raghunath Jadhav,
Age 40 years, Occupation Agri. &
Labour,
- 6) Anil s/o Sitaram Jadhav,
Age 29 years, Occupation Agri. &
Labour,
- 7) Ramdas s/o Raghunath Jadhav,
Age 43 years, Occupation Agri. &
Labour,
- 8) Ganesh s/o Ramdas Jadhav,
Age 30 years, Occupation Agri. &
Labour,

All R/o. Shirasgaon Tq.Shrirampur
Dist. Ahmednagar.

.. Applicants
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Shrirampur City Police Station,
Tq. Shrirampur Dist. Ahmednagar.
- 2) Itesh s/o Dilip Pawar,,
Age 29 years, Occupation Milk
Business, R/o Shirasgaon Tq.
Shrirampur Dist. Ahmednagar. .. Respondents

Mr. N. B. Narwade, Advocate for the applicants.
Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for respondent
No.1 - State.
Mr. C. A. Jadhav, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
K. L. WADANE, JJ.
DATE : 15-06-2018.**

ORAL JUDGMENT (Per T. V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.
2. Both the applications are filed under Section 482 of Code of Criminal Procedure for relief of quashing of First Information Reports.
3. Counter FIRs are given by the two sides. Both the parties have come up for quashing of First Information Report bearing No. 01 of 2018, registered on 01-01-2018 for the offence punishable under Section 307, 143, 147, 148, 149, 323, 504, 506 of Indian Penal

Code and offence punishable under Section 37 (1) (3) / 135 of Bombay Police Act, registered with Shrirampur City Police Station Dist. Ahmednagar. Other side has come for quashing of another First Information Report bearing No.03 of 2018, registered on 02-01-2018 for the offence punishable under Section 307, 143, 147, 148, 149, 326, 452, 323, 504, 506 of Indian Penal Code and offence under Section 37 (1) (3)/ 135 of Bombay Police Act and under Section 4/25 of Indian Arms Act, registered with same police station.

4. The first application is in respect of FIR No. 03 of 2018, which is registered mainly for offences punishable under Section 307, 326 of Indian Penal Code. The first informant is Sitaram Raghunath Jadhav. He has made allegation that, in incident dated 01-01-2018 at about 07-15 a.m. due to previous quarrel, all the applicants of this application came to his house with weapons like sickle, iron pipe, stick, they picked up quarrel and they assaulted him. Allegation is made that, sickle and iron pipe were also used against him and he sustained injuries. First Information Report was given on 02-01-2018 in the hospital.

5. The second application is in respect of FIR No. 01 of 2018 which is also registered mainly for offence punishable under Section 307 of Indian Penal Code. Itesh Pawar is the first informant and he has described the same incident in his FIR. He has contended that,

when he was at home along with his family members, the applicants of this application came to his house and out of previous dispute and by blaming the first informant and his family for defeat of their candidate in village panchayat election, they assaulted him and others. The allegations are made that, sickle was used against him. Other weapons like iron bar and stick were also used. Some persons from his side were also injured in the incident and then FIR was given on the same day i.e. on 01-01-2018.

6. The learned Addl. Public Prosecutor produced papers of investigation. The papers show that, in the first application four persons like Itesh Pawar, Dattu Sakhare, Dilip Pawar and Nitin Pawar sustained injuries. Dattu Sakhare sustained fracture of wrist, ulna. Nitin Pawar sustained fracture to right front parietal bone, bleeding injury to his head. So, it can be said that, he also sustained grievous injury.

7. In the second proceeding, only Sitaram Jadhav sustained four injuries and the fracture to 3rd and 4th rib of left side is described as grievous injury. However, there were two stab injuries and one stab injury had caused fracture of the ribs. Thus, one person from other side sustained grievous injury.

8. In both the applications the applicants and the first informants and injured have filed affidavits and they have submitted that, they

have settled the dispute and they want to live with peace in the village and for that they have requested for permission to compound the offences.

9. The learned Addl. Public Prosecutor opposed the prayer by submitting that in both the matters, offences are punishable under Section 326 and 307 of Indian Penal Code, and they are non-compoundable, and so, the permission may not be granted. However, the submissions show that, in both the matters the applicants came to this court immediately after registration of crime with such prayer and charge-sheet is not filed in both the matters.

10. In support of the contention that this Court can exercise the power given under Section 482 of Code of Criminal Procedure and even under Article 226 of the Constitution of India, the learned counsels for the applicants in both the applications placed reliance on some reported cases, those are -

1) 2014 DGLS (Soft.) 182, Supreme Court, (Narinder Singh and Others Vs. State of Punjab and Another), and

2) 2012 DGLS (Soft.) 457, Supreme Court, (Gian Singh Vs. State of Punjab and Anr.).

At Para No.57 there are relevant observations in second case i.e. *Gian Singh Vs. State of Punjab and Anr*, and they are as under -

"57. 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. "

11. There is one more case on this point like 2012 (2) Bombay C. R. (Cri) Pg. 72 (Supreme Court) (Shiji @ Pappu and ors. Versus Radhika and anr.). The Hon'ble Apex Court has discussed the provision of Section 320 of Code of Criminal Procedure and has made observation that, in some cases like present one where the dispute is of personal nature, High Court needs to take more

pragmatic view and use the power under Section 482 of Code of Criminal Procedure or power under Article 226 of the Constitution of India.

12. In the present matter the applicants of both these applications have settled dispute. They came to the Court immediately after the registration of crime and charge-sheet is not yet filed. Considering the nature of injuries and the reason for the dispute, this Court holds that, relief in both the matters needs to be given. In the result both the applications are allowed. Relief is granted in both the applications in terms of prayer Clause "B". Rule made absolute in both the applications accordingly. Both the applications are disposed of accordingly.

(K. L. WADANE)
JUDGE

(T. V. NALAWADE)
JUDGE

gawade/-.