

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 792 OF 2009

- 1) Sanjay @ Sandesh Tukaram Karle,
Age 35 years, Occupation Social
Worker,
- 2) Daulat s/o Tukaram Karle,
Age 40 years, Occupation Agri.,
- 3) Pravin Tukaram Karle,
Age 28 years, Occupation Education,
- 4) Tukaram s/o Keru Karle,
Age 65 years, Occupation Pensioner,
- 5) Bhandas s/o Keru Daund,
Age 47 years, Occupation Medical
Practitioner,
- 6) Ambadas s/o Keru Daund,
Age 45 years, Occupation Agri. &
Service,
- 7) Rahul s/o Bhandas Daund,
Age 21 years, Occupation Education,
- 8) Bhushan s/o ambadas Daund,
Age 19 years, Occupation Education,
- 9) Anil s/o Aba Lotke,
Age 26 years, Occupation Business,
- 10) Vikas s/o Aba Lotke,
Age 25 years, Occupation Business,
- 11) Bajrang s/o Baban Lotke,
Age 22 years, Occupation Business,
- 12) Dipak s/o Rangnath Darkunde,
Age 22 years, Occupation Business,

All R/o Khandala Tq. and Dist.
Ahmednagar.

.. Petitioners
(Orig. Accused)

VERSUS

1) The State of Maharashtra,
Through Police Station Officer
Nagar Taluka Police Station,
Dist. Ahmednagar.

2) Shivaji s/o Rambhau Dhere,
Age 29 years, Occupation Private
Service, R/o Khandala
Tq. and Dist. Ahmednagar.

.. Respondents
(Resp. No.2 Orig. Complainant)

Mr. N. V. Gaware, Advocate for the petitioners.

Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for respondent
No.1 - State.

Mr. S. P. Salgar, Advocate holding for Mr. G. R. Ingole, Advocate
for respondent No.2.

WITH

WRIT PETITION NO. 793 OF 2009

1) Milind s/o Machindra Pagire,
Age 23 years, Occupation Education &
Business, R/o T. V. Centre, Savedi,
Ahmednagar.

2) Shivaji s/o Rambhau Dhere,
Age 29 years, Occupation Agri.,
R/o Khandala Tq. Nagar
Dist. Ahmednagar.

3) Gulabrao Keru Karle,
Age 52 years, Occupation Business
& Agri., R/o as above.

4) Vikas Gulabrao Karle,
Age 25 years, Occupation Business
& Agri., R/o as above.

.. Petitioners
(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer
Nagar Taluka Police Station,
Dist. Ahmednagar.
- 2) Chandrakant s/o Gorakh Lotke,
Age 22 years, Occupation Driver,
R/o Khandala Tq. and Dist.
Ahmednagar.

.. Respondents
(Resp. No.2 Orig. Complainant)

Mr. G. R. Ingole, Advocate for the petitioners.
Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for respondent
No.1 - State.
Mr. N. V. Gaware, 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 petitions are filed under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure. The main relief claimed is quashing of the First Information Reports registered against the petitioners of the both petitions.
3. Writ Petition No. 792 of 2009 is filed in respect of First Information Report No. 21 of 2009 registered in Nagar Taluka Police

Station Dist. Ahmednagar, for the offences punishable under Section 307, 143, 147, 148, 149, 427 of the Indian Penal Code, on the basis of the report given by one Shivaji Rambhau Dhere. The report is given against the present petitioners that, in the incident dated 13-02-2009 at about 07.30 a.m., the petitioners and other persons who were there associates came to his crushing machine and hot mix plant and picked up quarrel with him. The allegations are made that some of the petitioners were holding weapons like axe, iron rod and their intention was to stop the activity of operation of the stone crushing. There was dispute with the first informant of these persons. The petitioners were having agricultural land adjacent to the site of crushing machine and the activity of crushing machine was causing nuisance to them and it had affected the yield. The allegations are made that, when the first informant said that, he would not stop his activity, assault was made on him by using sticks, iron bars etc. Assault was made on one Milind, the owner of the machine. When he attempted to finish Milind, first informant intervened and then assault was made on him also by using the same weapons on his head. When the neighbourers rushed to the spot the petitioners ran away. The First Information Report was recorded in the hospital for aforesaid offences.

4. Writ Petition No. 793 of 2009 is filed in respect of First Information Report No. 22 of 2009 and the report was given by

Chandrakant Gorakh Letke against the petitioners of that writ petition. In that petition the first informant, who is accused in the first crime has contended that, on the day of incident in the morning time when he saw that his brother-in-law Sandesh Karle was present at crusher site and quarrel was going, he went there. He has contended that, his brother-in-law was trying to convince the other side that due to crushing activity it was not possible for him to take any crop in his field. He has contended that, in the quarrel, by giving threats of life, attack was made by Milind, injured from first person and others, on them by using iron bars, cricket bats and other articles. He has contended that, he was also assaulted and Milind had given blow of axe on his head. His First Information Report was also recorded in the hospital on the same day for the aforesaid offences.

5. The papers of investigation were produced and they show that, in the first crime two persons like Shivaji Dhere and Milind Pagire had sustained injuries. Shivaji Dhere sustained injuries over his head like CLW and there were two contusions. All the injuries are described as simple injuries. Milind Pagire had sustained injury on head but this injury is also described as simple.

6. In the second FIR Chandrakant Latake had sustained in all four injuries and one injury had caused extra dural hemorrhage. This

injury is described as grievous. It can be said that during the trial it will be necessary for doctor to give evidence that this injury falls under Section 320 of Indian Penal Code.

7. In both the matters affidavits are filed of the injured to the effect that they have settled dispute with the other side and they want to compound the offences. The offence punishable under Section 307 of Indian Penal Code is non-compoundable and so learned Addl. Public Prosecutor has opposed the prayer made in both the petitions on the ground of settlement of the dispute.

8. On the aforesaid point learned counsel for the petitioner placed reliance on 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. "

9. 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.

10. In the present matter the petitioners of both these petitions 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 petitions are allowed. Relief is granted in both the petitions in terms of prayer Clause "B". Rule made absolute in both the petitions accordingly. Both the petitions are disposed of accordingly.

(K. L. WADANE)
JUDGE

(T. V. NALAWADE)
JUDGE

gawade/-.