

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.52/2018

Kanta Gawade
s/o Jaidev Gawade
major in age, Service
r/o Neura O Pequeno,
Neura, Tiswadi – Goa
Presently lodged Colvale
Central Jail. ... Petitioner.

Versus

1. State of Goa
Through the Public Prosecutor,
High Court, Panaji, Goa.
2. The Police Inspector,
Agacaim Police Station,
Dist – North Goa, Goa.
3. Bhupat Gawde,
s/o Jaidev Gawade
major in age,
r/o Neura O Pequeno,
Neura, Tiswade – Goa. Respondents

Mr. Vibhav Rajiv Amonkar, Advocate for the Petitioner.

Mr. S.R. Rivankar, Advocate for Respondent nos. 1 and 2.

*Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.*

Date : 29 June 2018.

Oral Judgment (Per N.M. Jamdar, J.):

The Petitioner is presently lodged in Colvale Central Jail in Goa. He has filed this petition for calling the records of Sessions Case No.66 of 2017 pending before the learned Additional Sessions Judge, North Goa for quashing the Charge-sheet No.62 of 2017 and consequent criminal proceedings in Sessions Case No.66/2017 against the Petitioner.

2. The Petition is filed invoking inherent power of this Court under Section 482 of the Code of Criminal Procedure solely on the ground that since the Petitioner and the victim have compromised their dispute to achieve peace, it will be in the interest of justice to quash the criminal proceedings as there is no likelihood of any conviction in the case.

3. That there is a power with the High Court under Section 482 of the Code of Criminal Procedure to quash the proceedings even in the cases when they are non-compoundable, is a settled position. In the decision of *Gian Singh Vs. State of Punjab*¹ the Apex Court considered the existence of power and its parameters. The exercise of

¹ (2012) 10 SCC 303

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 straitjacket formula neither it is possible to lay down precise and inflexible guidelines. The Apex Court has held that the High Court, when it quashes criminal proceedings with regard to the fact that the dispute is settled even though the offence is not compoundable, it does so in furtherance of justice to put an end to the dispute and to see that peace is restored; securing ends of justice being the ultimate guiding factor. But it was observed that the crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the society. The crime-doer should not be allowed to go scot free only on the ground that the dispute has been amicably settled or the victim has been paid compensation. An exception was carved out in respect of offences such as murder, rape, dacoity, etc. and other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes. The Apex Court held that in such cases compromises would have no legal sanction at all. In the case of *Narinder Singh and others Vs. State of Punjab and another*² the Apex Court was considering a situation where there was a dispute amongst neighbours residing in a village and out of the said dispute one set had attacked the others when they were going on a motorcycle and the victim suffered injuries. The Apex Court considering the totality of the circumstances therein found

² (2014) 6 SCC 466

that the interest of justice is served if peace is restored in the neighbourhood. It was observed that in a given circumstances, the High Court will not be powerless to quash the proceedings even if there is a case such as assault put to an end to the dispute and restore peace. The Apex Court also held that in the said case that Section 307 of the Indian Penal Code was not prima facie attracted. These decisions have been followed in various cases by the Courts and in some decisions considering the facts and circumstances, the Courts have refused to exercise the inherent power. Whether the power needs to be exercised or not would undoubtedly depend on the scrutiny of the facts of the case.

4. Since the matter is not addressed on merits but solely on the ground of compromise, we have gone by the statements made in the complaint. The case at hand is that the Petitioner has assaulted his own father with an Axe. A first F.I.R., under Sections 452, 307 and 506 (II) of the Indian Penal Code was lodged at the Police Station, Agacaim by the Complainant, brother of the Petitioner. Complainant stated that he was staying with his father and mother. His brothers were residing separately near his house in the common property, including the Petitioner. It is stated by him that the Petitioner was in habit of consuming alcohol and under the influence of alcohol he was fighting with all of them. He was continuously threatening all with dire consequences. He had also in the past assaulted one of the neighbours with chopper causing serious bodily injuries and he was arrested by

Agacaim Police Station. Thereafter every now and then the Petitioner would commence fight carrying weapons with him such as chopper and axe. The Complainant stated that on 9 September 2017 when he was with his father inside the house and the father was present in hall cum kitchen the Petitioner entered the house and started threatening the father that he will kill him. The Complainant intervened and thereafter the Petitioner left the house. Thereafter when the father sat on the floor to have his dinner, the Petitioner assaulted him with an axe. The Complainant raised alarm and other family members rushed towards him to stop. The Petitioner rushed out of the house shouting that he will finish all of them. The father was taken to the hospital at Bambolim. The Complainant stated that it was only out of miracle that the axe hit in the back region of shoulder and if it had hit on the head, 80 years father would have died on the spot. Accordingly, a complaint was filed to the Police Station.

5. The Petitioner applied for anticipatory bail. A reply filed to the application for bail and the Police Authorities shows that the applicant was previously involved in C.R.No.104/2014 under Section 307 of Indian Penal Code, he was on trial and when he was on the conditional bail, he committed the act of assault on his own father. The bail was accordingly rejected.

6. The learned counsel for the Petitioner has sought to argue

before us that the Petitioner is the only bread earner in the house and the family is trying to put an end to the dispute and the father is ready and willing to file an affidavit to that effect. He submitted that in view of the decisions of *Gian Singh and Narinder Singh* this is a fit case where the F.I.R. needs to be quashed so that the family can live together.

7. The Complaint does not disclose that the father is solely dependent on the Petitioner. The Complainant is the one who lives with the mother and father and the other brothers stay nearby. Apart from the Petitioner, there are four sons to look after the father. Secondly, it is not that it was out of a sudden quarrel that the Petitioner lost his mental balance and tried to assault the father, not that even that is condonable. Neither there is any indication that the father, 80 years old was aggressive. On the contrary, it is stated in the Complaint that the Petitioner was exhibiting criminal tendencies and assaulting not only the family members but also the neighbours. The Petitioner was arrested in connection with the assault of similar nature under Section 307 of the Indian Penal Code, when the Petitioner was on bail that he attacked his father with chopper.

8. The action of the Petitioner is thus not an isolated incident but series of such actions exhibiting criminal tendencies. It cannot be said that this assault is purely a family dispute and will have no

repercussion on the society. The Apex Court in the case of *Gian Singh* has in fact underscored that for the offences involving mental depravity, the Court would not use its inherent powers. In the case of *Narinder Singh*, sought to be relied upon by the learned counsel for the Petitioner, there was dispute between the neighbours and the quarrel took place and thereafter they sought compromise to settle down peacefully. This factual situation is entirely different from the present case where the action of the Petitioner as stated in the complaint seems to be source of continuously breach of the law and order culminating into assault on his aged father.

9. Considering the totality of the circumstances, we are of the opinion that in the present case the inherent power of the Court, which is vested in it to secure ends of justice, cannot be exercised. It cannot be stated that either the offence alleged is trivial or that if it is quashed, it will restore peace. Consequently, the petition is devoid of merit and is accordingly rejected. The trial be conducted on its own merits.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.