

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.728 OF 2018**

Vaibhav Kantilal Deshmukh and ors. : Applicants.
Versus
State of Maharashtra and ors. : Respondents.

**ALONG WITH
CRIMINAL APPLICATION NO.729 OF 2018**

Harshal @ Harshchandra Uttam Pawar & ors. : Applicants.
Versus
State of Maharashtra and ors. : Respondents.

Mr. Rupesh K Bobade for the Applicants in Criminal Application No.728 of 2018 and for the Respondent Nos.2 to 4 in Criminal Application No.729 of 2018.

Mr. Priyal G Sarda for the Applicants in Criminal Application No.729 of 2018 and for the Respondent Nos.2 to 4 in Criminal Application No.728 of 2018.

Mr.R M Pethe, APP for the Respondent/State.

API Mr. Rajendra Magdum, Tembhorni (Rural) Police Station, Solapur present.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**
DATE : 12th JULY 2018

P.C.

1 The above Criminal Applications have been filed for quashing of the FIR being No.202 of 2018 (subject matter of the Criminal Application No.728 of 2018) registered with Tembhorni Police Station, Solapur for the offences punishable under Sections 324, 504, 506 and 34 of the Indian Penal Code, and the FIR being No.203 of 2018 (subject matter of the Criminal Application No.729 of 2018) registered with Tembhorni Police Station, Solapur for the offences punishable under Sections 307, 324, 143, 147, 148, 149, 504,

and 506 of the Indian Penal Code. The said FIRs are the fall out of the incident which has taken place on 08/05/2018 wherein the two sets of Applicants in the above two Criminal Applications were involved.

2 In so far as the FIR No.202 of 2018 is concerned, it is case of the First Informants that though the advance of Rs.50,000/- was paid for construction of road to the Applicants, the said road was not constructed though a period of one year had lapsed and an altercation took place when the First Informants questioned the Applicants about the same.

3 In so far as the FIR No.203 of 2018 is concerned, the cause for filing of the said FIR is the alleged dispute which took place on account of the result of the IPL match.

4 Since in one of the FIRs i.e. in FIR No.203 of 2018 the offence alleged is one punishable under Section 307, we have with the assistance of the learned APP Shri R M Pethe gone through the injury certificates of the injured i.e. Respondent Nos.2 to 4 to the Criminal Application No.729 of 2018. On perusal of the said injury certificates we find that the injured Malan had suffered fracture which has been described as grievous injury in the medical certificate where as other injuries suffered by Malan are said to be simple as also the injuries suffered by the other injured.

5 In so far as the FIR No.202 of 2018 is concerned, reading of the said FIR discloses that the allegations are in respect of the simple injury caused to the persons mentioned therein.

6 In so far as the grievous injury which has been suffered by Malan is concerned, it is required to be noted that she does not attribute the injury as being inflicted by any person but she states that the said injury was caused by a person in the mob. Hence the person who has caused the injury to Malan is not identified.

7 The Applicants in both the Criminal Applications who are the first informants have invoked the jurisdiction of this Court under Section 482 of the Criminal Procedure Code on the ground that the parties have amicably settled their dispute. The first informant and the injured i.e. the Respondent Nos.2, 3 and 4 in Criminal Application No.728 of 2018 and the injured i.e. the Respondent Nos.2, 3 and 4 in Criminal Application No.729 of 2018 have filed their affidavits which are identical.

8 In so far as Criminal Application No.728 of 2018 is concerned, paragraphs 18 and 20 of the said affidavit of Tanaji Uttam Pawar i.e. the Respondent No.2 can be gainfully reproduced herein under :-

“18 I state and submit I am ready to forgive all the allegations against the present Applicants for the offences punishable u/s.324, 504, 506, 34 of IPC and now I does not have any grudge against the present Applicants.

20 I state and submit that as both the parties are showing their consent for the withdrawal of the FIR and further proceeding arising out FIR No.202/2018 registered with Tembhurni Police Station, Dist. - Solapur in the interest of justice the FIR No.202 of 2018 and further proceeding arising out said FIR required to be quashed.”

9 In so far as Criminal Application No.729 of 2018 is concerned, paragraphs 18 and 20 of the said affidavit of Amol Kantilal Deshmukh i.e. the Respondent No.2 can be gainfully reproduced herein under :-

“18 I state and submit I am ready to forgive all the allegations against the present Applicants for the offences punishable u/s.324, 143, 147, 148, 149, 504, 506 of IPC and now I does not have any grudge against the present Applicants.

20 I state and submit that as both the parties are showing their consent for the withdrawal of the FIR and further proceeding arising out FIR No.203/2018 registered with Tembhurni Police Station, Dist. - Solapur in the interest of justice the FIR No.203 of 2018 and further proceeding arising out said FIR required to be quashed.”

10 The Respondent No.2 in Criminal Application No.728 of 2018 – Tanaji Uttam Pawar is personally present in Court. He is identified by the

learned counsel Shri Priyal G Sarda. He is also identified by his Aadhar Card bearing No.941875459994. His address mentioned in the said Aadhar Card is “Shivaji Nagar, Tembhurni, Solapur”. When put in the box and queried, he states that he has been read over and explained the contents of the said affidavit which has been tendered across the bar by the learned counsel Shri Priyal G Sarda today. He further states that he has understood the contents of the said affidavit. He states that in view of the settlement between the parties, he and other Respondents i.e. the injured are not desirous of proceeding with the case in question. He lastly states that he has filed the said affidavit of his own free will and volition.

11 The Respondent No.3 – Malan Uttam Pawar is also personally present in Court. It is not necessary to record her statement in view of the statement recorded of the Respondent No.2 – Tanaji Uttam Pawar.

12 The Respondent No.4 – Gautam Uttam Pawar is concerned, we are informed that he is incarcerated and therefore not in a position to remain present before this Court.

13 The Respondent No.2 in Criminal Application No.729 of 2018 – Amol Kantilal Deshmukh is also personally present in Court. He is identified by the learned counsel Shri Rupesh K Bobade. He is also identified by his PAN

Card bearing No. BSEPD5041H. When put in the box and queried, he states that he has been read over and explained the contents of the said affidavit which has been tendered across the bar by the learned counsel Shri Rupesh K Bobade today. He further states that he has understood the contents of the said affidavit. He states that in view of the settlement between the parties, he and other Respondents i.e. the injured are not desirous of proceeding with the case in question in view of the settlement between the parties. He lastly states that he has filed the said affidavit of his own free will and volition.

14 The Respondent No.3 – Malan Kantilal Deshmukh is also personally present in Court. She is identified by the learned counsel Shri Rupesh K Bobade. She is also identified by her Aadhar Card bearing No.565957999229. When put in the box and queried, she states that she is accompanied by her son. She further states that the contents of the affidavit filed on her behalf and tendered across the bar have been explained to her and her son and they have understood the contents of the said affidavit. She further states that she has recovered from the injury which she has suffered in the incident in question. She further states that she and other Respondents i.e. the injured are not desirous of proceeding with the case in question in view of the settlement between the parties. She lastly states that she has filed the said affidavit of her own free will and volition and pursuant to the consensual which was reached in her family.

15 The Respondent No.4 – Vaibhav Kantilal Deshmukh is also personally present in Court. However, it is not necessary to record his statement in view of the statement recorded of his mother i.e. the Respondent No.3 – Malan Kantilal Deshmukh.

16 It is required to be noted that the Applicants are the residents of Shivaji Nagar, in village Tembhurni, Tal. Madha, Dist. Solapur. They have been residing together and they were involved in the incident which took place on 08/05/2018. In respect of the cause of the said injury, there are divergent reasons which we have recorded in the earlier part of this order. It is required to be noted that the jurisdiction of this Court is invoked at the stage where the investigation is on going and the charge sheet has not been filed. Hence the said circumstance assumes some relevance in the context of the relief sought in the above Criminal Applications. In view of the settlement between the parties, though the offence punishable under Section 307 of the Indian Penal Code is one of the offences which finds a place in the FIR being No.203 of 2018, in our view, no useful purpose would be served in the Investigating Agency proceeding with the investigation in view of the settlement arrived at between the parties as there is hardly any chance of evidence forthcoming from the side of either of the parties at the trial.

17 In the fact situation that has arisen, a useful reference could be made to the judgments of the Apex Court in the matter of Gian Singh V/s State of Punjab & Anr reported in (2012) 10 SCC 303 and Narinder Singh & ors v/s. State of Punjab & Anr reported in 2014 AIR SCW 2065. In Narinder Singh's case (supra) the Apex Court has explicated the circumstances in which the powers under Section 482 of the Criminal Procedure Code can be exercised. In our view, the instant case satisfies the guide-lines mentioned therein by the Apex Court.

18 The above Criminal Applications are required to be allowed and are accordingly allowed and made absolute in terms of prayer clause (b). The Applicant No.1 – Harshal @ Harshchandra Uttam Pawar and the Applicant No.2 – Gautam Uttam Pawar in Criminal Application No.729 of 2018 who are incarcerated, to be released on the authenticated copy of this order being produced by the parties. The above Criminal Applications are accordingly disposed of.

19 All concerned parties to act upon an ordinary copy of this order duly authenticated by the Court Associate/Sheristedar.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

Laxmikant
Gopal Chandan

Digitally signed by Laxmikant
Gopal Chandan
Date: 2018.07.16 14:20:03 +0530