

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3159 OF 2017**

1. Yuvraj Babasaheb Mahadik .Petitioners  
Age : 35 yrs, Occu : business
2. Babasaheb Baburao Mahadik  
Age : 67 yrs, Occu : business
3. Shivraj Babasaheb Mahadik  
Age : 33 yrs, Occu : business

All R/o. Near Babujamal Dargah,  
Kolhapur.

Vs.

1. The State of Maharashtra .Respondents
2. Rahul Sudhakar Vernekar  
Age : 35 yrs, Occu : business

R/o. Sutarmala, Lakshatirth Vasahat,  
Kolhapur.

Mr. S. A. Ingawale, Advocate, for the Petitioners  
Mr. S. V. Walve, APP, for the Respondent No. 1 – State  
Mr. A. S. Patil, Advocate, for the Respondent No. 2  
The Petitioners-in-person present  
Mr. Rahul Vernekar, Respondent No. 2-in-person present

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 16.01.2018**

**ORAL ORDER**

. Heard learned counsel for the parties.

2. Rule.

3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal.

4. By this Petition, the Petitioners have impugned the Order dated 15.05.2017 passed by the learned Additional Sessions Judge, Kolhapur in Cri. Appeal No. 32 of 2017, by which the Petitioners' and the Respondents' Applications i. e. Exhs. 23 / C and 22 / D for compounding the case i. e. R. C. C. No. 1012 of 2013 and consequently, for quashing the Judgment and Order of conviction and sentence dated 20.01.2017 passed by the learned 12<sup>th</sup> Judicial Magistrate First Class, Kolhapur in R. C. C. No. 1012 of 2013, came to be rejected.

5. Learned counsel for the Petitioners submits that the Petitioners and the Respondent No. 2 had filed a joint pursis (Exhs. 23 / C and 22 / D), in view of the amicable settlement between them and prayed that the Judgment and Order of conviction and sentence be quashed and set aside and the Petitioners be acquitted from the said case. He submitted that the said Applications for compounding the case were rejected by the learned Additional Sessions Judge,

Kolhapur on the premise that Section 326 of the Indian Penal Code was not compoundable. He submits that in the facts, no offence punishable under Section 326 is disclosed qua any of the Petitioners and in fact, the offence, if any, would be one under Section 324.

6. Learned counsel for the Respondent No. 2 states that the matter has been amicably settled between the parties and that the Respondent No. 2 has no objection to the quashing and setting aside of the Judgment and Order of conviction and sentence dated 20.01.2017, passed by the learned 12<sup>th</sup> Judicial Magistrate First Class, Kolhapur in R. C. C. No. 1012 of 2013 and if the Petitioners are acquitted.

7. Perused the papers. The Petitioners have been convicted by the learned 12<sup>th</sup> Judicial Magistrate First Class, Kolhapur, essentially for the offence punishable under Section 326 r/w 149 of the Indian Penal Code and have been sentenced to suffer S. I. for two years and to pay fine of Rs. 2,000/- each, in default to suffer further S. I. for one month by the trial Court.

8. Being aggrieved by the Judgment and Order of conviction and sentence, the Petitioners preferred Cri. Appeal No. 32 of 2017 in the

Court of Sessions, Kolhapur. As there was an amicable settlement between the parties, joint pursis (Exh. 23 / C) was filed by them stating therein, that the matter was amicably settled between them; and that at the highest, even if the Medical Certificates are seen, the offence would be one under Section 324 of the Indian Penal Code. The Petitioners and the Respondent No. 2 also filed an Application (Exh. 22 / D) seeking permission to compromise the said case and to grant permission to compound the case. The said Application was rightly rejected by the learned Additional Sessions Judge, Kolhapur vide Order dated 15.05.2017, on the ground that the offence punishable under Section 326 of the Indian Penal Code was not compoundable.

9. A perusal of the evidence of the Complainant shows that he was not assaulted by any of the Petitioners, on the nose, which resulted in a nasal fracture. The other injuries alleged to have been caused by the Petitioners are simple in nature. The evidence of the two Doctors i. e. PW.6 – Dr. Archana Virendrasinh Pawar and PW.7 – Dr. Santosh Tarachand More also contradicts each other with regard to the injuries and as such, it is doubtful, if an offence punishable under Section 326 is disclosed against any of the Petitioners. The Petitioners placed reliance on the Judgment of the Apex Court in the case of *Yogendra Yadav &*

*ors. Vs. State of Jharkhand & anr.*, reported in *(2014) 9 Supreme Court Cases 653*. The Apex Court in the said case had held that though the offences punishable under Sections 326 & 307 of the Indian Penal were not compoundable, considering the compromise petition filed by the parties and the fact that they were neighbours and living peacefully, pending the proceedings permitted the compromise and quashed the proceedings. Reliance was also placed on a Judgment of this Court dated 5<sup>th</sup> February, 2016 passed in Cri. W. P. No. 1576 of 2015.

10. The Respondent No. 2 had filed a joint pursis alongwith the Petition in the Appellate Court. The Petitioners and the Respondent No. 2 have stated that they live in the same locality and that they wanted to live peacefully and that the Respondent No. 2 had no objection, if the proceedings are quashed and set aside as against the Petitioners.

11. The Petitioners and the Respondent No. 2 are present in Court. The Respondent No. 2 confirms that the dispute between them has been settled.

12. In the peculiar facts & circumstances of this case and

having regard to the Judgments relied upon by the Petitioners, the impugned Orders dated 15.05.2017 passed below Exhs. 23 / C & 22 / D in Cri. Appeal No. 32 of 2017 by the learned Additional Sessions Judge, Kolhapur as well as the Judgment and Order dated 28.01.2017 passed by the learned Judicial Magistrate First Class, Kolhapur in R. C. C. No. 1012 of 2013 are quashed & set aside and the Petitioners are acquitted from the said offences.

13. In view of the above, the Appeal, being Cri. Appeal No. 32 of 2017 does not survive and is rendered infructuous.

14. Accordingly, the Petition is disposed of.

Rule is made absolute in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**