

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.97 OF 2019

Padmanabh Rawal
S/o. Ashutosh Rawal
26 years of age, r/o. H.No.G-8,
2nd Floor, Gokul Nandanvan Complex,
Tonca, Caranzalem Tiswadi, Goa.

.... Petitioner

V/s.

1. State of Goa,
Through the Public Prosecutor,
High Court, Panaji, Goa.

2. The Police Inspector,
Panaji Police Station,
Dis.-North Goa, Goa.

3. Hicbal Khan,
s/o. Cadir Khan,
major in age, R/o. H.No.G-1,
Pankaraj Building, Near Mithai Mandir,
Tonca, Caranzalem, Tiswadi, Goa.

4. Shirin Khan,
S/o. Hicbal Khan,
Major in age, r/o. H.No.G-1,
Pankaraj Building, Near Mithai Mandir,
Tonca, Caranzalem, Tiswadi, Goa.

.... Respondents

Mr. Vibhav Rajiv Amonkar, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for
Respondents No.1 & 2.

Mr. Vithal Naik, Advocate for Respondents No.3 & 4.

**Coram :- S. C. GUPTE &
NUTAN D. SARDESSAI, JJ.**

Date:- 1st July, 2019

ORAL JUDGMENT : (Per S.C. Gupte, J.)

Rule. Rule made returnable forthwith. Learned Counsel appearing for the respondents waive service.

2. This Criminal Writ Petition seeks quashing of an FIR registered at Panjim Police Station. The FIR is in respect of offences under Sections 279, 338 and 504 of IPC. The FIR states that the petitioner accused, who was riding a bullet motorcycle, rode it in a rash and negligence manner causing a fracture injury to the rider of another scooter, who is the father of the complainant. The present quashing prayer is on the footing that the petitioner's case that the accident was not on account of his rashness or negligence and was purely a fortuitous accidental circumstance, is not disputed by the complainant. It is submitted that the complainant accepts that the complaint was filed on account of a misunderstanding between the petitioner on the one hand, the complainant and her father (the respondents herein) on the other. The petitioner has produced along with the petition an affidavit sworn by the respondents, testifying to this circumstance and making it clear that they had no grievance against the petitioner and, as such, were not desirous of continuing the criminal proceedings against

the petitioner.

3. On the last occasion, we made it clear that considering the nature of the offence alleged against him, the petitioner must come out forthright and produce before the Court the writing executed between the parties, if any. The petitioner has produced before the Court consent terms drawn between the parties. The consent terms indicate that the family of the petitioner had paid the entire medical expense of respondent no.3 including allied and miscellaneous expenses and compensated respondent no.3 for loss, if any, caused to respondents no.3 & 4 due to the unfortunate incident. The consent terms also indicate that the petitioner had repeatedly checked the status of health of respondent no.3 with respondent no.4, offering to render all assistance for speedy recovery of respondent no.3.

4. In these circumstances, both the petitioner on one hand and respondents no.3 & 4 on the other request the Court to quash the FIR. They rely on the judgment of the Supreme Court in the case of **Gian Singh V/s. State of Punjab & Anr.**¹ as also the case of **Darshan J. Wadke V/s. The State of**

¹ (2012) 10 SCC 303

Maharashtra².

5. Learned Additional Public Prosecutor opposes the application for quashing. He submits that the offence under Section 279 is a serious offence and not a matter to be settled between the parties by private settlement. Learned Additional Public Prosecutor relies on the judgment of this Court in **Inacio Pereira V/s. State of Goa (Criminal Writ Petition No.108/2018, decided on 25/06/2018)** in support of his submissions.

6. The propositions laid down by the Supreme Court in Gian Singh (supra) are towards explaining inherent power of the High Courts under Section 482 to quash criminal proceedings involving non-compoundable offences in the light of compromise between the parties and its relative scope. The Court held that Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Court held that exercise of such power would entirely depend on the facts and circumstances of each case and that it was neither permissible nor proper for the Court to provide a

² 2016 SCC OnLine Bom. 11212

straitjacket formula for regulating the exercise of such inherent powers. No precise and inflexible guidelines could be provided in this behalf either. In the first place, as the Supreme Court noted, quashing of an offence or criminal proceedings on the ground of settlement between the offender and the victim is not the same thing as compounding of an offence. These two are different and not interchangeable. In other words, the power of compounding of offences given to a Court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction, although, in the ultimate analysis, the consequence of such quashing is acquittal or dismissal of indictment. Quashing of a criminal prosecution on the basis of settlement reached between the offender and the victim is essentially premised on the Court opinion formed by the Court that continuance of criminal proceedings would be an exercise in futility and justice of the case demanded that the dispute be put to an end and peace restored, securing the ends of justice being the ultimate guiding factor in this behalf. The Court, at the same time, sounded a note of question that in case of crimes which have harmful effect on the public and consist in a wrong doing that seriously endangers or threatens the wellbeing of the society, it is not

safe to let the wrong doer off the hook only because he and the victim have settled the dispute amicably or that the victim has been paid compensation. In some of these offences, it may be impermissible to compound the offence by a private settlement; it may be necessary to obtain the permission of the Court. On the other hand, in respect of certain other and more serious offences like murder, raper, dacoity or other offences of mental depravity under IPC or offences involving moral turpitude under special statutes, like the Prevention of Corruption Act, etc. any settlement between the offender and the victim can have no legal sanction whatsoever. On the other hand, there may be offences which overwhelmingly and predominantly bear a civil flavour or some other offences having a private element, where the wrong is basically committed to the victim. In the case of such offences, irrespective of the fact that the offences have not been made compoundable, the High Court may, within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that in the face of such settlement, there is hardly any likelihood of the offender being convicted and on the other hand, if criminal proceedings are not quashed, justice would be a casualty and ends of justice shall be defeated. The Court has

listed various offences in this behalf, cautioning at the same time that the list was merely illustrative and not exhaustive; each case would depend on its own facts and no hard and fast category could be prescribed.

7. In the present case, we are concerned with an offence of rash driving or riding on a public way. The offence is cognizable, bailable and not compoundable. Though it is in a broad sense an offence against the society, it typically involves a victim who brings it in the arena of public prosecution on a complaint in most of the cases, though not necessarily so. At any rate, it would certainly involve participation of the victim in the prosecution. There may, of course, be independent witnesses, who may be available for evidence before the Court. In the present case, by all counts, the prospect of a successful prosecution would essentially depend on the testimony of the victim himself or the complainant, who brought the offence, in the first place, to the notice of the enforcement machinery. In a case such as this, where both the complainant and the victim have placed before the Court a sworn testimony that their complaint was essentially on the footing of a misunderstanding and that they accept the case of the accused of the incident was

really a matter of pure coincidence and not as a result of any criminal act such as rash or negligent driving or riding on the part of the accused. It would be a forgone conclusion that the trial of the alleged offences, if at all we decide to take it to its logical conclusion, is hardly likely, that is to put it but mildly, in real terms, there is practically no likelihood of the trial yielding a conviction.

8. The question then is, should the Court not exercise its inherent powers and quash the criminal prosecution, particularly in the light of the fact that the matters, which were initiated on a misunderstanding have been amicably resolved between the alleged offender and the victim. The case that the offender was riding his motorbike in a rash and negligent manner so as to cause harm is exclusively on the testimony of the victim and the complainant, who do not any longer stand by their statement. The answer, as we are advised, ought to be in the negative. In our view, no purpose may be served in prosecuting the accused in the facts and circumstances of the case.

9. The case of **Inacio Pereira** (supra) cited by learned

Additional Public Prosecutor was on an entirely different footing. That was a case where the incident had occurred on a bridge on which overtaking was prohibited. From the panchanma which was placed on record, it was apparent that the accused had taken his car on the extreme right and consequently dashed against the vehicle coming on the other side. The incident, thus, occurred not just on the main road, but on a narrow bridge where overtaking was strictly prohibited and on a lane which was for vehicles coming from the other direction. In these circumstances, the Court was of the view that such driving, which was prima facie rash and negligent and was in a manner so as to cause harm, would seriously affect the confidence of other drivers. The incident was not one which the Court felt could be treated as a minor infraction. The Court was of the view that the petitioner had acted in brazen defiance of traffic regulations and the impact of the incident travelled well beyond the parties involved. The Court was of the view that while exercising inherent jurisdiction, the Court should be conscious not to send wrong signals to the society or be seen to condone and trivialize serious infraction.

10. As we note, in the present case, the facts are

materially and fundamentally different. In the present case, the accident occurred not in the middle of the public road but somewhere near the compound of the victim's house. The victim was near his compound waiting to cross the road with his bike when the bike of the accused is supposed to have hit him. In other words, there is a clear possibility that the accused was traveling in a straight direction on the road and it was the victim who was about to cross the road. In a case involving such possibility, the testimony of the victim or the complainant, who initiated the criminal prosecution is very crucial. If they themselves say that there was no rash or negligent driving and that the complaint was filed by them on a misunderstanding, there is no reason why such complaint should not be quashed relying on the observations of this Court in **Inacio Pereira** (supra). After all, by itself, an offence under Section 279 does not necessarily qualify as a serious offence, where the prosecution should not be quashed on the basis of a legitimate settlement between the parties. **Gian Singh** (supra) does itself acknowledge this, while quoting the guidelines in **Kulwinder Singh & Ors. V/.s State of Punjab & Anr.**³. These guidelines in terms say that "minor offences as under Section 279 IPC may be permitted to be compounded on the basis of legitimate

³ (2007) 4 CTC 769

settlement between the parties.”

11. In the light of this law and in the face of the peculiar facts and circumstances of the case, which have been noted above, this Court is of the view that the criminal proceedings in the present case deserve to be quashed by invoking our inherent powers. The petitioner has offered to pay such costs as this Court may deem fit as costs of the petition.

12. In the premises, rule is made absolute and the petition is disposed of by quashing the complaint dated 18/09/2018 and FIR No.221/2018 based thereon. The petitioner shall pay the costs of this petition quantified at ₹15,000/-. Such costs shall be paid to the legal aid cell of this Court within a period of two weeks from today.

NUTAN D. SARDESSAI, J.

S. C. GUPTE, J.

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