

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO. 4178 of 2019**

Bunty s/o.Prakash Gavhane and ors. ....Petitioners  
versus  
The State of Maharashtra and anr. ....Respondents

Mr. Nitin V. Gaware i/b. Mr. V. S. Tadke, advocate for the petitioners.  
Mr. K. V. Saste, APP for the State.  
Mr. Paras D. Yadav i/b. Mr. Madhukar Yelutla, advocate for respondent  
No.2.

**CORAM : RANJIT MORE &  
N. J. JAMADAR, JJ.**

**DATE : 30<sup>th</sup> SEPTEMBER, 2019.**

**P. C. :**

Heard learned counsel and learned APP appearing for the  
respective parties.

2. The petition is filed for quashing and setting-aside the FIR bearing CR.No.385 of 2019 registered with Shirur Police Station, at the instance of respondent No.2, initially for the offences punishable under Sections 326, 324, 323, 143, 141, 142,146, 147, 504 and 149 of the Indian Penal Code, 1860 (for short “the IPC”). Subsequently, an offence under Section 307 of the IPC was added.

3. Pending investigation, the parties settled their dispute

amicably and have approached this Court for quashing the subject FIR by consent of respondent No.2. Respondent No.2/Original Complainant as well as the victim – Nandabai @ Nati Banti Gavhane have filed separate affidavits dated 16<sup>th</sup> August, 2019 and 26<sup>th</sup> September, 2019 respectively. In paragraph 3 of their respective affidavits, they have given their no objection to quash the subject FIR. Both the respondent/original complainant and the victim – Nandabai are personally present before the Court. On being questioned, they specifically stated that they have made their respective affidavits on their own free will and without there being any pressure or coercion. They further stated that they have fully understood the contents of their affidavits and have no objection if the subject FIR is quashed and set-aside.

4. It is true that the offence under section 307 of IPC is of serious nature and is an offence against the society. Consequently, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to Paragraph 28 of **Narinder Singh vs. State of Punjab [2014 AIR SCW 2065]**, wherein the Apex Court has held as under :

“28. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or

both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

5. The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR / Charge-sheet if the

Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

6. So far as the instant case is concerned, we have gone through the FIR as well as statements of other witnesses and injury certificate of the complainant. The FIR shows that there was no premeditation on the part of the petitioners to commit the crime as alleged. The incident occurred on the spur of the moment. Though, the injury certificate of the complainant discloses that he suffered head injury and there was abrasion on parietal region and the object used for causing the injury was hard and pointed one, if this certificate is considered along with the statements of witnesses, then, we are of the opinion that the offence under Section 307 of the IPC is not made out. So far as other offences are considered, undisputedly, the settlement between the parties can be accepted and, therefore, in our opinion, no fruitful purpose will be served by continuing with the prosecution.

7. In the backdrop of above facts and circumstances and especially in view of law laid down by the Apex Court in the case of **Narinder Singh (supra)**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the criminal Courts which are already overburdened. In that view of the matter and in the interest of justice, the subject FIR is required to be quashed and set-

aside. However, at the same time, costs need to be saddled on the parties for putting into motion the police and judicial mechanism for settling their personal disputes.

8. Accordingly, the writ petition is allowed in terms of prayer clause (B) subject to payment of costs of 20,000/- by the petitioners to **“Tata Memorial Hospital”** an institution that takes care of advanced and terminally ill cancer patients and, thereafter, produce the receipt thereof on the file of this Court within a period of four weeks from today, failing which, the writ petition shall stand dismissed automatically without further reference to the Court and order quashing the subject FIR shall be treated as non-est.

9. Subject to above, the writ petition is disposed off.

**[N. J. JAMADAR, J.]**

**[RANJIT MORE, J.]**