

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1634 OF 2020

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| 1. Rahul S/o Bharatrao Kale | | |
| 2. Ankush S/o Ramrao Kolhe
Taluka Ghansawangi, District Jalna. | ... | Applicants
(Orig. Accused) |
| Versus | | |
| 1. The State of Maharashtra | | |
| 2. Anil S/o Vishnu Bharaskar | ... | Respondents
(Res. No.2 is Orig. Complainant) |

...
Advocate for Applicants : Mr. R.M. Deshmukh
APP for Respondents/State : Mr. K.D. Munde
Advocate for R/2 : Mr. V.Y. Patil
...

**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**
DATE : 21.10.2020

JUDGMENT: (Per: *M.G. Sewlikar, J.*)

This is an application under Section 482 of the Cr.PC. for quashing of the Crime No. 254 of 2020 registered with Ghansawangi Police Station, District Jalna dated 06.07.2020 for the offence punishable under Section 307, 323, 504 read with Section 34 of the I.P.C.

2. Facts giving rise to this application are that the informant-respondent no.2 herein is a regular customer of applicant no.1 who runs a hotel by name Sahyadri Beer Bar on the road from Ghansawangi to Sutgirni.

3. It is alleged in the F.I.R. that on 05.07.2020 the informant-respondent no.2 herein along with his friend Gajanan Baraskar, Sunik Dhekle, Rameshwar Raut went to Sahyadri Beer Bar for lunch. They ordered liquor and had lunch. At 4.00 pm when they went to the counter for making payment, applicant no.2 who is a waiter in the said hotel demanded Rupees Fifty over and above the amount of the bill which led to a quarrel between applicant no.2 and the informant. Applicant no.2 started abusing the informant-respondent no.2 and started jostling him. Applicant no.1 the owner of the Beer Bar delivered a blow of iron pipe on the head of the informant. He delivered another blow of pipe on the head of the informant. Respondent no.2 fell unconscious and regained consciousness during his hospitalisation in Apex Hospital, Aurangabad. Accordingly, F.I.R. was lodged on 06.07.2020 at 22.25 hours.

4. Heard Shri R.M. Deshmukh the learned counsel for the applicants, Shri K.D. Munde the learned APP for the State and Shri V.Y. Patil the learned counsel for the respondent no.2.

5. Shri Deshmukh argued that apparently false case has been filed against the applicants. Respondent no.2 during his hospitalisation had given a history of the injury as due to fall from motorcycle. Medical record bears a testimony to it. Thereafter, respondent no.2 was shifted to Apex Hospital, Aurangabad. At that time also respondent no.2 has given history as fall from motorcycle. He submits that applicants and respondent no.2 have arrived at a compromise and therefore application deserves to be allowed. He placed reliance on the following cases **AIR 2014 SC (Supp) 1839 Narinder Singh and Ors. V/s. State of Punjab and Anr.** and **2012 AIR SCW 5333 Gian Singh V/s. State of Punjab and Anr.**

6. Shri Munde submitted that CCTV footage of the hotel shows that applicant no.1 delivered a blow of iron rod on the head of respondent no.2. This clearly shows that respondent no.2 sustained injury because of the blows delivered by the applicant no.2.

7. In the case of **Narinder Singh and Ors. V/s. State of Punjab and Anr.** (supra) after considering Gian Sing (supra) case the Hon'ble Supreme Court has laid down following guidelines in regard to settlement and quashing the proceedings:-

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute

like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by

the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally

on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

8. From the above principles enunciated by the Hon’ble Apex Court, it is axiomatic that offence under Section 307 of I.P.C. is to be treated as an offence against the society. And if there is sufficient evidence against the accused, proceedings cannot be quashed. On touchstone of these guidelines, the case at hand will have to be considered.

9. On perusal of the investigation papers, it is seen that spot panchanama was prepared which indicates that blood had spilled at the spot. CCTV footage has been collected by the police during the investigation. The script of the CCTV footage is prepared by the Investigating Officer which shows that applicant no.1 was seen beating the respondent no.2. and respondent no.2 had fallen on the ground and blood was oozing from his head. This CCTV footage clearly shows the involvement of the applicants in

the offence. Friends of respondent no.2 namely Gajanan Baraskar, Sunil Dhekle and Rameshwar Raut have stated about the incident involving the applicant nos.1 and 2. Medical certificate which is placed on record shows that respondent no.2 had sustained head injury on left side over frontal bone by hard and blunt object. Not a single document is placed on record to show that respondent no.2 has sustained injuries due to fall from motorcycle. On the contrary medical certificate collected by the police shows that respondent no.2 sustained injury by means of hard and blunt object. CCTV footage also lends corroboration to the contents of the F.I.R. Thus, there is sufficient evidence collected by the prosecution to indicate that there is a possibility of conviction. Having regard to this and more particularly as the incident took place during lockdown, we do not deem it fit to quash the F.I.R. Moreover, assault was launched on account of a paltry sum of Rs.50/- and that too during the period of lock down. Having regard to this, proceedings cannot be quashed.

10. Having regard to this, we do not deem it fit to quash the F.I.R. and hence the application stands dismissed.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]