

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 79 OF 2021

Liyakat S/o Chand Qureshi and others ... Applicants

VERSUS

The State of Maharashtra and another ... Respondents

...

Mr. N.S. Ghanekar, Advocate for applicants
Mr. A. S. Shinde, APP for respondent – State
Mr. T.C. Sonawane, Advocate for respondent no. 2

...

**CORAM : SUNIL P. DESHMUKH
AND
N. B. SURYAWANSHI, JJ.**

DATE : 1st SEPTEMBER, 2021

PER COURT :

1. This application is filed for quashing of FIR bearing crime no. 0484 of 2020 registered with Mukundwadi Police Station, District Aurangabad for the offences punishable under sections 307, 341, 323, 504, 506 read with 34 of the Indian Penal Code.

2. The respondent no. 2 lodged the FIR in question, alleging that on 01/12/2020 in the night at about 10.00 p.m. to 10.15 p.m., when he was returning from the chicken shop along with Arbaz @ Rahim Sayed Rashid on motorcycle at API corner

bridge in front of hotel Sara, one Alto car blocked their way. Liyakat c/o Chand Qureshi, his son Soheli Qureshi, his nephew, Soheli Qureshi (applicants) and Nanha Qureshi alighted from the said car. Nanha Qureshi assaulted informant / respondent no. 2 with wooden log and Liyakat c/o Chand Qureshi (applicant no. 1) assaulted him with iron rod on his head. The applicant nos. 2 & 3 slapped Arbaz. All the four accused had mercilessly beaten him. Soheli Liyakat Qureshi picked up a stone from road and hit him on cheek. All the accused thereafter fled from the spot.

3. During pendency of the application, parties have amicably settled the matter out of Court on the intervention of the respectable persons from their community.

4. Learned Advocate for the applicants by relying on the settlement deed (at Exhibit "B"), submits that the parties have resolved their dispute and have amicably settled the matter. Taking into consideration the same, the application deserves to be allowed.

5. The informant – respondent no. 2 has filed affidavit stating that he and the applicants are having good relations and they want to maintain peace among themselves. The informant does not want the prosecution to continue against applicants and he wants to put an end to all the litigations.

6. Arbaz @ Rahim Sayed Rashid who was accompanying the informant – respondent no. 2 and who allegedly fled from the spot of incident, has also filed an affidavit stating that the matter has been amicably settled between the parties.

7. We have perused injury certificate of Mahamad Firoj Abdul Hamid Qureshi (informant - respondent no. 2) which shows that he has suffered CLW on the post-parietal region of head and haematoma on face and head. These injuries are stated to be simple in nature. Injury certificate of Arbaz @ Rahim Sayed Rashid is not on record.

8. In **Narinder Singh and others Vs. State of Punjab and another** reported in **(2014) 6 SCC 466**, Hon'ble Apex Court has held;

" 26. 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 unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.

29.6 *Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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/delicate 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.”*

9. Applying above ratio to the facts of the present case and since the injuries suffered by the informant – respondent no. 2 are simple in nature, we find that there is no material to attract the charge under section 307 of the Indian Penal Code.

10. On the basis of prima facie analysis of the material collected during the course of investigation, according to us, prosecution of applicants under section 307 of the Indian Penal Code is not sustainable.

11. Both the parties belong to the same community and they are in chicken business. Their shops are adjacent to each other. They have decided to bury the hatchets and lead a peaceful life and maintain good relations amongst themselves and as they want to put an end to all the litigations. In view of the amicable settlement of dispute between the parties, according to us, continuation of the prosecution against the applicants would be an abuse of process of law. As such, the application deserves to be allowed. Hence, following order.

I) Criminal Application no. 79 of 2021 is allowed.

II) FIR bearing crime no. 0484 of 2020 registered with Mukundwadi Police Station, District Aurangabad for the offences punishable under sections 307, 341, 323, 504, 506

read with 34 of the Indian Penal Code, is quashed and set aside.

III) The applicants are directed to pay costs of Rs. 10,000/- (Rs. Ten Thousand) each to the High Court Legal Services Sub-Committee at Aurangabad within a period of four weeks from today.

[N. B. SURYAWANSHI]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

Vdk