

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

CRIMINAL WRIT PETITION NO.690 OF 2019

1. Sushil S/o Kantilal Bafana,
Aged : 42 years, Occu. Business,
R/o Vilholi, Tq. Ghoti, District Nashik.
2. Surendra S/o Kantilal Bafana,
Aged : 45 years, Occu. Business,
R/o Vilholi, Tq. Ghoti,
District Nashik. ... **Petitioners.**

Versus

1. Akash S/o Vilas Shinde,
Aged : 21 years, Occu. Journalist &
Education,
R/o Bambhale, Tq. Sindkheda,
District Dhule.
2. The State of Maharashtra,
Through Police Inspector,
Police Station Sindkheda,
Tq. Sindkheda, Dist. Dhule. ... **Respondents.**

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Advocate for Petitioners : Mr. Joslyn Menezes h/f Mr. Paranjape
Prakash S.

APP for Respondent No.2-State : Mr. S. J. Salgare.

Advocate for Respondent No.1 : Adv. Borse Nimishaben V.

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**CORAM : V. K. JADHAV, AND
M. G. SEWLIKAR, JJ.**

DATE : 05.03.2021

ORAL JUDGMENT (PER V. K. JADHAV, J.) :-

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.
2. This pertains to quashing of the FIR mainly on the ground that during pendency of this writ petition, the parties have arrived at amicable settlement.
3. The learned counsel for the petitioners submits that on the basis of the complaint lodged by respondent No.1 Akash, the Crime No.30 of 2017 came to be registered with Shindkheda Police Station for the offences punishable under Section 341, 427, 501, 323, 504, 506 read with Section 34 of the IPC against the petitioners and now after filing of the charge-sheet, the case is now registered before the Court as S.T.C.C. No.136 of 2018. The learned counsel for the petitioners submits that the petitioners and the informant are residing in the same locality and due to intervention of the elderly members of the society, the parties have decided to settle the matter amicably. The learned counsel submits that as per the injury certificate of the informant Akash and injured Gopal, both of them have sustained the simple injuries in the assault.

4. The learned counsel for respondent No.1 submits that due to intervention of the elderly members of the society and to maintain the relations in future, the parties have decided to settle the matter amicably. The learned counsel submits that the said injured Gopal is the cousin of respondent No.1 Akash and both of them have sustained the simple injuries in the assault.

5. The learned APP has strongly resisted the application mainly on the ground that there are antecedents of the petitioners and in addition to this crime, there are two more crimes registered against them. The learned APP has placed his reliance in a case *State of Madhya Pradesh Vs. Dhruv Gurjar and another*, reported in *AIR 2019 Supreme Court 1106*, wherein in paragraph No.18.2, the Supreme Court has considered the antecedents of the accused and further criticised the order passed by the High Court quashing the FIR within a short period.

6. In a case *Parbatbhai Aahir and others Vs. State of Gujarat and others*, reported in *AIR 2017 SC 4843*, in paragraph No.15 of the judgment, the Supreme Court has

considered the broad principles which emerge from the precedents on the subject and summarized the same in the following propositions :

“(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

7. In terms of Clause No.(v), the Supreme Court has laid down the proposition that the decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated. In terms of Clause No.(ix), it is laid down that the High Court may quash the criminal proceedings if in view of the compromise between the disputants, the possibility of

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice.

8. In the instant case, none of the offence alleged to have been committed by the petitioners is punishable with death or imprisonment for life or even imprisonment for more than seven years. Furthermore, respondent No.1 so also the injured have sustained only simple injuries in the assault. Further as per the allegations made in the FIR, no weapon has been used in the assault and the respondent was allegedly subjected the beating with the help of fists and kicks blows. It further appears from the affidavit filed by respondent No.1 and the injured Gopal that due to the intervention of the elderly members of the society they have decided to settle the matter amicably. It is also informed by the learned counsel appearing for them that the petitioners and respondent No.1 are residing in the same locality.

9. In a case *State of Madhya Pradesh Vs. Dhruv Gurjar and another*, reported in *AIR 2019 Supreme Court 1106*, relied upon by the learned APP in Paragraph No.18.2 of the judgment the Supreme Court has made following observations :

"18.2 Even otherwise, in the facts and circumstances of the case of the appeal arising from SLP(Crl.) No. 9860/2013, the High Court has erred in quashing the FIR. It is required to be noted that the FIR was lodged on 21.12.2012 for the offence alleged to happen on 21.12.2012. All the accused were absconding. After a period of approximately three months, they approached the High Court by way of filing a petition under Section 482 of the Cr.PC., i.e., on 12.03.2013. The learned Chief Judicial Magistrate issued a proclamation under Section 82 of the Cr.PC. against the accused persons on 14.03.2013. In the meantime, the accused managed to get the affidavits of the complainant and the two witnesses dated 09.02.2013, and the High Court quashed the FIR on 15.03.2013, i.e., within a period of three days from the date of filing the petition. The High Court has also not considered the antecedents of the accused. It has come on record that the accused persons were facing number of trials for the serious offences. The aforesaid would be relevant factors, while exercising the inherent powers under Section 482 Cr.PC and while considering the application for quashing the FIR/complaint/criminal proceedings. In fact, in such a situation, the High Court ought to have been more vigilant and ought to have considered relevant facts and circumstances under which the accused got the settlement entered into. The High Court has not at all considered the aforesaid relevant circumstances, while exercising the power under Section 482 Cr.PC. "

10. However, the fact of the aforesaid case are altogether different. The Supreme Court has taken a note that the accused persons in that crime were facing number of trials for the serious offences.

11. In the instant case, as per the report submitted by the Investigating Officer, there are two crimes registered against these petitioners (i) Crime No.50 of 2017 for offence punishable under Section 354(A), 509, 109, 501 read with Section 34 of IPC and (ii) Crime No.201 of 2017 for the offence under Section 504, 506 read with Section 34 of the IPC. However, it is informed by the learned counsel for the petitioners that Crime No.50 of 2017 was quashed by this Court vide order dated 07.09.2018 in Criminal application No.115 of 2018.

12. We do not find that the petitioners are facing the trials for the serious offences.

13. In view of the above, considering the settlement between the parties and in view of the ratio laid down by the Supreme Court in Parbatbhai Aahir (*supra*), we are inclined to allow this writ petition. Hence the following order :

ORDER

(I) Writ Petition is allowed in terms of prayer clause 'B' and 'B-1'.

(II) Writ Petition is accordingly disposed off.

(III) Rule made absolute in the above terms.

(M. G. SEWLIKAR, J.)

(V. K. JADHAV, J.)

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vmk/-