

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 CRIMINAL APPLICATION NO. 2180 OF 2021

KUNAL S/O JAGANNATH KHANDEBHARAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. Dheple Shantaram R.
APP for Respondent No.1 : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Sachin Joshi h/f
Mr. M. C. Ghode

.....

CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 16th NOVEMBER, 2021

PER COURT:-

1. Heard finally with consent at admission stage.
2. This application is filed for quashing of the FIR bearing C.R. No. 25/2021 registered with Osmanapura Police Station, Aurangabad for the offence punishable under Sections 307, 324, 323, 504 r/w 34 of IPC on settlement.
3. The applicant is accused no.1 in connection with the aforesaid crime.

4. Learned counsel for the applicant submits that the applicant and respondent no.2 have arrived at an amicable settlement. They are residing in the same area i.e. Osmanpura, Aurangabad. Learned counsel for the applicant submits that respondent no.2 and his associate one Mayur Choudhary have sustained simple injuries in the incident. It is alleged in the complaint that the informant and his associate Mayur were assaulted by the applicant with the help of *kada* (bracelet) wore by him in his hand and also by giving dash of four-wheeler to respondent no.2-informant. Learned counsel submits that the matter has been amicably settled.

5. Learned counsel for respondent no. 2-informant submits that respondent no. 2 has filed his affidavit-in-reply. The matter has been amicably settled between them as they are residing in the same area i.e. Osmanpura, Aurangabad. Respondent no.2 do not want to further prosecute the matter in view of the compromise dated 03.09.2021 Exhibit "E". Learned counsel submits that the compromise deed was registered before the Notary and a copy of the same is annexed to the application marked at Exhibit "E". Learned counsel submits that even the affidavit of injured Mayur is also filed on record to the effect that he has no objection for the

said settlement. Learned counsel submits that even said Mayur has not sustained any injury in the incident.

6. Learned APP submits that applicant has assaulted respondent no.2 and inflicted injuries with the help of *kada* (bracelet) on his forehead. Furthermore, he has also tried to kill respondent no.2 by giving dash of four-wheeler. Thus, the allegations are serious in nature. Respondent no.2 has also sustained injuries. The application is liable to be rejected even though quashing is sought on settlement.

7. Learned APP has pointed out that in the year 2015, there is one crime registered against the applicant for having committed the offence punishable under Section 323, 341, 504 and 506 of IPC and the applicant herein came to be acquitted in connection with the said crime. At present there are no antecedents.

8. We have carefully gone through the allegations made in the complaint so also the police papers. It has been alleged in the complaint that the applicant has assaulted the informant and his associate Mayur and inflicted injuries on their person with the help

of *kada* (bracelet) wore by him in his hand and further attempted to kill the informant by giving dash of his four-wheeler. We have gone through the medico-legal certificate of respondent no.2-informant. He has sustained one CLW on the frontal part and tenderness on back. It has been stated in the medico-legal certificate that both the injuries are simple in nature. There is no injury certificate in respect of the said so-called injured Mayur. Respondent no.2-informant has filed his affidavit-in-reply and the said Mayur has also filed an affidavit. Both of them have stated in their respective affidavits that they are residing in the same area i.e. Osmanpura, Aurangabad and in view of the same, to maintain peace in future, they have arrived at a settlement.

9. In the case of ***Narinder Singh and others v. State of Punjab and another***, reported in (2014) 6 SCC 466, relied upon by learned counsel for the applicant, in para 26 and 27, the Supreme Court has made the following observations:

“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.

27. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury, etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to

the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.”

10. In the instant case, the settlement is arrived at between the parties within four to five months after registration of the crime and the matter is still under investigation. It further appears that the incident had taken place as of sudden without any premeditation. Even the applicant was not carrying any weapon with him and he used the said *kada* (bracelet) wore by him in his hand for inflicting injury on the person of the informant and the said Mayur. Though there are allegations that there was an attempt to kill respondent no.2 informant by giving dash of four-wheeler, however, in the medico-legal certificate, only tenderness on back has been noted. Both the injuries are simple in nature. Considering the nature of injuries sustained, the portion of the body where injuries were inflicted and the nature of the weapon, we are inclined to quash the FIR on the basis of the settlement. We are satisfied that the parties have arrived at the settlement voluntarily.

11. In view of the above, and in terms of the ratio laid down by the Supreme Court in the afore-cited case, we proceed to pass the following order :

ORDER

- I. The criminal application is hereby allowed in terms of prayer clause “C” to the extent of the applicant KUNAL S/O JAGANNATH KHANDEBHARAD.
- II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)