

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.580 OF 2021

- | | | | |
|----|--------------------------------------|---|--------------------|
| 1] | Shabir Abdul Rehman Shaikh |] | |
| | Age 26 years, Occu : Nil |] | |
| | R/o : Maulana Azad Nagar, |] | |
| | 4 th Nijampura Bhivandi, |] | |
| | Dist. Thane |] | |
| | |] | |
| | |] | |
| 2] | Rajiuddin @ Danish Shabiuddin Shaikh |] | |
| | Age 35 yrs. Occu : Nil |] | |
| | R/o. Iliyas Sheth Chawl, |] | |
| | Shastri Nagar, Bhivandi, |] | |
| | Dist – Thane |] | Petitioners. |

Versus

- | | | | |
|----|-----------------------------------|---|--------------------|
| 1] | The State of Maharashtra |] | |
| | |] | |
| 2] | Mr. Ayaz Ahmed Shaikh |] | |
| | Age : 40 years, Indian Inhabitant |] | |
| | R/o. Room No.201, Near Nagina |] | |
| | Masjid, Navi Vasti, Kalyan Road, |] | |
| | Bhivandi, Dist : Thane |] | Respondents. |

ALONG WITH
CRIMINAL WRIT PETITION NO.592 OF 2021

- | | | | |
|--|----------------------------------|---|-------------------|
| | Ayaz Ahmed Shaikh |] | |
| | Age 40 years, Occu – Labourer |] | |
| | R/o. Room No.201, Near Nagina |] | |
| | Masjid, Navi Wasti, Kalyan Road, |] | |
| | Bhiwandi, Dist – Thane |] | Petitioner. |

Versus

- | | | | |
|----|--------------------------|---|--|
| 1] | The State of Maharashtra |] | |
| | |] | |

2] Rajiuddin @ Danish Shabiuddin Shaikh]
 Age 35 yrs. Occu : Nil]
 R/o. Room of Guddu Sheth,]
 Shastri Nagar, Bhivandi,]
 Dist – Thane]..... Respondents.

Mr. Pradip Rajput i/by Mr. Sharad S Mulik for the Petitioners in Writ Petition No.580 of 2021 and for Respondent No.2 in Writ Petition No.592 of 2021.

Mr. Aniket Vagal for the Petitioner in Writ Petition No.592 of 2021 and for Respondent No.2 in Writ Petition No.580 of 2021.

Mrs. M H Mhatre, APP for the Respondent/State.

CORAM : S. S. SHINDE,
 MANISH PITALE, JJ
Reserved on : 23rd March 2021
Pronounced on : 25th March 2021.

JUDGMENT (PER S S SHINDE, J.)

1 Both the Criminal Writ Petitions arise out of the cross FIRs lodged by the complainants against each other in respect of the incident occurred on 20/02/2020, hence both the Criminal Writ Petitions are being disposed of by this common judgment.

2 Rule in both the Criminal Writ Petitions. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

3 The case of the complainant – Respondent No.2 Ayaz Ahmed

Shaikh in Criminal Writ Petition No.580 of 2021 is that, on 19/02/2020 the complainant did internal work of the office of one Abdul Shety and went there to collect his money, he was asked to come on next date. Thereafter the complainant by 11 pm went to have liquor with his friend Rehman. At about 2.30 am the complainant was about to go to home, one person by name Yusuf came there. The complainant demanded money from him. Yusuf abused the complainant and started assaulting him. The friends of said Yusuf by name Shabir and Danish i.e. the Petitioners herein came there and they also assaulted the complainant with wooden log. When the friend of complainant by name Rehman intervened and the fight stop. Thereafter Complainant – Respondent No.2 Ayaz Shaikh lodged FIR being C R No.145 of 2020 with Shantinagar Police Station for the offence u/section 324, 326, 504, 506 r/w 34 of the Indian Penal Code against the Petitioners in Criminal Writ Petition No.580 of 2021.

5 The case of the complainant – Respondent No.2 – Danish Shabiuddin Shaikh in Criminal Writ Petition No.592 of 2021 is that, the complainant was having habit of drinking and he used to drink with Petitioner – Ayaz Shaikh. On the date of alleged incident, the complainant was drinking alone. The Petitioner Ayaz Shaikh asked him that why he did not join him for drinking. As the complainant avoided to give reply, the Petitioner got annoyed and started giving fist blows to the complaint. When the complainant tried to

retaliate, the Petitioner removed cutter like weapon and gave blows on the body of complainant. At that time the friend of the Petitioner by name Nissar came there and gave blows to the complainant. The complainant after received injuries started shouting therefore both of them ran away from the spot. Thereafter Complainant – Respondent No.2 Danish Shaikh lodged FIR being C R No.143 of 2020 with Shantinagar Police Station for the offence u/section 324, 504 r/w 34 of the Indian Penal Code against the Petitioner in Criminal Writ Petition No.592 of 2021.

6 The Petitioners in both the Petitions have stated that the complaints were lodged by them against each other out of misunderstanding as they are friends. It is also stated in the Petitions that the matter between themselves is now settled by them amicably.

7 The learned counsel appearing for the parties jointly submit that the complaints lodged by both the parties against each other are cross complaints and, the parties have amicably settled the dispute between themselves. It is also submitted that both the parties do not want to prosecute the matter against each other and both the parties agreed to withdraw the cases pending against each other. The learned counsel appearing for both the parties jointly submit that it is the voluntary act of both the complainants to arrive at settlement and give consent for quashing the impugned FIRs filed by

them against each other.

8 When these Petitions were on board on 16/03/2021 for hearing, both the contesting Respondents i.e. Respondent No.2 – Ayaz Shaikh in Criminal Writ Petition No.580 of 2021, and Respondent No. 2- Danish Shaikh in Criminal Writ Petition No.592 of 2021 were present. They were identified by their respective advocates. When we interacted with them, they stated that it is their voluntary act to settle the dispute and they jointly prayed for quashing the impugned FIRs. Both of them have filed their respective affidavits in these Petitions.

9 Respondent No.2 – Ayaz Shaikh, who lodged the FIR being CR No.145 of 2020, has stated in his affidavit as under :-

“I say that I have lodge an FIR against Shabir Rehman Ahmed Shaikh and Rajiuddin @ Danish Shabuddin Shaikh vide C R No.145 of 202 at Shantinagar Police Station on 20/2/2020 for the offence punishable u/s 324, 326, 504, 506, 34 of IPC.

I say that I have lodge said FIR out of misunderstanding and now I have amicably settled the matter with the Petitioner.

I say that now I am having no complaints against the

Petitioner and I have no objection for quashing an FIR against the Petitioner lodge by me vide C R No.145 of 2020.

10 Respondent No.2 – Rajiuddin @ Danish Shabuddin Shaikh, who lodged the FIR being CR No.143 of 2020, has stated in his affidavit as under :-

“I say that I have lodge an FIR against Ayaz Ahmed Shaikh vide C R No.143 of 202 at Shantinagar Police Station on 20/2/2020 for the offence punishable u/s 324, 504, 34 of IPC.

I say that I have lodge said FIR out of misunderstanding and now I have amicably settled the matter with the Petitioner.

I say that now I am having no complaints against the Petitioner and I have no objection for quashing an FIR against the Petitioner lodge by me vide C R No.143 of 2020.

11 In view of settlement arrived between the parties, no fruitful purpose will be served by continuing the further investigation in the impugned FIRs i.e. FIR No.143 of 2020 and 145 of 2020 registered with Shantinagar Police Station, Bhiwandi. In the FIR lodged by Respondent No.2 Ayaz Shaikh being CR No.145 of 2020, offence under Section 326 of the Indian Penal Code is mentioned. However, there is no material placed on record to show that the

accused has used sharp weapon. In fact, there was a sudden fight without premeditation. Therefore, the ingredients of Section 326 of the Indian Penal Code are not attracted.

12 The Supreme Court in the case of **Giansingh v. State of Punjab and Another**¹ has held that, the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (I) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

¹ 2012 (10) SCC 303

13 In the light of discussion in foregoing paragraphs, it is abundantly clear that the both the impugned FIRs are the crossed complaints filed by the contesting Respondents against each other and they are not going to support the allegations made by them in their respective FIRs and further continuation of investigation in both the FIRs would tantamount to abuse of the process of the Court. Since both the contesting Respondents by way of filing their respective affidavits have clearly stated that they are not interested to pursue the allegations made in the impugned FIRs against each other, the chances of conviction of the Petitioners in both the Petitions would be bleak and remote.

14 It is pertinent to note at this stage that though the parties herein have resolved/settled their dispute between them and approached this Court for quashing of the FIRs lodged by them against each other, we deem it appropriate to impose costs of Rs.5,000/- (Rupees Five Thousand only) on both the Complaints i.e. the contesting Respondent No.2 in both the Petitions. Accordingly we direct both the Contesting Respondent No.2 in both the Petitions i.e. the First Informants to deposit costs of Rs.5,000/- (Rupees Five Thousand only) each with the Children's Aid Society, Mumbai within two weeks from today in the account number given herein below.

Name of Bank of Account : Children Aid Soc Donation

Bank Account No. :02370100005612

Bank Name : UCO Bank

Branch : Matunga Mumbai

IFS Code : UCBA0000237

In turn the Children's Aid Society, Mumbai shall transfer the said costs for betterment of the children to the New & Additional Children's Home, Mankhurd, Mumbai.

15 For the reasons stated herein above, in order to secure the ends of justice and to prevent further abuse of the process of the Court both the Criminal Writ Petitions deserve to be allowed, and the accordingly the same are allowed in terms of prayer clause (a) which read thus :-

"Prayer clause (a) in Writ Petition No.580 of 2021

C.R. No.145 of 2020 registered at Shantinagar Police Station for the offence u/s. 324, 326, 504, 506 r/w 34 of IPC may kindly be quashed and set aside on any terms and condition as this Court may deem fit and proper"

"Prayer clause (a) in Writ Petition No.592 of 2021

C.R. No.143 of 2020 registered at Shantinagar Police Station for the offence u/s. 324, 504, r/w 34 of IPC may kindly be quashed and set aside on any terms and condition as this Court may deem fit and proper"

16 The contesting Respondent No.2 in both the Writ Petitions shall deposit their respective costs within two weeks from today. Payment of aforesaid costs is a condition precedent for allowing these Writ Petitions and this order will take effect after depositing the amount of costs by the contesting Respondent No.2.

17 Rule in both the Criminal Writ Petitions is made absolute to the above extent and both the Criminal Writ Petitions stand disposed of accordingly.

18 List the Petition on 15/04/2021 under caption “For Compliance” of deposit of costs.

[MANISH PITALE, J]

[S. S. SHINDE , J]