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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.240 OF 2020

Rakesh Damodar Mulukh And Ors. .. Applicants

v/s.

The State of Maharashtra And Anr. .. Respondents

....

Mr. Himanshu Shinde, for the Applicants.

Mr. K.V. Saste, APP, for Respondent State.

Mr. Kunal Phoole, for Respondent No.2.

....

CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 6 DECEMBER 2021.

P.C:-

By this application, the Applicants are seeking to quash the FIR lodged by Respondents, bearing No.210 of 2018, under Sections 324, 147, 148, 149, 504 read with Section 34 of the Indian Penal Code.

2. The learned Counsel for the Applicants submitted that Respondent No.2 has given consent for quashing the FIR and he has filed his affidavit. The learned Counsel for Respondent No.2 also drawn our attention to the affidavit filed. Therefore, the application is

filed to quash the FIR not on merits, but on the ground that Respondent No.2 has consented. According to the learned Counsel for the Applicants, the case falls within the parameters laid down by the Apex Court in the case of *Gian Singh vs. State of Punjab And Another*¹ and, therefore, considering the consent of Respondent No.2, and the nature of injuries, which are placed on record, this is a case where the matter can be put to a quietus and the dispute can be then resolved. The learned Counsel submits that even in the cases where the offences under Section 307 have been mentioned in the FIR, the Apex Court has quashed the FIR.

3. There is no dispute regarding the proposition of law. In certain circumstances, the Court can quash the FIR of a cognizable offence on the consent of the Respondent-Complainant, but each case will have to be considered on its own facts, more particularly, the impact of the incident on the society at large and the implications of the complaint.

4. The FIR states that Respondent No.2 was working as a waiter in a restaurant. While he was working, at around 1 p.m. in the afternoon in the restaurant full of crowd of the customers, a dispute arose between two groups in the restaurant and a quarrel began. Couple of hours thereafter, five, six people entered the restaurant with sticks and sharp weapon and attacked the other group, Respondent

¹ (2012) 10 Supreme Court Cases 303

No.2 was standing near the other group of persons. When Respondent No.2 tried to intervene and stop the assailants from attacking persons, he was dragged out of the restaurant and hit with a stick on his back and also injured by a sharp weapon on his head. Thereafter, Respondent No.2 was given medical treatment.

5. The thrust of the argument of the learned Counsel for the Applicants is on nature of injuries, which is stated to be simple. However, what we take note of is the manner in which the incident has taken place. It took place in a restaurant which was full of customers. The assailants, i.e. the Applicants, have entered armed sticks and Respondent No.2 who was only working in the restaurant and was trying to intervene, was dragged out and assaulted. This would not only create impact on Respondent No.2, but also on the other customers, who would have come to the restaurant and such incident would create lasting impact on their minds. Therefore, it cannot be said that the FIR is in respect of any private dispute or a domestic or commercial one or between relatives inside the confines of a house. According to us, since the incident would make the customers and other persons feel generally unsafe and would have direct implications on the society.

6. Therefore, we do not find that this FIR can be quashed merely because Respondent No.2 has consented. In the affidavit, Respondent No.2 has not stated that incident did not take place, but

that it was settled with the help of other persons. Since the incident has taken place as narrated above, which has implications on society at large, subsequent consent of Respondent No.2 will not make any difference. No arguments on merits of FIR were advanced.

7. The application, therefore, stands rejected.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)