

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.403 OF 2020**

Sandeep Madhukar Rajguru ...Applicant  
vs.  
The State of Maharashtra and Anr. ...Respondents

Mr. Hardik Vyas i/b. Mr. Meghdeep Oak, for the Applicant.  
Mr. Dinesh Dey i/b. Mr. Amit Munde, for Respondent No. 2.

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**CORAM : S. S. SHINDE &  
N. J. JAMADAR, JJ.**

**DATE : 30<sup>th</sup> AUGUST , 2021.**  
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**JUDGMENT:**

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This application under section 482 of the Code of Criminal Procedure, 1973 (the Code) is preferred to quash and set aside the prosecution, bearing C.C.No.918/PW/2013 pending on the file of learned Additional Chief Magistrate, Vikhroli, Mumbai arising out of F.I.R. bearing C.R. No. 289 of 2012 registered with Pant Nagar police station, Ghatkopar for the offences punishable under sections 324, 326, 143, 146, 147, 148, 149 of Indian Penal Code, 1860 (the Penal Code) dated 8<sup>th</sup> November, 2012 at the instance of respondent No. 2-first informant, qua the applicant/accused No. 5.

3. The indictment against the applicant/co-accused is that on 7<sup>th</sup> November, 2012 at about 9.30 p.m. the first informant Shrikant Phalke and other members of the group of Bhimshakti Mitra Mandal had assembled at Phule Shahu Shatabdi ground to plan the organization of gathering on the eve of Dipawali. On the night intervening 7<sup>th</sup> and 8<sup>th</sup> November, 2012 at about 1.00 am while the equipment and articles were being unloaded from a truck, the members of another group Bal Mitra Mandal came thereat. An altercation incised. The members of the rival group including the applicant and co-accused assaulted the first informant and the injured witnesses namely Avinash Mane, Nitin, Pravin Rokde and Sujit Ushire by means of stumps and sharp weapons. The first informant sustained a bleeding injury. He and the rest of the injured were shifted to hospital. The first informant thereafter lodged report leading to C.R. No. 289 of 2012 for the aforesaid offences. Post completion of investigation, chargesheet came to be lodged against the applicant and the co-accused.

4. The applicant preferred an application for discharge contending that the applicant was not at all named in the first information report. However, the learned Magistrate was persuaded to reject the application for discharge.

5. In the meanwhile, the dispute between the applicant and the first informant and injured witnesses has been amicably resolved. Hence, the applicant has invoked the inherent jurisdiction of this Court.

6. The first informant Shrikant Phalke and injured witnesses Pravin Rokde, Sujit Ushire and Avinash Mane have filed affidavits incorporating their express consent to quash the prosecution against the applicant. On 25<sup>th</sup> February, 2021 the first informant and injured witnesses appeared before this Court. Their affidavits were taken on record. The Court interacted with the first informant and the injured, and recorded that they do not wish to further prosecute the applicant.

7. As the learned APP sought time to verify the antecedents of the applicant, the application came to be deferred. Today, the learned APP has tendered a report, it records that there is no other offence to the credit of the applicant.

8. Mr. Vyas, learned counsel for the applicant and Mr. Dey, learned counsel for respondent No. 2- first informant made a joint statement that in view of the amicable resolution of the dispute

between applicant and first informant and injured, no fruitful purpose would be served in continuing the prosecution against the applicant. Our attention was also invited to the injury certificate which indicates that all the injured have suffered simple injuries.

9. Paragraph 2 to 6 of the affidavit of Shrikant Phalke, the first informant read as under:

*2. I say that the applicant herein and the respondent No. 2 have amicably resolved their entire dispute and therefore, there is no grievance or enmity of the parties against each other. I say that I agree to withdraw the allegations in the above mentioned case against the present applicant.*

*3. I say that the applicant has approached the respondent No. 2 and informed that the applicant's mom has retired from BMC in the year 2017 that he can join the same department of BMC but due to the present case pending, he cannot enroll for the said job. I say that there is no monetary consideration and the respondent No. 2 out of good faith and on humanitarian reason does not want the present applicant's livelihood/ career to be ruined and does not want to pursue the said case against the applicant and wants him discharged from the said case.*

*4. I say that I am aware that the applicant has preferred the above criminal application for quashing and setting aside of the F.I.R. and criminal proceedings.*

*5. I say that I do not have any objection if the present applicant is discharged from the case. I further say that I want to discharge only the present applicant i.e. Mr. Sandeep Madhukar Rajguru from the present criminal case and I wish to continue with my criminal case against the other accused persons.*

*6. In the above mentioned facts and circumstances, it is most humbly prayed that I withdraw all allegations made against the present applicant in the said FIR*

*No. 289 of 2012 registered with Pant Nagar police station, Ghatkopar, Mumbai and pending before the 6<sup>th</sup> Court, Metropolitan Magistrate, Vikhroli, Mumbai bearing Case No. PW/918/2013 for offences punishable under section 324, 326, 143, 143, 147, 148, 149 of IPC. The Criminal Application be allowed and this Court be pleased to quash and set aside the FIR and Criminal proceedings being Case No. PW/0000918/2013 (FIR No. 289 of 2012) only against the present applicant i.e. Mr. Sandeep Madhukar Rajguru.*

10. The injured witnesses Pravin Rokde, Sujit Ushire and Avinash Mane have also made identical affirmation in their respective affidavits.

11. In the backdrop of the aforesaid submission, statements and averments in the affidavit, we have perused the material on record.

12. It becomes evident that the incident occurred as members of the two groups had a fracas over organizing events to celebrate the Dipawali. Undoubtedly, in the first information report and the statements of witnesses, there are allegations of assault by dangerous weapons by the accused party. However, it is pertinent to note that no specific role of assault by a particular weapon has been attributed to the applicant. In fact, the applicant had sought discharge on the ground that he was named in the first information report as one Mohan Rajguru was named as the member of the unlawful assembly. The learned Magistrate was not persuaded to

accede to the submission as in the arrest panchanama, the applicant was named as Sandip @ Mohan Rajguru. Nonetheless the fact remains there are no allegations of participation in the actual assault against the applicant. It is true that when the applicant is alleged to be a member of an unlawful assembly, in prosecution of the common object of which the offences were allegedly committed, the fact that no overt act is attributed to the applicant is of little consequence. However, when the parties have amicably resolved the dispute and the first informant and the injured support the prayer of the applicant, this factor cannot be said to be of no significance.

13. In view of consent given by the first informant and the injured witnesses to quash the proceeding against the applicant, on account of settlement of the dispute, it is very unlikely that the first informant and the injured would support the prosecution qua the applicant. Continuation of prosecution, in such circumstances, against the applicant would turn out to be a futile exercise, it would cause grave prejudice to the applicant, especially in the backdrop of the acts ascribed by the first informant and the injured for giving consent to quash the proceeding namely the adverse consequences which the applicant is facing securing in employment due to

pendency of the said prosecution. Thus, in order to secure the ends of justice, in the peculiar facts of the case, the exercise of extraordinary power seems justifiable.

14. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***Gian Singh vs. State of Punjab***<sup>1</sup>, wherein a Three Judge Bench of the Supreme Court, considered the relative scope of the provisions contained in Section 482 and Section 320 of the Code and expounded the power of the High Court to quash the FIR or prosecution in exercise of its inherent jurisdiction, as under:

*“61. .... But the criminal cases having overwhelmingly and predominately 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 offences 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, High Court may quash 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 criminal case would put 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. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise*

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1 (2012) 10 Supreme Court Cases 303.

between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

(emphasis supplied)

15. In addition to the express consent of the victims, have considered the nature of the injuries sustained by the first informant and the injured as well as the antecedents of the applicant. In our view, in the facts of the case, the ends of justice would be secured and abuse of the process of Court would be avoided by quashing the prosecution qua the applicant. Hence, the application deserves to be allowed. Thus, the following order:

### **ORDER**

- i) The application stands allowed.
- ii) The proceeding in C.C.No.918/PW/2013 pending on the file of learned Additional Chief Metropolitan Magistrate, 73<sup>rd</sup> Court, Vikhroli, Mumbai, arising out of F.I.R. No. 289 of 2012 registered with Pant Nagar police station, Ghatkopar dated dated 8<sup>th</sup> November, 2012 stands quashed and set aside, qua the applicant Sandeep Madhukar Rajguru (accused No. 5) only.
- iii) The trial in C.C.No.918/PW/2013 shall proceed against the rest of the accused in accordance with law.

iv) It is clarified that consideration in the instant application is confined to justifiability of the prayer to quash the proceeding qua the applicant and the learned Magistrate shall proceed with the trial in C.C.No.918/PW/2013 against rest of the accused uninfluenced by any of the observations hereinabove.

v) Rule made absolute in the aforesaid terms.

**(N. J. JAMADAR, J.)**

**(S.S.SHINDE)**