

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1214 OF 2019

1. Pranav Jagdishbhai Shingada, residing]
at Panchnath Plot, Shiv Krupa, Rajkot.]
2. Chirag Vinodbhai Gadhiya, residing]
at Hasanwadi, Main Road, Rajkot.] ... Applicants

Versus

1. Union of India,]
at the instance of Diu Police Station,]
through the Public Prosecutor, High]
Court, Mumbai.]
2. Chandubhai Pratap Solanki, having]
address at Firangiwada, Diu.] ... Respondents

...

Mr. M. V. Rajpopat for the Applicants.

Mr. Hiten S. Venegaonkar for Respondent No.1.

Ms. Priti Singh for Respondent No.2.

...

**CORAM : S.S. SHINDE &
MANISH PITALE, JJ.**

RESERVED ON : 11TH JANUARY, 2021.

PRONOUNCED ON : 14TH JANUARY, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. By this application, the applicants (original accused) have approached this court with a prayer to quash the First Information Report (“FIR”) wherein C.R. No.21 of 2019 dated 26/04/2019 is registered against them at Police Station Diu and Daman for the alleged offences under Section 308 read with Section 34 of the Indian Penal Code (“IPC”).

2. The complainant in the present case is respondent No.2. In the application itself, it is stated that the applicants and respondent No.2 (original complainant) have reached an amicable settlement and that, therefore, the FIR deserves to be quashed.

3. On 05/12/2019, when this application was listed for consideration, this court passed the following order:

“Parties are present with their advocates. They have amicably settled the matter. To show their bona fide, applicants state that they will not enter the Union territory of Diu and Daman and shall also pay reasonable amount as cost to Diu and Daman Police Station.”

4. Thereafter, respondent No.2 filed an affidavit before this court stating that the incident leading to the registration of FIR did take place but after giving a thought to the implications that the case is having on

the applicants and the manner in which the family members of the applicants are seeking to ensure that the applicants do not languish in jail, he i.e. respondent No.2 (original complainant) is inclined to amicably settle the dispute on his own free will without fear or any coercion whatsoever.

5. In the light of the above-quoted order passed by this court dated 05/12/2019, the applicants also filed an affidavit to the effect that they had amicably settled the matter with respondent No.2 (original complainant) and further that they undertake to pay reasonable costs to Diu and Daman Police Station also.

6. When the present application was finally heard, learned counsel for the applicants informs this court that during the pendency of the present application, unfortunately, applicant No.1 committed suicide. As a consequence, the entire proceedings initiated in pursuance of the said FIR and even the present application stand abated to that extent. It was further submitted that the main role in the present case was attributed to applicant No.1 and it was alleged that he was responsible for the injury suffered by respondent No.2 on his head leading to bleeding and application of stitches. It was pointed out that even as per the complaint lodged by respondent No.2, the role attributed to applicant No.2 is only that of restraining respondent No.2 from escaping while applicant No.1 allegedly assaulted respondent No.2.

7. A perusal of the papers placed on record does indicate that the manner in which the incident in question was described by respondent No.2 did show that it was applicant No.1, who had allegedly assaulted respondent No.2 on a dispute pertaining to parking of the two wheeler by respondent No.2 in the premises of a bank, where the said respondent No.2 was working as a watchman.

8. In the backdrop of the above facts and circumstances in which the complaint was lodged, as also the fact that the parties have now come around to amicably settle the dispute and the fact that now applicant No.1 is no more, learned counsel appearing for the applicants submitted that this court may be pleased to quash the FIR, in the peculiar facts and circumstances of the present case.

9. Learned counsel for respondent No.2 reiterated the stand taken by the applicants regarding amicable settlement between the parties as was stated in the presence of the parties on 05/12/2019, before this court and which was further supported by such statements made by respondent No.2 in his affidavit filed before this court.

10. A perusal of the record shows that now, only applicant No.2 is before this court to support the prayer for quashing of the FIR for the reason that applicant No.1 has unfortunately expired. The role attributed to applicant No.2 is minor as compared to the major role that was attributed to applicant No.1. On the basis of the complaint, offence

under Section 308 of the IPC was registered against the accused pertaining to attempt to commit culpable homicide, being an offence punishable with imprisonment upto seven years. There is no doubt about the fact that the statements made on behalf of the applicants and respondent No.2 as also the affidavit placed on record, clearly indicate that respondent No.2 no longer has any grievance with regard to the incident in question and that the parties have amicably settled the dispute between them.

11. But, this in itself cannot be the sole ground for quashing of the FIR as per the position of law laid down by the Hon'ble Supreme Court in various judgments, including in the judgment in the case of **Gian Singh v. State of Punjab & Anr. (2012) 10 SCC 303.** While considering the question as to whether the High Court can exercise inherent power under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") for quashing FIRs even in cognizable and non-compoundable offences, the Hon'ble Supreme Court laid down certain principles. In paragraph 58 of the said judgment, the Hon'ble Supreme Court held as follows:

"58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which

have harmful effect on the public and consist in wrong doing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under Indian Penal Code or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

12. It was then emphasized in the said judgment of the Hon’ble Supreme Court that the inherent power under Section 482 of the Cr.P.C. is certainly of wide amplitude but it has to be exercised either to secure

the ends of justice or to prevent the abuse of process of court and, that, in what cases power to quash the criminal proceedings or complaint or FIR may be exercised where the offender and the victim have settled the dispute, would depend on the facts and circumstances of each case and no straight jacket formula can be prescribed. It is further emphasized that heinous and serious offences would certainly be not covered in the scope of power under Section 482 of the Cr.P.C. to quash such proceedings.

13. Applying the aforesaid principles to the facts of the present case, we are of the opinion, that the inherent power as contemplated under Section 482 of the Cr.P.C. can be exercised in the facts of the present case, although by imposing appropriate conditions. We are of the opinion that the manner in which the incident occurred in the present case indicates that the genesis of the same was an ordinary quarrel between the applicants and respondent No.2 concerning a dispute about parking of two wheeler of respondent No.2. It appears that in the heat of moment, applicant No.1 committed the act of assaulting respondent No.2 while applicant No.2 appears to have been present at the spot of the incident.

14. There can be no doubt about the fact that the role attributed to applicant No.2 was relatively minor. It is undisputed that applicant No.1 has expired, having committed suicide during the pendency of the present application. The affidavit placed on record also shows that respondent No.2 no longer has any grievance with regard to the incident

in question.

15. Nonetheless, for the injuries suffered by respondent No.2 and the fact that he had to undergo medical treatment, including application of stitches on the scalp, will indicate that he deserves to be compensated with regard to the said incident. Additionally, as noted by this court in the above-quoted order dated 05/12/2019, the applicants had stated that they shall also pay a reasonable amount as costs to Diu and Daman Police Station. This is significant for the reason that the police machinery was put into motion with regard to the said incident leading to the entire exercise of investigation being undertaken. Therefore, the surviving applicant certainly needs to pay cost in that regard also.

16. Taking an overall view of the matter, we are of the opinion that the present application deserves to be allowed as follows:

:ORDER:

- (a) The FIR being C.R. No.21 of 2019 dated 26/04/2019 registered with the Police Station at Diu and Daman is quashed, in view of the affidavit and material placed on record on behalf of the rival parties.
- (b) The aforesaid FIR is quashed on the condition that applicant No.2 (the only surviving applicant) pays an amount of Rs.1,00,000/- towards compensation to

respondent No.2. The payment shall be made directly into the bank account of respondent No.2, the details of which are as follows:

Name : Chandu Pratap Solanki
SB. A/c. No.: 95810100029732
Bank : Bank of Baroda
IFSC Code : BARBODBJGDH

- (c) Additionally, applicant No.2 shall deposit an amount of Rs.50,000/- as cost in the account of the Police Welfare Society of the Diu and Daman, the account details are as follows:

Name : DNH & DD Police Welfare Society
CIF No. : 89196619435
SB. A/c. No.: 36004058950
Bank : State Bank of India
IFSC Code : SBIN0002671

- (d) The aforesaid payment and deposit of amounts will have to be made within a period of four weeks from today and it is only upon satisfaction of the aforesaid conditions that the FIR shall stand quashed.

17. The application is allowed in the above terms.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)