

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 798 OF 2020

SUBHASH S/O. BHUJANGRAO KHANDAGLE AND ANR

VERSUS

THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. Gore Ravindra Vitthal

APP for Respondent No.1/State : Mr. R. V. Dasalkar

Advocate for Respondent No.2 : Mr. C. V. Bodkhe h/f Mr. G. J. Pahilwan

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**CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE : 14th JULY 2022.

Per Court :

1. Leave to amend the prayer clause forthwith.
2. This is an application for quashing of the Criminal Proceedings pending before learned Judicial Magistrate First Class, Aurangabad vide R.C.C. No. 1226/2012 for offence punishable under Sections 452, 323, 504, 506 read with 34 of IPC.
3. The prosecution case was lodged on the basis of the FIR given by

one Santosh Lokhande. He has stated that on 12.05.2012, both the Applicants entered his house, started beating the Informant with kicks and fist blows and started abusing. He fell down. Applicants caused a small injury on his chest. Then, the Applicants left the place. After that, the FIR was lodged. The investigation was carried out and the charge-sheet was filed. The trial proceeded before the Judicial Magistrate First Class, Aurangabad as mentioned earlier. Now the trial is posted for hearing the arguments of the parties. In the mean time, after the statement under Section 313 of Cr.P.C. was recorded, an application was preferred before the trial Court for seeking permission to compound the offences, as the matter was settled between both the parties. Learned Magistrate vide order dated 22.10.2019 partly allowed that application and quashed the proceeding as far as offences punishable under Section 323, 504 and 506 are concerned. Learned Magistrate observed that offence under Section 452 of IPC was not compoundable and therefore that offence was not allowed to be compounded. Now the proceedings are pending only under that particular section.

4. Learned Counsel for the Applicants submitted that in view of the settlement, this Court has sufficient powers to permit quashing by consent

5. Learned Counsel for the Respondent No.2 has filed an affidavit of the Respondent No.2-the First Informant. In paragraph 5 onwards, it is mentioned that the parties have settled the matter, they are close relatives and they have decided to live with peace and love. They have decided to withdraw all the complaints pending between the parties before the Court. The Respondent No.2 has no grievance against the Applicants in relation to the complaint lodged vide CR No. I-85/2012. Even the trial Court has partially allowed the compounding of the offences which were compoundable in nature under Section 320 of Cr.P.C.

6. Learned APP fairly submitted that even at this stage quashing of the proceeding by consent is permissible as far as powers of this Court are concerned. Learned APP submitted that the Hon'ble Supreme Court has taken a similar view in the case of State of **Madhya Pradesh Vs.**

Laxmi Narayan and others as reported in (2019) 5 Supreme Court Cases 688.

7. We have considered these facts and the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment. In that case, the Hon'ble Supreme Court was considering whether settlement was permissible, when the allegations were of commission of offences punishable under Section 307 of IPC and the Arms Act. In that context, it was observed that such offences would fall in the category of heinous and serious offences and therefore they are to be treated as crime against the society and not against the individual alone. It was further observed that the High Court would not rest its decision merely because there is a mention of Section 307 of IPC in the FIR or the charge is framed under that provision. It would be open to the High Court to examine as to whether there was sufficient evidence to attract that particular section. For that purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital parts of the body, nature of weapons used, etc.

. More importantly, the further observations are relevant regarding the stage of settlement. The Hon'ble Supreme Court has observed that such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation.

8. In the present case, the investigation is over long time ago, the trial has proceeded and has reached the stage of arguments. Therefore, based on this ratio, this Court can exercise the power of quashing on the basis of settlement. This is an application for quashing by consent. The Magistrate has already permitted compounding of other offences. The only offence left is under Section 452 of IPC. As we described earlier, the allegations in the FIR indicate that it was a petty offence and a minor incident. It had taken place in the year 2012. After such a long gap and since it is a minor incident, it would meet ends of justice if the case is allowed to be settled and quashed in view of the settlement arrived at between the parties. Hence the following order.

ORDER

- (i) The Criminal Application is allowed in terms of prayer clause 'B'.
- (ii) The proceedings vide R.C.C. No. 1226/2012 pending before the Judicial Magistrate First Class, Aurangabad, are quashed and set aside.
- (iii) The Criminal Application is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

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