

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2128 OF 2019

**OMKAR ANILRAO KULKARNI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

**WITH
CRIMINAL APPLICATION NO. 4231 OF 2017**

**ARJUN DNYANESHWAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Mr. Abhishek Kulkarni
APP for Respondent no.1-State: Mr. S. S. Dande
Advocate for Respondent nos.2 & 3: Mr. A.M. Gaikwad (Appointed)

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**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 17th FEBRUARY, 2022.

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ORDER : (Per : Sandipkumar C. More, J.) :-

1. By consent of the parties, heard finally at admission stage.
2. Both these applications are preferred by the applicants, who are the accused in Sessions Case No. 130 of 2017, pending before the learned Additional Sessions Court, Aurangabad for the offence punishable under Sections 307, 143, 147, 148, 149, 341, 323 of IPC, Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of Mumbai

Police Act. For convenience, we have referred Criminal Application No. 2128 of 2019 as first application and Criminal Application No. 4231 of 2017 as second application.

3. According to the applicants, they and the original informant respondent no.2- Vishal Kishor Phate were good friends and knowing to each other since long and also participated actively in various social programmes in the city. On 06/02/2017 original respondent no.2 Vishal Phate lodged report at MIDC, Waluj Police Station alleging that on 12/01/2017 applicant Arjun Jadhav in second application i.e. accused no.1 in the aforesaid sessions case had organized rally on the occasion of birth anniversary of Rajmata Jijau at Bajaj Nagar. However, the original informant Vishal Phate had also organized one separate rally in which some of the friends of Arjun Jadhav had participated. As such, there was grudge in the mind of present applicants against the informant Vishal Phate. Consequently, on 06/02/2017 Arjun Jadhav made phone call to one Balu Misal i.e. other injured in the case and asked that he wanted to meet them. Accordingly, the present applicants and the informant Vishal Phate met behind Hanuman Temple. The applicants were armed with knife, sword and sticks. Thereafter, they assaulted informant Vishal Phate and Balu Misal on account of previous grudge, wherein Vishal Phate

and Balu Misal both sustained injuries on various parts of their body. Resultantly, Crime No. 67 of 2017 was registered at MIDC, Waluj Police Station the present applicants.

4. The learned counsel for the applicants in both the applications, submits that the applicants and original informant Vishal Phate had already settled the dispute and in consequence of the same, Vishal Phate filed an affidavit in reply, wherein it was stated about said settlement and consented for quashing the aforesaid proceeding bearing Sessions Case No. 130 of 2017. Learned counsel for the applicants submits that though the original informant i.e. respondent no.2 Vishal Phate died during pendency of these applications, but his affidavit on record clearly indicates the settlement between the applicants and himself. Learned counsel for the applicants also submits that in the second application the another injured Balu Misal has also filed an affidavit stating therein that the applicant Arjun Jadhav was not present on the day of incident and neither he assaulted him nor he had actively participated in the incident dated 06/02/2017. As such, it appears that the applicants want to quash the aforesaid criminal proceeding on the ground of settlement.

5. On the contrary, the learned APP strongly opposed the applications and submits that on the death of original informant Vishal Phate, though his legal heirs have been brought on record, but those legal heirs have not filed any affidavit in support of alleged settlement between the applicants and the informant along with other injured. He further submits that the original informant Vishal Phate and injured Balu Misal had sustained severe injuries and therefore, considering the nature of offence punishable under Section 307 of IPC which appears against the society, the alleged settlement is not permissible by invoking powers under Section 482 of Cr.P.C. As such, he prayed for dismissal of both these applications.

6. Learned counsel for respondent nos.2 and 3 have also supported the submissions made on behalf of the applicants by their learned counsel.

7. It is significant to note that though the original informant, earlier respondent no.2 - Vishal Phate had filed affidavits in both the applications about mentioning the settlement between himself and the applicants, but he is now no more. Further his legal heirs have not filed any affidavit to that effect on record. As such, the story of settlement on the basis of original informant Vishal

Phate's affidavit, cannot be considered. Further more, in the second application though the other injured Balu Misal has filed affidavit by denying the presence of Arjun Jadhav at the time of incident dated 06/02/2017, but after going through the contents of his affidavit it is evident that he has denied only the presence of Arjun Jadhav out of the applicants on the day of incident and further stated that he was not knowing the name of other assailants. The original informant Vishal Phate in the second application, had stated similarly as that of Balu Misal. However, in the affidavits of Vishal Phate and Balu Misal there is no whisper of proper settlement contents. The recitals of those affidavits only indicate that they have stated as if they are trying to save only Arjun Jadhav as it normally occurs while deposing before the trial court after the witness resiles from his earlier statement. There are no specific details as to how they resolved the dispute with the applicants later on.

8. Apart from that, it appears that the applicants are facing charge under Section 307 of IPC on the allegation that they jointly assaulted the original informant Vishal Phate and one Anirudha @ Balu Misal with the help of dangerous weapons.

9. Learned counsel for the applicants heavily relied upon following cases :

- I) *Narinder Singh and others vs. State of Punjab and another, (2014) 6 SCC 466;*
- II) *Yogendra Jadhav and others vs. State of Jharkhand and another, 2014(3) Bom.C.R. (Cri.) 690;*
- III) *Venkatesh Somraj Verilgadda vs. State of Maharashtra, 2014(3) Bom.C.R.(Cri.) 692;*
- IV) *Gain Singh vs. State of Punjab and another, (102) 10 SCC 303;*
- V) *Mrs. Farida Aslam Khan and others vs. The State of Maharashtra and another, 2016 ALL MR (Cri) 4121;*
- VI) *Sundar Bhanudas Khose and another vs. The State of Maharashtra and another, 2016 ALL MR (Cri) 4055;*
- VII) *Vilas s/o Nimbaji Shinde vs. The State of Maharashtra and others, 2015 ALL MR(Cri) 273;*
- VIII) *Rahul s/o Pandurang Magar vs. The State of Maharashtra and another, 2015 ALL MR (Cri) 277;*
- IX) *Laxman s/o Dharba Bobade and another vs. The State of Maharashtra and another 2015 ALL MR (Cri) 1550;*
- X) *Gajanan Modku Meshram vs. State of Maharashtra, 2015 ALL MR (Cri) 1555;*

- XI) Shalini Harpalsingh Dugal and others vs. State of Maharashtra and another 2016(5) Mh.L.J. (Cri.) 542;*
- XII) Bapurao @ Dattatraya s/o Shivaji Ligade vs. The State of Maharashtra and others, 2016 ALL MR (Cri) 4030;*
- XIII) Sau. Suwarna Prashant Mhaiskar vs. Prashant Chandramani Mhaiskar, 2016 ALL MR (Cri) 4031;*
- XIV) Mr. Juergen Langer and another vs. The State of Goa and others, 2016 ALL MR (Cri) 2558;*
- XV) Tukaram Tulsiram Pawar vs. The State of Maharashtra 2016 ALL MR (Cri) 2559;*
- XVI) Amit Kumar vs. State of Maharashtra and another, 2016 ALL MR (Cri) 1553;*
- XVII) Dr. Radhakrishna s/o Namdeo Zalwar and another vs. The State of Maharashtra and others, 2016 ALL MR (Cri) 1556;*
- XVIII) Sayyed Taraque Ali vs. State of Maharashtra and another, 2012(2) Mh.L.J. (Cri.) 476;*
- XIX) Anita Sandip Khese vs. The State of Maharashtra and others, 2015 ALL MR (Cri) 2295;*

- XX) Dimpey Gujral and others vs. Union Territory through Administrator, U. T. Chandigrah and others, AIR 2013 SC 518;*
- XXI) Vithal s/o Bhanudas Bhandwalkar and others vs. The State of Maharashtra and another, 2016 ALI MR (Cri) 4713 and*
- XXII) Machindra s/o Bhanudas Jadhav vs. The State of Maharashtra, 2016 ALL MR (Cri) 4714.*

However, on going through the contents of the injury certificate of injured Balu Misal it is evident that though the nature of injury is shown as simple, but there is presence of stab wound over his abdomen. Further if the discharge summary of said injured is perused, it is evident that he was admitted to Government Medical College, Aurangabad on 06/02/2017 and was admitted therein till 03/03/2017. Moreover, penetrating stab injury in the abdomen in the discharge summary along with fracture distal third femur on the right side with intercondylar fracture was also noticed. As such, though the nature of injuries is shown as simple in the injury certificate but from discharge summary it appears that injured Balu Misal had sustained grievous injuries causing threat to his life. Moreover, on perusal

of his affidavit in second application, there are no proper contents of settlement between the applicants and injured Balu Misal mentioned therein. It appears that the said injured has only tried to say that the applicant Arjun Jadhav was not present at the time of incident. As such, without there being any other affidavit on record by the legal heirs of the original informant Vishal Phate stating that some settlement has been taken place between the applicants and themselves, it cannot be said that the applicants are seeking quashing of crime against them on the settlement.

10. Even otherwise also the Hon'ble Supreme Court in the case of **Narinder Singh and others** (supra) in para no. 29.6 has observed as follows :

"29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this 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/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship."

From bare reading of the aforesaid observation it is duty cast upon this court to examine the nature of injury sustained by the injured in the offence punishable under Section 307 of IPC. Moreover, as per the aforesaid observation this court can also refuse to accept the settlement and quashing the criminal proceeding if there is strong possibility of conviction. In the instant matter as mentioned above the injured witness Balu Misal was admitted in hospital for about one month and he had

sustained fracture on his right thigh along with stab injury to his abdomen i.e. vital part of body. Further his affidavit also does not show the proper contents of settlement between the applicants and himself. In view of the same and in the light of observation of Hon'ble Apex Court in the judgment cited supra, we are not inclined to quash the proceeding as claimed by the applicants in both the applications. Hence, we pass the following order.

ORDER

- I) Criminal applications are hereby dismissed.
- II) Since Mr. A. M. Gaikwad, learned counsel is appointed to represent respondent nos. 2 and 3, we quantify the legal fees and expenses of appointed counsel @ Rs.3,000/- (Rs. Three thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- III) Criminal Applications are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-