

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

CRIMINAL APPLICATION NO. 3234 OF 2021

1] Ambadas Raghunath Chaudhari,
Age : 57 years, Occu. Contractor,
R/o. S. R. No. 137/2, Shri. Ganesh Nagar,
Near Saibaba Mandir, Ravalgaon Colony,
Malegaon Camp, Malegaon, Tal. Malegaon,
District Nashik.

2] Shashikant Rajendra Patil,
Age : 27 years, Occu. Contractor,
R/o. At Post Ganeshpur, Tal. Chalisgaon,
Dist. Jalgaon.

....Applicants

Versus

1] The State of Maharashtra

2] Hemant Bhanudas Mali,
Age : 39 years, Occu. Service,
R/o. PWD Sub -Division,
Dondaicha, Ta. Shindkheda,
District Dhule.

...Respondents

(Resp. No. 1 – Orig. Complainant)

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Mr. N. L. Choudhari, Advocate for the applicants

Mr. A. M. Phule, APP for respondent/State

Mr. A. G. Choudhari, Advocate for respondent no. 2

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**CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.**

DATE : OCTOBER 03rd, 2022

JUDGMENT [PER RAJESH S. PATIL, J.] : -

1. The applicants, by way of this application, seeks quashing of the FIR registered vide C.R. No. 129/2018 registered against them by respondent no. 2 at Dondaicha Police Station, Dhule for the offences punishable under Sections 353, 332, 341, 504, 506 r/w 34 of the Indian Penal Code, on the ground of settlement arrived at between them.

FACTUAL MATRIX :

2. The prosecution story, in nutshell, is as under :

Respondent no. 2 – complainant who was, at the relevant time, working in the capacity of Assistant Civil Engineer in the Public Works Department. He had responsibility of supervising the roads in the sub-division of Dondaicha. On 23.12.2018 at about 05:00 p.m., he had received information over phone from one Mr. Hemant Gosavi working in the same department as Junior Engineer about illegal laying of cable within the jurisdiction of Dondaicha Malpur road by some people of Reliance Infotech Ltd. Company. He thereafter reached at the spot at 06:45 p.m. and found that the applicants were digging road by means of two JCBs and one Pokelane and thereby caused damage to the road. When respondent no. 2 tried to stop the work, the contractor i.e. applicant no. 1, applicant no. 2 and two persons working on daily wages abused him. Respondent no. 2 then tried to tell the applicants that the said work is illegal and they should

immediately stop it but the applicants on the other hand taking disadvantage of the dark, deterred him from discharging public duty and threatened him to leave the spot as they have good rapport with the people working on higher posts and started beating him saying he would lose his job. However, respondent no. 2 could escape himself from the spot and informed his superior about the said incident. Later, respondent no. 2 and his superior visited the said spot but the applicants had already fled away from the spot. Respondent no. 2 then approached the police and lodged the report as referred to above.

SUBMISSIONS OF THE PARTIES : -

3. Learned counsel for the applicants submits that the impugned FIR is false, afterthought and outcome of misunderstanding between the applicants and respondent no. 2. The allegations made in the FIR amount to abuse of process of law. The applicants are innocent persons as they were not present on the spot on the day of the incident and some unknown persons have assaulted the informant. He further submitted that when the police had shown the accused persons to the respondent no. 2, at that time the respondent no. 2 realized that the applicants are not the persons who had assaulted him. Respondent no. 2 on realizing the said fact gave an affidavit to the police stating that the applicants are not the persons who had assaulted him. The informant even gave assurance to the applicants that he would not take action against them on the basis of such false complaint.

4. Learned counsel for the applicants further submitted that the applicants and respondent no. 2 – informant have, in order to put

an end to the dispute and to restore peace, arrived at an amicable settlement.

5. Learned APP opposed the application and requested to pass an appropriate order.

6. Learned counsel for respondent no. 2 – informant submits that the parties have arrived at an amicable settlement so as to maintain cordial and good relations between them. The incident had taken place in a heat of moment. They are ready to live happily. In view of the same, they have entered into a compromise, which is annexed with this application.

ANALYSIS : -

7. Perusal of record shows that the case is under trial. By passage of time, the parties have decided to bury their hatchet and compromise the dispute amicably among themselves.

8. A consent affidavit filed before this Court is signed by respondent no. 2 / complainant and the applicants and counsels appearing on their behalf. The relevant portion of the consent affidavit dated 03.10.2022 is extracted hereunder : -

“3. That, because of some misunderstanding, the said incident was happened and same is resolved by our mutual understanding as respondent no. 2 and applicants have no any intention to hurt themselves, now we have settled the disputes and the respondent no. 2 has also given affidavit before the police

authority that the complaint is lodged inadvertently and due to misunderstanding, therefore, with all understanding, therefore, through respectable persons in society we have compromised and settled the dispute and therefore, we are filing this short affidavit, thereby, giving consent for quashing of proceedings before the learned Judicial Magistrate 1st Class at Dondaicha bearing Regular Criminal Case No. 133 of 2020 and same is pending before District and Sessions Court at Dhule Sessions Case No. 54 of 2020 for trial for the offences punishable under Sections 353, 332, 341, 504, 506 r/w 34 of Indian Penal Code, 1860, hence, this Hon'ble Court may kindly be pass an appropriate order."

9. It is settled law that the High Court has inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceedings even for the offences which are not compoundable under Section 320 of the Code of Criminal Procedure, where the parties have settled their dispute between themselves. However, while quashing the criminal proceedings based on the settlement arrived at between the parties, the High Court should act with caution and the power should be exercised sparingly only in order to secure the ends of justice and also to prevent abuse of process of any Court.

10. In **Narinder Singh v. State of Punjab** [2014(6) SCC 466], after considering the Gian Singh's case, the Hon'ble Supreme Court has held as follows :-

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

- 29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure: (i) ends of justice, or (ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.
- 29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.
- 29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.
- 29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

11. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the settlement arrived at between the parties.

12. In the case at hand, the respondent no. 2 / informant has stated in the affidavit that the offence was registered inadvertently due to misunderstanding and he has no complaint against the applicants and ready to withdraw the proceedings filed against the applicants.

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13. In view of the affidavit of the complainant not pressing the complaint, the possibility of conviction is also remote and bleak. In the above circumstances, the continuity of the criminal proceedings would only cause oppression, frustration and prejudice to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the applicants.

14. The affidavit filed by the complainant/Respondent no. 2 and the applicants dated 03.10.2022, shall form part and parcel of Court records.

15. In view of above, the application is allowed subject to costs of Rs. 10,000/- to be paid by each of the applicants with the High Court Legal Service Sub-committee, Aurangabad, within a period of two weeks from today. We have imposed the said costs on the applicants since it is now stated that the FIR was lodged due to misunderstanding and for wasting the valuable time of entire machinery i.e. police department and the judicial system.

16. The FIR vide C. R. No. 129/2018 registered against the applicants by respondent no. 2 at Dondaicha Police Station, Dhule for the offences punishable under Sections 353, 332, 341, 504, 506 r/w 34 of the Indian Penal Code and the proceedings arising therefrom are quashed and set aside.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE