

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.999 OF 2020

Rahul Damodar Malji ...Petitioner

Versus

1. The State of Maharashtra
2. Sameer Kantraj Gowda ...Respondents

Ms. Seema Pandya, for the Petitioner.

Mr. K. V. Saste, A.P.P for the Respondent No.1– State.

Ms. Neelam Ghorpade, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.***

DATE : 20th DECEMBER 2022

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent No.1–State. Ms. Ghorpade, waives notice on behalf of the respondent No.2.

3. By this petition, preferred under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, the petitioner seeks quashing of the FIR bearing C.R. No.600 of 2019, registered with the Tulinj Police Station, Palghar, for the alleged offences punishable under Sections 323, 326, 504, 506 r/w 34 of the Indian Penal Code (IPC). Quashing is sought on the premise, that the parties have amicably settled their dispute.

4. Perused the papers. According to the respondent No.2/original complainant, the incident took place on 7th May 2019. He has stated that because of an earlier dispute, the petitioner called him, pursuant to which, there was an altercation between the two. He has stated that the petitioner pushed him and assaulted him with fists and kick blows and that thereafter two persons came at the spot and assaulted him with an iron rod on his head, pursuant to which, he lodged the aforesaid FIR, alleging the aforesaid offences. We are informed that till date, charge-sheet has not been filed in the said case.

5. In the interregnum, during the pendency of the investigation of the aforesaid case, the parties amicably settled their dispute. We have perused the injury certificate of the respondent No.2, since one of the offence alleged is under Section 326 of the IPC. A perusal of the injury certificate of the respondent No.2 shows that he had sustained an injury over his head, however, the injury is stated to be a simple injury. It is specifically noted in the medical certificate issued by the Vasai-Virar City Municipal Corporation that there was no evidence of any fracture, dislocation. Having regard to the medical certificate, the offence would not be one under Section 326 of the IPC, inasmuch as, the ingredients of Section 326 IPC are not disclosed.

6. Learned counsel for the respondent No. 2 has filed an affidavit of the respondent No.2 dated 20th January 2020, duly affirmed before the Assistant Registrar, High Court, Appellate Side, which is at Exhibit – ‘C’ on page 15 of the petition giving his no objection to the quashing of the aforesaid FIR. Today, the learned

counsel for the respondent No.2 has tendered an additional affidavit of the respondent No.2 dated 20th December 2022, duly affirmed before the Assistant Registrar, High Court, Appellate Side. In the said affidavit, the respondent No.2 has stated that he has amicably settled the dispute and that he does not intend to proceed, not only as against the petitioner but also as against the 2 unknown persons. He has therefore given his no objection to the quashing of the FIR, as against all the accused. The said additional affidavit is take on record. Respondent No. 2 is present in Court. On questioning, he re-iterates what is stated by him in his affidavit. He states that he has no objection for quashing of the entire C.R. as against all the accused. Learned Counsel for the respondent No. 2 has tendered a self attested xerox copy of the aadhar card of the respondent No. 2. The same is taken on record. Learned Counsel for the respondent No.2 has identified the respondent No.2 and the learned APP has verified the aadhar card of the respondent No.2. *Prima facie*, as far as the petitioner is concerned, the only role ascribed to him, is that of giving fists and kick blows. It appears that two other persons unknown to

the petitioner had come and given a blow on the respondent No.2's head.

7. Be that as it may, the injury is stated to be simple in nature and as such Section 326 of the IPC would not be attracted, in the facts.

8. Considering the nature of dispute, the amicable settlement between the parties, the affidavits of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in *Gian Singh vs. State of Punjab and Another*¹ and *Narinder Singh and Others vs. State of Punjab and Another*², there is no impediment in allowing the petition.

9. The petition is accordingly allowed and the FIR bearing C.R. No.600 of 2019, registered with the Tulinj Police Station,

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

Palghar, is quashed and set-aside.

10. The petitioner to deposit a sum of Rs.15,000/- with the **Central Police Welfare Fund bearing Account No. 914010029005759, IFSC No. UTIB0000060**, as costs. The said costs to be deposited within three weeks from today.

11. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

12. Stand over to **2nd February 2023**, for recording compliance of the said deposit of costs.

13. All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.