

JPP

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

CRIMINAL WRIT PETITION NO. 2761 OF 2018

Umesh s/o. Bhavaniprasad Gupta

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Anand Mishra a/w. Mr. Dubey i/b. Ashok M. Saraogi for the
Petitioner

Ms. Ankita Mohite i/b. Prajot H. Jaggi for the Respondents 2 to 5

Mr. J.P. Yagnik, APP for the Respondent - State

***CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.***

DATE : 01 JULY 2022

P.C. :-

Heard the learned Counsel for the parties. Taken up for
disposal by consent.

2. The reason given by the learned Counsel for the
Petitioner for quashing of the FIR is that the Respondent No. 2 -
wife and the Respondent No.3 - complainant daughter have given
their consent. The learned Counsel for the Petitioner and the
Respondent No.2 to 5 state that in the light of the consent given,

this Court has the power to quash the FIR as held by the Hon'ble Supreme Court in the case of *Gian Singh v/s. State of Punjab*¹ and *Narendra Singh & Ors. v/s. State of Punjab*², a joint request is made to quash the FIR.

3. This Petition depicts unfortunate state of affairs. The allegations are that the Petitioner – husband of Respondent No.2 and father of three children has assaulted them with a knife. As per the complaint of Respondent No.2, the incident occurred on 20 March 2018. After having dinner, the family went to sleep. The complainant heard shouts of quarrel between the Petitioner – her father and Respondent No.2 – her mother. Thereafter, the mother came out of the bed room and the Petitioner assaulted her with a knife. He also assaulted the children with a knife. The Petitioner himself went to the Police Station and gave a statement that he has assaulted his wife and children with a knife. On this basis, the FIR came to be lodged under Section 307, 326 r/w. 37(1)(a) of the Indian Penal Code and under Section 135 of the Maharashtra Police Act.

4. When the matter appeared before us in the Court, the Respondents were present through their Advocate and in person. Considering the nature of allegations, we interacted with the parties

1 2012(10) SCC 303

2 2014(6) SCC 466

in the Chamber to understand the position before proceeding further with the matter. In the affidavit of consent it is stated that the entire family was under depression due to losses suffered by the Petitioner and out of that depression, the incident took place. It is stated that the losses suffered by the Petitioner in the business of lottery and which led to the Petitioner this incident taking place. During the interaction with both the Petitioner and the Respondent – wife and children, we find that the family has put the past behind and they are now living together. The children empathetically stated that they do not suffer any trauma from the incident and they have forgiven their father – the Petitioner for his isolated act of assault which was out of some frustration due to loss suffered in the business. The children have grown up and made the statement freely. We had interacted with them separately and all parties together, extensively. We were informed that the Respondent No.3 – complainant got married and her wedding was also properly conducted by the Petitioner. Perusal of the FIR also would show that this incident occurred on a spur of moment and it was inside the house.

5. In the case of *Narinder Singh*, the Supreme Court has observed thus :-

“29. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under

investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.”

In the case of *Gian Singh* the Supreme Court has held that in the cases where the cognizable offence is made out and the parameters laid down in the decision are fulfilled, the Court has power to quash the FIR in the interest of justice.

6. Considering the totality of the circumstances, the contents of the reply and our interaction with the Respondents, we

find that the case for exercise of extraordinary jurisdiction of this Court to quash the FIR is made out. The Petitioner and the Respondents are staying together. We have not been informed that there are any antecedents. This was an isolated incident as stated in the affidavit, out of frustration due to loss in business. The Petitioner has filed an additional affidavit with a note attached written by him in hand that he will ensure that no such incident takes place and family is looked after well.

7. Thus, accepting the statement made by the Petitioner on oath, we allow the Writ Petition in terms of prayer clause (b). Order accordingly.

N.R. BORKAR, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date:
2022.07.06
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