

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION NO. 857 OF 2022

1. Durgadas Dhansing Rathod,
 Aged : 67 Yrs., Occu. : Senior Advocate

2. Sagar Durgadas Rathod,
 Aged : 35 Yrs., Occu. : Advocate,

3. Paras Durgadas Rathod,
 Aged : 22 Yrs., Occ. Student,

All R/o. Digras, Tq. Digras, Distt.
 Yavatmal.

4. Rahul Subhash Soyam,
 Aged : 27 Yrs., Occu. : Labour,
 R/o. Arni, Tah. Arni, Distt. Yavatmal

5. Suresh Kamal Rathod,
 Aged : 44 Yrs., Occu.: Advocate,
 R/o. Swanga, Tah. Digras,
 Dist. Yavatmal.

6. Vijay Baliram Rathod,
 Aged : 59 Yrs., Occu.: Advocate,
 R/o. Digras, Tah. Digras,
 Distt. Yavatmal.

.. APPLICANTS

Versus

1. State of Maharashtra,
 Through Police Station Officer Arni,
 Tq. Arni, Dist. Yavatmal,

2. Rahul Dinesh Dhore,
 Aged :30 Yrs., Occu.: Advocate,
 R/o. Nandanvan Colony, Arni,
 Tq. Arni, Dist. Yavatmal.

.. NON-APPLICANTS

Shri S. G. Varshani, Advocate for the applicants
 Shri Firdos Mirza, Advocate for non-applicant No.2
 Shri. M. J. Khan, APP for non-applicant No.1

WITH
CRIMINAL APPLICATION NO. 1122 OF 2022

1. **Shankar S/o. Sitaram Rathod,**
Aged : 45 Yrs., Occu. : Advocate
2. **Milind S/o. Dattaram Chavhan,**
Aged : 37 Yrs., Occu. : Advocate,
3. **Rahul S/o. Dinesh Dhore,**
Aged : 30 Yrs., Occ. Advocate,
4. **Ganesh alias Umesh S/o. Dinesh Dhore,** Aged : 32 Yrs., Occ. Private Work,
5. **Dinesh Mahadeo Dhore,**
Aged : 53 Yrs., Occ.: Agriculturist

.. APPLICANTS

All R/o. Arni, Tah. Arni, Dist.: Yavatmal.

Versus

1. **State of Maharashtra,**
Through Police Station Officer Arni,
Dist. Yavatmal,
2. **Kishor Bhanudas Khandar,**
Aged about : Major, Occu.: Service,
Police Sub-Inspector, Posted
At Police Station Arni, Tah. Arni,
Distt. Yavatmal
3. **Durgadas Dhansing Rathod,**
Aged about : 65 Yrs., Occu.: Advocate,
R/o. Arni, Tah. Arni, Distt. Yavatmal

.. NON-APPLICANTS

Shri Firdos Mirza, Advocate for applicants

Shri S. G. Varshani, Advocate for the non-applicant No.3

Shri. M. J. Khan, APP for non-applicant No.1

CORAM : MANISH PITALE AND
DATE : G. A. SANAP, JJ.
20/08/2022

ORAL JUDGMENT (PER : MANISH PITALE, J.)

1. These applications are filed for quashing of First Information Report Nos. 486 of 2022 and 487 of 2022, both dated 28.05.2022, registered at Police Station Arni, Distt. Yavatmal. Both the FIRs have been registered concerning the very same incident alleged to have taken place on 26.05.2022. The applicants before this Court are Advocates and members of the Bar at Arni, Distt. Yavatmal.

2. The genesis of the incident appears to be that some members of the Bar decided to organize a farewell function for a Magistrate, who was transferred. It appears that when junior members of the Bar took lead in organizing the farewell function, some senior members of the Bar, including applicant No.1 in Criminal Application (APL) No. 857 of 2022, who claims to be President of the Bar Association, took strong objection to the said function being organized. In the backdrop of the aforesaid differences of opinion amongst the members of the Bar, it is alleged that a scuffle took place, wherein certain persons were injured. It is also alleged that during the course of the incident a “tocha” was used to assault one of the victims and there is also reference to use of knife and sticks during the course of scuffle. It appears that although the incident is said to have taken place on 26.05.2022 in the evening, the FIRs came to be registered after about two days on 28.05.2022.

3. After registration of the FIRs, it appears that attempts were made to bring about conciliation and this resulted in the parties agreeing to withdraw allegations against each other, in the interest of harmony in the Bar.

4. These applications stood filed before this Court wherein notices were issued.

5. Mr. Firdos Mirza, learned counsel appearing for the non-applicant No.2 (original informant) in Criminal Application (APL) No. 857 of 2022 and the applicants in Criminal Application No. 1122 of 2022, strenuously urged that since better sense has now prevailed over the parties and they are before this Court seeking quashing of the cross FIRs, this Court may favourably consider the applications. It is submitted that although the unfortunate incident ought not to have taken place, now that the parties had agreed to mutually settle their differences, quashing of the FIRs would go a long way in bringing about much needed harmony in the Bar at Arni, District Yavatmal. It is submitted that the parties have realized their mistakes and hence, they are personally present before the Court to press the prayers made in the applications.

6. Mr. S. G. Varshani, learned counsel has appeared for the applicants in Criminal Application (APL) No. 857 of 2022 and he reiterates

the submissions made by Mr. Mirza. It is submitted that this Court may consider allowing the present applications, in the interest of justice.

7. Both the learned counsels have relied upon the judgment of Hon'ble Supreme Court in the Case of ***Narinder Singh and Ors .v/s. State of Punjab and Anr.***, reported in, ***(2014) 6 SCC 466***, particularly paragraph 29 thereof. It is urged that although serious offences, including offence under Section 307 of the Indian Penal Code have been registered in both the FIRs, in the present case, considering the background of the matter and the fact that the parties have agreed for an amicable settlement, this Court may follow the dictum laid down in the said judgment of the Supreme Court and the applications may be allowed in the interest of justice.

8. Mr. M. J. Khan, learned APP has appeared on behalf of the non-applicant No.1/State in both the applications and he submitted that although a perusal of the FIRs would show that there is indeed a *prima facie* case made out for investigation and further proceedings, in the light of submissions made on behalf of the applicants, this Court may pass appropriate order.

9. We have considered the submissions made on behalf of the applicants as well as submissions made by the learned APP. We are pained by the facts that have come to the fore in these two applications. It

is most unfortunate that members of legal profession, which is expected to be a noble profession, have indulged in such activities that are not only shameful but they show the legal profession in a very poor light. It is incidents like these that tend to give credence to a belief that persons who have otherwise failed in other walks of life, end up joining the legal profession. Such incidents are to be eschewed and an endeavour has to be made to regain the lost glory of the legal profession.

10. The details of the incident, as are evident from the oral reports, leading to registration of FIRs, would show that on a trivial matter the members of the Bar at Arni, District Yavatmal, indulged in such violent activities, leading to injuries to some of the victims. The statements made, leading to registration of the FIRs, would in the ordinary course clearly justify the submission made by the learned APP that a case is indeed made out for investigation and further proceedings in the matters. But, the real question is, as to whether the proceedings can be interdicted for the reason that the parties have now come down to an amicable settlement and they do not wish to pursue the matter any further. It appears that after tempers have cooled and better sense has prevailed, the parties have come round to an amicable settlement and they are supporting each other for the prayers made in the present applications for quashing of the FIRs.

11. The Supreme Court has been dealing with such situations where parties come round to amicable settlements after criminal proceedings have been triggered. There have been instances where non-compoundable offences are also quashed on the basis of amicable settlement and the question as to whether such prayers can be granted has been engaging attention of the Supreme Court and various Courts for a long period of time.

12. In the case of *Gian Singh .v/s. State of Punjab*, reported in *(2012) 10 SCC 303*, the Supreme Court considered such cases and held that certain categories of offences, although non-compoundable, could be quashed on the basis of settlement, if it was found that the dispute can be said to be of private nature and it would be futile to allow proceedings to continue further. In the light of the said judgment, came the judgment of *Narinder Singh & Ors. .v/s. State of Punjab & Anr. (supra)* wherein the Supreme Court considered the question as to whether an FIR wherein serious offences, including the offence under Section 307 of the IPC was registered, could be quashed on the basis of settlement between the parties. Having considered the earlier judgments in that regard, the Supreme Court in the case of *Narinder Singh & Ors. .v/s. State of Punjab & Anr. (supra)* concluded that where ends of justice would be met in terminating the criminal proceedings and continuation of such proceedings could be said to

be an abuse of the process, as the possibility of conviction was rendered remote and bleak, this Court would exercise powers under Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings. The relevant portion of the said judgment reads as follows :

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

29.4

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.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are 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/delicate 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.”

13. It is significant that in paragraph 29.6 of the above quoted portion of the said judgment of the Supreme Court, it has been observed that this Court while exercising powers under Section 482 of the Code of Criminal Procedure, while considering quashing of FIR, may also consider the nature of the injuries sustained, as to whether they were on

vital/delicate parts of the body and as to what was the nature of weapons that were used during the course of incident, particularly in the context of offence under Section 307 of the Indian Penal Code.

14. Therefore, apart from the fact that the parties in these two cases have approached this Court stating that they have now amicably settled their *inter se* dispute and they wish to cooperate for quashing of the FIRs, this Court has also taken note of the allegations in the reports leading to registration of FIRs. We find that there is specific reference to injuries suffered by two persons by means of a pointed “tocha”. This particular tool is commonly available in the offices of Advocates for poking holes in papers and paper books for binding. Therefore, it cannot be said that a “weapon” was procured and then an assault was launched in the present case. There is indeed reference to a knife being used, but on the face of it, no corresponding serious injury was discernible from the material placed on record. It appears that when tempers rose in the backdrop of the aforesaid incident amongst the members of the Bar at Arni, Distt. Yavatmal, a scuffle ensued, leading to some minor injuries to some of the victims and general skirmish between the parties. Although as noted above, the conduct of the parties, being Advocates, in such manner was shameful, but we have to consider whether any purpose would be served by allowing the criminal proceedings to continue.

15. In the light of the settlement arrived at between the parties and better sense having prevailed, we are of the opinion that applying the guiding factors specified in paragraph 29.2 of the aforesaid judgment in the case of ***Narinder Singh and Ors. .v/s. State of Punjab and Anr. (supra)***, by allowing the present applications and quashing the subject FIRs, ends of justice would be met and it would lead to preventing abuse of the process of the Court. It is found that possibility of conviction in these cases is remote and bleak. Continuation of the criminal proceedings would not only cause oppression and prejudice to the concerned parties, but it may leave an indelible mark of dis-affection and anger amongst the parties, sowing the seeds for future conflicts. Therefore, applying the said position of law, we are of the opinion that present applications can be allowed.

16. But, we cannot leave the matter at that, for the reason that the accused in the present case are members of the Bar and they have indulged in such a shameful and dis-appointing conduct. We are of the opinion that some of the applicants being senior members of the Bar and other being junior members, have all indulged in such conduct without realizing as to the role that members of this noble profession play in the society at large. This is a unique profession where the Advocate has three fold duties. The first duty of the Advocate is towards the Court, the second being towards his or her client and third being towards the society at large.

We wonder what example the applicants have set by indulging in such conduct, having failed in their duty from every possible angle. The falling standards in the profession is evident from such incidents and we shudder to imagine what our forefathers would think about such incidents, considering the fact that large number of members of the Constituent Assembly were members of this great profession.

17. We feel that in order to make amends and show remorse, the applicants before this Court and other members of the legal profession at Arni, District Yavatmal need to divert their energies towards studies and assistance to the Court and their clients. They need to indulge in introspection and make efforts towards improving their legal skills and knowledge, rather than worrying too much about organizing farewell parties for transferred Magistrates.

18. We feel that the applicants before this Court must contribute towards improving the standards of the library and sources of knowledge in the District of Yavatmal and accordingly, we propose to impose suitable costs on the applicants, as a pre-condition for granting their prayers for quashing the FIRs.

19. In view of the above, both the applications are allowed. Consequently, FIRs bearing Nos. 486 of 2022 and 487 of 2022, both dated

28.05.2022, registered at Police Station Arni, District Yavatmal are quashed, subject to the six applicants in Criminal Application (APL) No. 857 of 2022 and five applicants in Criminal Application (APL) No. 1122 of 2022, depositing costs of Rs.25,000/- each with the saving bank account of Yavatmal District Bar Association, Yavatmal in Indian Bank, Branch Yavatmal bearing account No. SB20945205799, IFSC Code – IDIB000Y503, within a period of four weeks from today. Additionally, the applicants in both these applications shall individually file undertakings on affidavits within four weeks from today before this Court stating that they shall never indulge in similar conduct in the future and that they would concentrate on the profession and in improving their skills and knowledge.

20. It is made clear that if the costs, as indicated, are not deposited and the undertakings on affidavits are not submitted within the stipulated period of time, this order shall stand recalled without further reference to the Court.

21. Accordingly, the criminal applications stand **disposed of**.

[G. A. SANAP, J.]

[MANISH PITALE J.]

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