

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 479 OF 2023

Farukhbhai Yusufbhai Memon

Applicant

Versus

The State of Maharashtra & another

Respondents

Mrs. S. T. Kazi, Advocate for the applicant.

Mr. S. D. Ghayal, APP for the State.

Mr. H. V. Tungar, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

DATE : 23rd FEBRUARY, 2023.

PER COURT :

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant has sought to quash judgment dated 7th May, 2018 in RCC No. 46/2013 whereby the applicant has been held guilty under Section 324 of the Indian Penal Code and sentenced to undergo simple imprisonment for six months and fine of Rs. 3,000/-, in default to undergo rigorous imprisonment for 15 days.

2. Respondent No. 2 has alleged that on 11th December, 2012, while he was in a meeting of Muslim community of Jama Masjid, the applicant herein questioned him as to why he attended religious programme at Nandurbar. There was an altercation between

them followed by scuffle. Respondent No. 2 has alleged that applicant had hit with an iron rod on his forehead as a result of which he sustained injuries. Respondent No. 2 has also alleged that the applicant had also assaulted one Riyaz Arebiyani by kicks and blows. Based on aforesaid allegations, Crime No. 85/2012 came to be registered with Visarwadi Police Station against the applicant and some others for the offences punishable under Sections 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code. The crime was investigated and charge-sheet was filed which was registered as RCC No. 46/2013. The learned Magistrate, after considering the material on record, acquitted the co-accused and held the applicant herein guilty of offence punishable under Section 324 of the Indian Penal Code and convicted and sentenced him as stated above. The applicant has preferred appeal being Criminal Appeal no. 10/2018 which is pending on the file of learned Sessions Judge, Nandurbar.

3. During pendency of the said appeal, the applicant and respondent No. 2 have entered into a settlement. Respondent No. 2 has filed affidavit stating that applicant No. 1 and he belongs to the same religion and in view of that they have agreed to resolve the

dispute amicably. Respondent No. 2 is present before the Court. He has confirmed the contents of the affidavit and has given no objection to quash the criminal proceedings in which applicant has been held guilty. The other co-accused has expired and the death certificate is already placed on record.

4. The parties have invoked jurisdiction of this Court under Section 482 of the Code of Criminal Procedure post conviction and during pendency of the appeal. In the case of Ramawatar vs. State of Madhya Pradesh, **2021 SCC Online SC 966**, the Hon'ble Supreme Court has held that powers under Article 142 of the Constitution of India and Section 482 of the Code of Criminal Procedure are exercisable in post-conviction matters only where appeal is pending before one or the other Judicial Forum. It was further held that the touchstone for exercising the extra-ordinary powers under Article 142 of the Constitution of India or Section 482 of the Code of Criminal Procedure would be to do complete justice between the parties. In the instant case, as noted above, appeal is pending. Both the parties have settled the matter amicably. In our considered view, the settlement is voluntary and genuine moreover the offence is of private nature. In such circumstances, in our considered view, this is a fit

case to exercise discretion under Section 482 of the Code of Criminal Procedure to secure the ends of justice.

5. In the result, application is allowed in terms of prayer clause 'B'. Consequently, criminal proceeding bearing RCC No. 46/2013 and First Information Report in Crime No. 85/2012 registered with Visarwadi police station are hereby quashed and set aside subject to cost of Rs. 10,000/- to be paid by the applicant within two weeks. The amount of cost be paid to Dattaji Bhale Blood Bank, Aurangabad.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

dyb