

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1058 OF 2023

1] Shaikh Sajjad Hussain Shaikh Abed Hussain
Age – 79 years, Occu – Retired
R/o Mouje Saygaon, Tq. Ambajogai
District – Beed

2] Shaikh Taufiyoddin Shaikh Amiroddin
Age – 37 years, Occu - Agriculturist
R/o Mouje Saygaon, Tq. Ambajogai
District – Beed

3] Sahaikh Shabbir Hussain Shaikh Sajjad Hussain
Age – 39 years, Occu – Agriculturist
R/o Mouje Saygaon, Tq. Ambajogai
District Beed

.. Applicants

Versus

1] The State of Maharashtra
Through the Police Inspector of Bardapur
Police Station, Tq. Ambajogai,
District Beed

2] Shaikh Mohammad Hussain
S/o Shaikh Ahmed Hussain
Age – 55 years, Occu – Agriculturist
R/o Mouje Saygaon, Tq. Ambajogai,
District Beed

.. Respondents

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Advocate for applicants : Mr. H.V. Tungar
APP for the respondent – State : Mr. S.D. Ghayal
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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 21 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

By resorting to the provisions of section 482 of the Code of Criminal Procedure, 1973, the applicants are seeking quashment of crime no. 34 of 2011 registered with Bardapur Police Station, Taluka Ambajogai, Dist. Beed and the Sessions Case no. 100 of 2011 pending on the file of learned Sessions Judge at Ambajogai for the offences punishable under section 307, 323, 504, 506 r/w. 34 of the Indian Penal Code and section 30 of the Arms Act.

2. We have heard the learned advocate Mr. Tungar for the applicants. He submits that the applicants are seeking quashment of the crime and the criminal case. The application for compounding the crime was moved before the Sessions Court (Exhibit 109) under section 320 of the Criminal Procedure Code but since the offence is not compoundable, the application is rejected and the applicants are seeking quashment solely on the ground of such settlement and compromise with the respondent no. 2.

3. Mr. Tungar would place reliance on the decision in the matters of ***Gian Singh Vs. State of Punjab and another; (2012) 10 SCC 303, Narinder Singh and others Vs. State of Punjab and another; 2014 ALL MR (Cri.) 1886 (S.C.) and Ramawatar Vs. State of Madhya Pradesh; .***

4. The learned APP strongly opposes the application. He submits that in-fact the trial is on the verge of completion. Recording of testimonies is over and even the applicants i.e. accused persons have been examined under section 313 of the Code of Criminal Procedure. He would further point out that the crime is serious. A rifle has been used to shoot at the informant but for the intervention of the witnesses it would have hit on the head of the informant, in all probability causing his death. Apart from the fact that the offence is not compoundable and even if it is trite that criminal cases can be quashed on the basis of compromise even in non-compoundable cases, that is not the rule. Depending on the facts and circumstances of each case such a decision will have to be taken. Considering the peculiar facts and circumstances and even the stage of the trial where only arguments will have to be heard and judgment would be pronounced, it would not be appropriate to quash the crime.

5. We have carefully considered the rival submissions and perused the papers.

6. There is no dispute about the fact that the trial is on the verge of conclusion. Only arguments have remained to be heard. Pertinently, the informant has been examined as a prosecution witness no. 1 (Exhibit 35) and he has supported the prosecution. He has

expressly stated about accused - Sajjad Hussain (applicant no.1) having fired at him with a gun and in all probability the bullet would have hit on his head but for the timely intervention of witnesses Azam Khan and Najimoddin. Witness Najimoddin (PW2) has also testified corroborating the version of the respondent no. 2 informant in stating that accused - Sajjad Hussain i.e. applicant no. 1 having fired at the respondent no.2 and but for his action along with one Azam Khan, the respondent no. 2 would have died and the bullet went in air. If such is the state-of-affairs, it is indeed a serious crime. A gun has been used to fire at the respondent no. 2 - informant on head and fortunately for him due to intervention of couple of individuals he was not killed.

7. Pertinently, even there is a charge for the offence punishable under section 30 of the Arms Act which provides for punishment for contravention of conditions of the licence. Only fortunately the respondent no. 2 is still alive. A firearm like the gun has been used in contravention of the licence. Permitting such settlement and quashing the crime would really be against the public policy. It would be like indirectly suggesting that in spite of breach of the terms and conditions of the arms licence, a person can get scot-free.

8. This precisely would weigh with the Courts whenever a request is made for quashing the crime on the basis of compromise in the matters which are not compoundable. Suffice for the purpose to

refer the parameters laid down in the matter of ***Gian Singh Vs. State of Punjab and another*** (supra) further elaborated in the matter of ***Narinder Singh and others*** (supra).

9. Pertinently, in the matter of ***Narendra Singh*** (supra) though there was an offence punishable under section 307 of the Indian Penal Code, it was observed that the offence was initially registered merely under section 323, 324 r/w. Section 34 of the Indian Penal Code and only after obtaining x-ray report regarding one of the injuries that section 307 of the Indian Penal Code was added. Again the evidence was yet to be led. In view of the compromise there were minimal chances of witnesses coming forward in support of the prosecution. Even if the injuries were proved, it would have been difficult to attribute its authorship and the chances of conviction were remote. Ex facie, such is not the state-of-affairs in the matter in hand wherein admittedly, the testimonies have been recorded and even the respondent no.2 as well as the eye witnesses have clearly supported the prosecution.

10. In the matter of ***Ramawatar*** (supra), the offence punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w. Section 34 of the Indian Penal Code was involved and the crime was quashed in exercise of the powers under section 482 of the Code of the Criminal

Procedure post conviction by invoking the powers under Article 142 of the Constitution of India and considering the nature of the crime punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 coupled with the peculiar facts and circumstances obtaining therein. We do not have that power or jurisdiction which vests with the Supreme Court under Article 142 of the Constitution of India.

11. The Application is rejected.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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