

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.3524 OF 2018

**AMEY S/O. MADHAV MULE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr. K. N. Shermale, Advocate for the applicants
Mr. A. R. Kale, APP for the respondent/State
Mr. U. S. Mate, Advocate for respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.
DATE : 3RD MARCH, 2023**

PER COURT :-

1. At the outset, learned counsel for the applicants states that respondent No.2 has expired. He seeks leave to delete the name of respondent No.2 and to incorporate the name of the son of the respondent No.2. Leave granted. Amendment to be carried out forthwith. Learned counsel for respondent No.2 waives service on behalf of newly added respondent.

2. This is an application under Section 482 of the Code of Criminal Procedure to quash the first information report bearing No. I-104 of 2018 dated 09/07/2018 registered with Sangamner Taluka Police Station and Sessions Case No. 46 of 2018 pending before the learned Sessions Court, Sangamner for the offences punishable under Sections 143, 147, 149, 323, 327, 341, 427, 504, 506, 395 and 397 of the Indian

Penal Code.

3. The aforesaid crime was registered pursuant to the first information report lodged by the respondent No.2. He has alleged that on 10/07/2018 while he and his friend Suresh Pawar were proceeding towards Akole, the applicants who had come on motorcycles intercepted them and abused and assaulted them for lodging complaints against the applicants for carrying on illegal liquor business. He has stated that the applicants had also taken away his gold ring and cash of Rs.28,000/-. Bases on these allegations, the aforestated crime came to be registered.

4. Learned counsel for the applicants and respondent No.2 states that the parties have settled the dispute amicably. They have placed on record affidavit filed by Omkar Jadhav and Suresh Pawar wherein it is stated that they have settled the dispute amicably and that they have no grievance against applicants. They have given no objection to quash the first information report lodged against the applicants. Omkar Jadhav, the son of the deceased complainant as well as Suresh Pawar are present before us. They have confirmed the contents of the affidavit and have accorded no objection to quash the FIR.

5. Learned APP states that applicant No.1 has criminal antecedents and the offence under Section 395 of IPC is an offence

against society cannot be quashed on a compromise between the parties. He submits that the stolen ring was recovered from applicant No.1 and the cash was recovered from the other applicants. He submits that the allegations levelled against the applicants disclose serious crime, which is not private in nature. Considering this fact and in view of criminal antecedents against applicant No.1, this would not be a fit case to quash the criminal proceeding with consent.

6. Having considered submissions of learned counsel for the respective parties and having perused the material on record, we are of the considered view that even if the entire case as disclosed in the FIR and the other material gathered in the course of the investigation is accepted in its entirety, the same does not disclose the essential ingredients of dacoity. The offence of robbery assumes the character of dacoity when it is committed conjointly by 5 or more persons. Robbery as defined under Section 390 of IPC is an aggravated form of either theft or extortion. Theft is robbery if, in order to the committing of theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraints or fear of instant death or of instant hurt, or of instant wrongful restraint. In **Venu @ Venugopal And Ors** Versus **State of**

Karnataka (2008) 1 SCC (Cri) 623, the Apex Court has observed that the words 'for that end' in Section 390 of IPC clearly mean that the hurt caused must be with the object of facilitating the committing of the theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by the theft. It is thus evident that there can be no robbery when hurt, or attempt to cause hurt or wrongful restraint is not caused for the purpose of committing or in an attempt in committing the theft or in carrying away or in an attempt to carry away the property obtained by the theft.

7. The first information report and the other material on record does not indicate that the applicants had assaulted the respondent No.2 with an object of facilitating the committing theft, but had assaulted him for lodging a complaint against him for conducting illegal liquor business. The assault was not caused to commit theft and hence the act of subsequent removal of ring and cash does not constitute robbery and consequently does not amount to 'dacoity' under Section 390 of IPC. The offence at the most would be theft within the meaning of Section 379 of IPC. Hence in our considered view, offence under Section 395 of IPC is not made out. Though it is stated that applicants have criminal antecedents, learned counsel for the applicants has placed on record copy of the judgment which indicates that they have been acquitted in all

these cases. Since the offence under Section 395 is act made out the other offences are private in nature and parties have entered into an amicable settlement which in our considered view is voluntary and genuine, this would be a fit case for exercising discretion under Section 482 of Cr.P.C.

8. In the result, the Application is allowed in terms of prayer clauses 'B' & 'C'. Consequently, the first information report bearing No. I-104 of 2018 dated 09/07/2018 registered with Sangamner Taluka Police Station and Sessions Case No. 46 of 2018 pending before the learned Sessions Court, Sangamner for the offences punishable under Sections 143, 147, 149, 323, 327, 341, 427, 504, 506, 395 and 397 of the Indian Penal Code are stands quashed subject to payment of cost of Rs.50,000/- by the applicants to Snehalaya, A/c No. 01811000053339, IFSC : HDFC 0000181, a Non Government Organization, Ahmednagar within six weeks.

9. The applicants are put to notice that in the event, amount of cost is not paid within six weeks, this order shall stand recalled automatically without any further reference to this Court.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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