

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 574 of 2022

Sagar Bipin Morjariya ...Petitioner
Versus
Azim Ibrahim Mukadam and Anr ...Respondents

WITH
CRIMINAL WRIT PETITION NO. 573 of 2022

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Kamlesh Gupta and Anr . ..Petitioners
Versus
Sagar Bipin Morjariya and Anr ...Respondents

Mr. Prashant Malik for the Petitioner in WP/574/2022.
Mr. Rohan Sonawane for the Petitioner in WP/573/2022.
Mr. J.P. Yagnik, APP for the Respondent/State.
Respondents in both matters are present in Court.

CORAM : SUNIL B. SHUKRE, AND
M.M.SATHAYE, JJ.
DATE : 13th APRIL 2023

:ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith. Learned APP waives service on behalf of the State. Heard finally by consent of parties.

2. These petitions involve two criminal complaints registered at Juhu Police Station, Mumbai as Crime Nos. 522 of 2021 and 524 of 2021 respectively. In both these crimes, offences

punishable under Sections 326, 506 and 504 read with Section 34 of IPC are common, while Crime No. 522 of 2021 additional offence punishable under Section 323 and 427 of IPC have been registered. In Crime No. 524 of 2021 complainant is Sagar Morjaria, who is Respondent No.1 in Writ Petition No. 573 of 2022 while accused persons Kamlesh Gupta, Azim Mukadam and Liyaquat Shaikh are the Petitioners in the said petition. In Crime No. 522 of 2021, Azim Mukadam is the complainant and Sagar Morjaria is the accused along with three other unknown persons. However, learned APP on instructions states that in Crime No. 522 of 2021 only Sagar Morjaria has been found to be accused eventually.

3. These crimes apparently are serious in nature. There is, however a settlement reached between the rival complainants and according to the consent affidavits filed by the rival complainants, the incident has occurred only because of misunderstanding between rival groups which was on account of parking of vehicles and which misunderstanding led to heated exchange of words and accelerated into some assault and counter assault. They have also stated that all happened suddenly and on the spur of moment and in that state of mind only, they went to the police station and filed complaint against each other without realising that it was only a misunderstanding between them, which was unnecessarily blown out of proportion by both of them.

4. The complainants in both the crimes namely Azim Mukadam and Sagar Morjaria and also the accused persons in both the crimes are personally present before the Court. They have been duly identified by their respective counsel. We have inquired with them and they state that since there was misunderstanding between them, the complaint and counter complaint were filed by them against each other without realising that there was indeed no real dispute between them and what existed between them was only a misunderstanding. They have also stated that settlement has been arrived at between them voluntarily and amicably and they do not have any grudge against each other.

5. Learned APP submits that the crimes involved in both the petitions are serious in nature and therefore, they cannot be termed to be something in which the society has no interest. She, therefore, opposes acceptance of the settlement in quashing of both the crimes.

6. We can understand the anxiety of learned APP in these matters. After all, as stated by us earlier, crimes involved in these petitions are apparently serious in nature. But, the impression so apparently gathered goes away the moment we consider the explanation given by rival groups which is also reflected in the Consent Terms filed on record by the rival complainants. It then

converts itself into something which can be broadly termed to be a private dispute between the rival groups. There are no criminal antecedents against the Petitioners as well as the complainants.

7. These offences do not involve any mental depravity or such offences as rape, murder and dacoity. They appear to be private in nature and therefore, if settlement is accepted, it would have no adverse impact upon the society.

8. In the case of **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur v/s The State of Gujarat and Anr.**¹, the Apex Court has held that while exercising its power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences like murder, rape, dacoity, etc. should not be quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. It further held that continuation with the trial in such cases being founded upon the overriding element of public interest in punishing persons for serious offences, would be justified. The Apex Court has also held that when in a criminal case, there is an overwhelming or predominant element of a civil dispute, such a case stands on a

1 (2017) 9 SCC 641

distinct footing in so far as the exercise of the inherent power to quash is concerned.

9. In our considered opinion, what lay beneath the complaint and counter complaint in these petitions was misunderstanding between the rival groups which has turned the underlying dispute into a private dispute between the parties and therefore, this case would fall in the exception carved out in the case of **Parbatbhai** (supra).

10. In this view of the matter, we are not inclined to accept the contention of the learned APP, rather we would accept the settlement reached between the rival parties here.

11. Hence, we pass following order.

ORDER

(a) Both the petitions are allowed.

(b) Crime No. 522 of 2021 and Crime No. 524 of 2021 registered at Juhu Police Station, Mumbai are hereby quashed and set aside, subject to the following conditions.

(i) Sagar Bipin Morjaria, Azim Ibrahim Mukadam, Kamlesh Gupta and Liyaquat Shaikh each shall deposit an amount of Rs. 20,000/- each in the account of High Court Legal Aid Fund (Bank Name: Bank of Maharashtra, Branch Name: Fort Branch, Account No. 60045304283, IFSC Code: MAHB0000002) within a period of four weeks from the date of

the order, failing with this order shall stand cancelled automatically and the matters shall place before this Court for further directions.

(ii) Verification of compliance shall be made by the learned Registrar (Judicial-II), who shall close the matters upon his satisfaction regarding compliance having been done by the above referred persons or otherwise matters shall be placed before this Court for further directions.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)