

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1012 OF 2022**

1. Faisal Yasin Khan]
2. Ghazi Yasin Khan] Petitioners

Vs.

1. The State of Maharashtra]
2. Saurabh Kishan Bili] Respondents

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Mr. Akash Singh i/b Mr. Ashok M. Saraogi, for Petitioners.

Ms. P.P. Shinde, A.P.P, for Respondent No.1 -State.

Mr. Lokesh Sharma, for Respondent No.2.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 8th February, 2023.

ORDER: [Prithviraj K. Chavan, J.]:

1. Heard.

2. Rule.

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3. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal.

4. Learned A.P.P waives notice on behalf of respondent No.1-State. Mr. Sharma, learned Counsel waives notice on behalf of respondent No.2.

5. By this petition under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973 (for short "Cr. P.C"), the petitioners, who are real brothers, seek quashing of the First Information Report (for short "F.I.R") registered vide C.R. No.213 of 2019 with Samtanagar Police Station, Mumbai, for the alleged offences punishable under sections 341, 452, 323, 506 (2), 354 r/w 34 of the Indian Penal Code (for short "I.P.C") and consequently, the proceeding pending before the Metropolitan Magistrate 17th Court, Borivali, Mumbai, being Case No.1685/PW/2021. Quashing is sought on the premise that the parties have amicably settled their dispute.

6. Briefly stated, facts are as follows.

7. Respondent No.2 is the original complainant. Allegations as revealed from the F.I.R are that on 24th May, 2019, respondent No.2 had shared a Video from Wayanad on his Facebook. Petitioner No.1-Faisal Yasin Khan, who is a Facebook friend of the respondent No.2 residing in the same society started arguing with the respondent No.2 on account of the said video. The petitioners and respondent No.2 are the Facebook friends since more than five years. The petitioner No.1 started abusing the respondent No.2 via Facebook, so also the Respondent No.2. At the relevant time, the respondent No.2 was on his way to Goregaon from Powai. When he reached near the building of his residence on 25th May, 2019 around 12.30 midnight, it is alleged that the petitioner No.1 accosted, abused and also manhandled him. When mother of the respondent No.2 came for his rescue, she too was assaulted by the petitioners and had trespassed into his house. It is alleged that the petitioners threatened to kill the respondent No.2 and his family members by pouring petrol over their house and setting it ablaze. Accordingly, an F.I.R came to be registered as against the petitioners at Samtanagar Police Station, as above.

8. After investigation, a charge-sheet came to be filed in 17th Metropolitan Magistrate Court at Borivali, Mumai, being Case No.1685/PW of 2021.

9. The parties have approached this Court by stating that now they wish to amicably settle the dispute as they have arrived at a settlement, in view of the fact that they are neighbours. Mother of the respondent No.2 has sworn a consent affidavit dated 8th February, 2023, duly notarized before the Notary. Learned Counsel for the respondent No.2 has tendered a photostat copy of the said affidavit. Photostat copies of the Aadhar Card of the respondent No.2 and his mother are annexed with the said affidavit. The same are taken on record.

10. Petitioners have stated in the petition that amicable settlement between them and the respondent No.2 would not cause prejudice to any of the parties and, therefore, criminal proceeding being case No.1685/PW of 2021 pending before the learned Metropolitan Magistrate, 17th Court at Borivali, Mumbai needs to be quashed. Even mother of the respondent No.2, in her affidavit, unequivocally stated about the compromise/settlement between them. She states

that she has unconditionally withdrawn all the allegations in the criminal case filed against the petitioners.

11. Respondent No.2 and his mother are present in Court. On being questioned, mother of the respondent No.2 reiterates what is stated by her in her affidavit. Learned Counsel for the respondent No.2 identified him. Learned A.P.P has verified original Aadhar Card of the respondent No.2 and his mother.

12. *Prima facie*, perusal of the statement of the respondent No.2 does not indicate that the offence under section 354 has been made out *qua* the mother of the respondent No.2.

13. Considering the nature of the dispute, amicable settlement between the parties, consent affidavit of the mother of the respondent No.2 and having regard to the judicial pronouncements of the Apex Court in the case of **Gian Singh Vs. State of Punjab and another¹** and **Narinder Singh and others Vs. State of Punjab and another²**, there is no impediment in allowing the petition.

1 (2012) 10 SCC 303

2 (2014) 6 SCC 466

14. The petition is accordingly allowed. The F.I.R bearing C.R. No.213 of 2019 registered with Samtanagar Police Station Mumbai, as against the petitioners and consequently, the proceeding pending before the Metropolitan Magistrate 17th Court at Borivali, Mumbai being Case No.1685/PW/2021, are quashed and set aside.

15. The petitioners to deposit costs of Rs.5,000/- each, with "**The Association of Parents of Mentally Retarded Children**". Details of which are as under:

Bank Name	State Bank of India
Branch	J.K. Gram, Thane
Account Number	00000010884930648
IFSC	SBIN0009056

The said costs to be deposited within four weeks from today.

16. Rule is made absolute in the aforesaid terms subject to the petitioners depositing costs, as stated above. Petition is disposed of accordingly.

17. Matter to be kept for recording compliance regarding deposit of costs, on **8th March, 2023**.

18. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]