

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1706 OF 2022**

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| 1. Ashish Anand Kulkarni |] | |
| 2. Anand Krishnarao Kulkarni (deleted) |] | |
| Vs. | | |
| 1. State of Maharashtra |] | |
| 2. The Police Inspector |] | |
| Juna Rajwada Police Station, |] | |
| 3. Prasad Vilas Kulkarni |] | Respondents |

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Mr. Abhishek Avachat, for Petitioners.

Mr. J.P. Yagnik, A.P.P, for Respondents No.1 and 2.

Mr. Shantanu Phanse i/b Mr. Ajinkya Udane, for Respondent No.3.

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**CORAM : REVATI MOHITE DERE &
 SANDEEP V. MARNE, J.J.**

DATE : 14th FEBRUARY, 2023.

P.C.

1. Heard learned Counsel for the parties.

2. At the outset, learned Counsel for the petitioners seeks leave to amend to delete the name of the petitioner No.2 from the array of petitioners since the petitioner No.2 expired during the pendency of the aforesaid petition. Leave granted. Amendment to be carried out forthwith, during the course of the day.

3. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Learned A.P.P waives notice on behalf of respondent Nos.1 and 2-State and Mr. Phanse, learned Counsel waives notice on behalf of respondent No.3.

4. By this petition, preferred 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 petitioner seeks quashing of the F.I.R registered vide C.R. No.299 of 2018 with the Juna Rajwada Police Station, Kolhapur, for the alleged offences punishable under sections 307, 323 r/w 34 of the Indian Penal Code (for short "I.P.C") and consequently, the proceeding pending before the learned Session Judge, Kolhapur bearing S.C.C. No.4 of 2020. Quashing is sought on the premise, that the parties have amicably settled their dispute.

5. Perused the papers. Petitioner No.1-Ashish Kulkarni is the brother-in-law and petitioner No.2-Anand Kulkarni (deleted, since expired) was the father-in-law of the respondent No.3 (original complainant). Respondent No.3 got married with petitioner No.1's

sister on 10th March, 2003. From the said wedlock, respondent No.3 and the petitioner No.1's sister have one issue. According to the respondent No.3, the incident took place on 22nd March, 2018. It is alleged that his wife -Gauri left the matrimonial house alongwith their son, pursuant to which, he called the petitioner, his brother-in-law and father-in-law. It is alleged that since the petitioner and his father gave him evasive answers, he approached the Vimanagar Police Station, Pune, pursuant to which, the Police called the petitioner and confirmed that respondent No.3's wife alongwith their son was at Kolhapur. The respondent No.3 has further alleged that he told his wife to return home, as their son was missing school, however, she did not return from Kolhapur; that pursuant thereto, he went to Kolhapur on 18th April, 2018 with his aunt Anita Joshi and uncle Prakash Kulkarni and requested the petitioner and his father to permit his wife and son to go with him, however, petitioner and his father refused to let them go and instead started talking with him in a loud voice; that when he told the petitioner that he would take his son with him, as his examination was soon going to start, the petitioner and his father held him and attempted to throttle him. He has stated that pursuant to the said incident, he lodged the aforesaid complaint.

After investigation, charge-sheet was filed in the said case and the case is pending before the learned Sessions Judge, Kolhapur.

6. It is not in dispute that there are several cases initiated by the parties against each other and their family members in different Courts. In the Transfer Petition filed in this Court, a Mediator was appointed and pursuant to the mediation, the parties i.e the respondent No.3 and his wife (petitioner's sister) settled their dispute and entered into the consent terms. The said consent terms are at page 130 of the petition. In the said consent terms, the parties agreed to withdraw all allegations and counter allegations made against each other; it was also agreed that the marriage would be dissolved by mutual consent; that the permanent custody of the child would be with the respondent No.3 (original complainant) and that respondent No.3's wife does not have any access of their son either physical or virtual and that the expenses of the child would be borne by the respondent No.3. It was also agreed that the respondent No.3 would give Rs.14,89,620/- to his wife by way of one time settlement. We are informed that both the parties have complied with the terms and conditions set out in the said consent terms and that all the cases filed by each of the parties against each

other i.e civil as well as criminal, have been withdrawn by them. This is one of the last case, in the series of cases instituted by the parties against each other.

7. It appears that the present case is an outcome of the dispute between the respondent No.3 on the one hand and his brother-in-law and father-in-law on the other, over handing over respondent No.3's son to him. Admittedly, father-in-law of the respondent No.3 expired, during pendency of the aforesaid petition and, therefore, case has abated against him. The facts reveal that when the respondent No.3 told the petitioner and his father that he would take his son with him, as his examination was going to start soon, they assaulted him and tried to throttle him. Admittedly, there are no injuries on the neck and hence, *prima facie*, it is doubtful whether an offence of section 307 of the I.P.C is made out, in the facts.

8. Affidavit of the respondent No.3 dated 19th October, 2022 duly notarized before the Notary is annexed to the petition at page No.180. To the said affidavit, is annexed a photo copy of the Aadhar Card of the respondent No.3 duly attested by him. Affidavit

of respondent No.3's aunt - Anita Shankar Joshi dated 23rd November, 2022 duly notarized before the Notary is also annexed to the petition at page No.202. Anita Joshi had accompanied the respondent No.3 to Kolhapur, when the alleged incident happened. In the incident, she too, had sustained an injury on her forearm. The said injury is stated to be a simple injury i.e an abrasion. To the said affidavit, is annexed photo copy of her Aadhar Card, duly attested by her. In the said affidavit, Anita Joshi has given her no objection for quashing of the F.I.R as against the petitioners. In the said affidavit Anita Joshi has stated that since the dispute is amicably settled through mediation and the parties have entered into the consent terms, she has no objection to the quashing of the complaint. Respondent No.3 and his aunt - Anita Joshi are present in the Court. On being questioned, they reiterate what is stated by them in their affidavit. They both are identified by the learned Counsel for the respondent No.3. Learned A.P.P has verified their original Aadhar Cards.

9. Having regard to the peculiar facts of the case, the nature of dispute and considering the fact that the present case arises out of a matrimonial dispute between the parties, the amicable settlement

between them, the consent terms arrived at between them and the affidavit of the respondent No.3 and his aunt - Anita Joshi and having regard to the judicial pronouncements of the Apex Court in the cases 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.

10. The petition is accordingly allowed. The F.I.R bearing C.R. No.299 of 2018 registered with the Juna Rajwada Police Station, Kolhapur, as against the petitioners and consequently, the proceeding pending before the Sessions Court, Kolhapur being SCC No.4 of 2020, are quashed and set aside.

11. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

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

[SANDEEP V MARNE, J.]

[REVATI MOHITE DERE, J.]

¹ (2012) 10 SCC 303

² (2014) 6 SCC 466