

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1854 OF 2023

1. Arif @ Mannu Samsul Khan
Aged : 30 years, Occupation: Cook
R/a: Madina Compound, Sabun
Gully, 60 feet Road, Dharavi,
Mumbai 400 017
2. Jamal Kamal Ahmed
Aged : 30 years, Occupation Tailor
3. Nihal Kamal Ahmed
Aged : 30 years, Occupation Tailor
Both R/a : Madina Compound,
Sabun Gully, Dharavi,
Mumbai 400 017

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.... Petitioners.

Versus

1. The State of Maharashtra
(At the instance of Dharavi Police
Station vide C.R.No.23 of 2022)
2. Mohammed Imran Gulam Waris
Qureshi
Aged: 27 years, Occ: Labour
R/a : Madina Compound, 60 feet
road, Sabun Gully, Dharavi,
Mumbai 400 017

.... Respondents.

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Mr.Nouman Shaikh @ Heena Momin, Advocate for
petitioner.

Mrs.S.D. Shinde, APP for State.

Mr Faiz Ahmed Shaikh for respondent no.2.

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**CORAM: Nitin W. Sambre
& R.N.Laddha, JJ.**

DATE : 10 July, 2023.

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Order (Per R.N.Laddha, J.)

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith, with the consent of and at the request of the learned Counsel for the parties.

3. The petitioners have filed this criminal writ petition under Article 226 of the Constitution of India r/w Section 482 of Code of Criminal Procedure, 1973, to quash FIR No.23 of 2022 dated 18.1.2022, registered at Dharavi Police Station, Mumbai, for the offence punishable u/s 307 r/w Section 34 of the Indian Penal Code. The petitioners seek to quash the impugned FIR on the ground that they have amicably settled the dispute with respondent no.2.

4. The learned Counsel representing the petitioners and second respondent have jointly stated that the dispute between their clients arose due to a misunderstanding and has

since been resolved. They submitted that the petitioners and respondent No.2 are friends and are living in the neighbourhood. They submitted that continuing with the prosecution would be pointless, given their settlement.

5. The learned APP for respondent no.1 submits that appropriate orders may be passed.

6. Respondent No.2 filed a consent affidavit dated 4.3.2023. Respondent No.2 is present in the Court and stated that he has no objection to the quashing of the impugned FIR against the petitioners. Upon questioning, he confirmed the contents of his affidavit and was identified by his Counsel. The learned APP has verified his original Aadhar Card, of which a self-attested copy is placed on record.

7. We have examined the facts of the present case. It is not in dispute that the offence punishable u/s 307 of the Indian Penal Code is serious and cannot be quashed by consent. However, considering the peculiar facts and circumstances, we must examine the record and consider the submissions of the learned Counsel for the parties.

8. In his statement to the police on 18.01.2022, respondent no.2 explicitly stated that he was attacked by 3-4 unknown assailants. Moreover, all injuries of respondent no.2 are admittedly simple. In our view, prima facie no offence u/s 307 IPC is made out against the petitioners. The consent affidavit indicates that the petitioners and respondent no.2 live in the same neighbourhood and supports the prayer to quash the impugned FIR. As argued by the learned Counsel that the dispute between their clients arose due to a misunderstanding and has since been resolved.

9. That being so, continuing with the prosecution when the complainant is unwilling to support the allegations would be a futile exercise, empty formality and serve no purpose.

10. As we express our opinion, the learned Counsel for the petitioners, on instructions submitted, that each of the petitioners will pay costs of Rs. 25,000/- to the Kirtikar Law Library, Mumbai. The statement is accepted as an undertaking given to this Court. We, therefore, direct the petitioners to pay costs of Rs.25,000/- each within three weeks of this order being uploaded.

11. Accordingly, the impugned FIR bearing C.R.No. 23 of 2022 dated 18.1.2022 registered at Dharavi police station Mumbai, along with the proceedings arising from it, for the offence punishable u/s 307 r/w 34 of the Indian Penal Code against the petitioners are quashed and set aside.

12. The rule is made absolute in these terms, and this petition is disposed of subject to payment of costs as directed above.

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]