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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3391 OF 2023

Imran @ Aayan Gulam Husssein Chaudhary and Anr. ..Petitioners

vs.

The State of Maharashtra and Ors.

.. Respondents

Mr.Farkhruddin Khan for Petitioner in WP No. 3391 of 2023

Mr. A.D. Khamkhedkar, APP for Respondent No.1-State

Ms. Saina Ansari i/by Salman Palasara for Respondent Nos.2 and 3

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 26th OCTOBER, 2023.

ORDER: PER [SHYAM C. CHANDAK, J.]

1) The Petitioners are accused in Crime No. 416 of 2016 registered with Respondent No.1- Ghatkopar Police Station for the offences punishable under Sections 307, 323, 504, 34 of Indian Penal Code r/w. Sections 37 (1), 135 of Bombay Police Act. The said crime was regd. pursuant to the FIR was lodged by Respondent No.2 alleging therein that on the relevant date, time and place, both Petitioners assaulted to Respondent No.2 giving feast and kick blows and Petitioner No.1 caused knife injuries to Respondent No.3 After completing the investigation, Respondent No.1 submitted the charge-sheet against both the Petitioners for having committed the offences punishable under Sections 307, 323, 504, 34 of IPC r/w. Sections 37(1), 135 of Bombay Police Act, which has been registered as Case No.

4901164/PW/18 and now pending before the Learned Sessions Judge, 30th Court, Mumbai.

2) Thereafter the parties have agreed to settle the matter amicably and accordingly, they decided to get the said prosecution *i.e.* the FIR bearing Cr. No.416/2016 and the charge-sheet thereof quashed. It is stated that the settlement is by mutual consent and it is without pressure from either side. Hence, this Petition.

3) The Learned Advocate for the Petitioners submitted that, the Petitioners and Respondent Nos.2 and 3 have amicably settled their disputes and differences. That, Respondent Nos.2 and 3 have given their consent for quashing of the present crime. He, therefore, prayed that the present crime may be quashed by consent of Respondent Nos.2 and 3.

4) To substantiate the above, Respondent Nos.2 and 3 have produced their independent Affidavits. The Affidavit of Respondent No.2 clearly mentions that, he is the First Informant in the Crime No. 416 of 2016 and he had lodged the FIR on 24th August, 2016 with the Ghatkopar Police Station against the present Petitioners / accused persons and the said case is pending before the Learned Sessions Judge, 30th Court, Mumbai. He has stated that, at present the matter has been amicably settled on humanitarian ground between him and the Petitioners and he does not want to proceed

with the present matter against the Petitioners. The Affidavit of Respondent No.3 also states that he is the victim and brother of Respondent No.2. He has stated that, he was injured admitted in hospital and that is why his brother has lodged the complaint. His statement was recorded by the police. He has further stated that, at present the matter has been settled amicably on humanitarian ground between him and the Petitioners and he does not want to proceed with the present matter against the Petitioners. Hence, both Respondent Nos.2 and 3 have pleaded that the FIR along with the charge-sheet may be quashed.

5) In the above context we have carefully considered the relevant injury certificate and the medical papers. It revealed that Respondent No.3 had sustained the following injuries due to the said assault: (i) Incised wound 2cmX2cmX1cm over chest, (ii) Incised wound 2cmX1cmX1cm over suprapubic 'in midline' reaching up to rectum muscle and (iii) Incised wound 1cmX1cmX1cm over epigastrium in midline reaching up to falciform ligament. The injuries were caused by sharp weapon and grievous in nature. Nevertheless, this fact alone is not sufficient to reject the settlement and to quash the prosecution.

6) In this regard it would be apt to refer the judgment in **Narinder singh**

Vs. State of Punjab [(2014) 6 SCC 466]. In this case the Hon'ble Supreme Court observed and held that, *"Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement*

between the parties is going to result in harmony between them which may improve their future relationship”.

7) In the case on hand, the FIR No.416 of 2016 was registered on 24.08.2016 and thereafter the charge-sheet came to be filed. The narration in the FIR indicates that the incident occurred suddenly. The petition and the FIR show that prior to the incident, the relations between the parties were friendly. The Sessions Case that arose out the above crime is pending from last 7 years. The learned Advocate for the petitioners has submitted that hearing the evidence in the said case is yet to start. The settlement of the case is free from undue influence etc. The parties are ready to forget the past incident and to move on. Thus, the parties have not only buried their hatchet but have decided to live peacefully in the future. This is certainly an important consideration. In view of the compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though the above injuries can still be established by examining the medical officer as witness, who conducted the medical examination of Respondent No.3 or operated the said injuries, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be distant. It would, therefore, be unnecessary to drag these proceedings. The cross-case between the parties is

also amicably settled. We, taking all these factors into consideration cumulatively and considering the principles laid down in the case of **Narinder singh** (*supra*) are of the opinion that the compromise between the parties be accepted.

8) Thus, we are inclined to quash the C.R. No. 416 of 2016, dated 24th August, 2016, registered with Ghatkopar Police Station, Mumbai under Sections 307, 323, 504, 34 of Indian Penal Code r/w. Sections 37 (1), 135 of Bombay Police Act against the Petitioners.

9) As we expressed our opinion for quashing of said C.R. No. 416 of 2016 registered with Ghatkopar Police Station, Mumbai, learned Advocate for the Petitioners, on instructions, submitted that, the Petitioners will pay a cost of Rs.5,000/- per person totalling to Rs.10,000/- to Advocates' Association of Western India Generation Next Fund, Mumbai within a period of two weeks from today. The said statement is accepted as an undertaking to this Court.

10) We direct the Petitioners to pay a cost of Rs.5,000/- each totalling to Rs.10,000/- to Advocates' Association of Western India Generation Next Fund, Mumbai within a period of two weeks from the date of uploading of the present Order on the official website of Bombay High Court.

11) The details of the bank Account for payment of cost are as under:-

Bank Name	:-	Bank of India
Branch Name	:-	Mumbai Main
Account Name	:-	Advocates' Association of Western India Generation Next.
Account Number	:-	000110110007807
IFSC Code	:-	BKID0000001

12) The Petitioners to deposit the said cost of Rs.10,000/- within stipulated period as noted above and submit the receipt of the same in the Registry of this Court.

13) In view of above and subject to payment of cost, Petition is allowed in terms of prayer clause (i) and is accordingly disposed of.

14) It is made clear that, if the cost is not paid within stipulated period as mentioned above, the Petition shall stand revived automatically and in that event, the trial Court will proceed with the said C.R. No.416 of 2016, expeditiously.

15) List the Petition on 30th November, 2023 under the caption '*for reporting compliance*' of Order.

16) All the concerned to act on the basis of an authenticated copy of this Order.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)