

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 1114 OF 2023

APPLICANT : Santosh Uddavrao Dongre,
Aged about 48 years, Occ : Private
R/o Plot No.40, Rohini Nagar, Parsodi,
Police Station Beltarodi, Nagpur.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through Police Inspector,
Police Station Beltarodi,
Nagpur.
2. Dilip Baburao Shende,
Aged 62 years, Occ : Service,
R/o Reshimbad, Plot No.65,
Near Gajanan Mandir, Nagpur.
3. Bhushan Tulsiram Uprikar,
Aged 42 years, Occ : Service,
R/o Siddharth Nagar, Ajni, Nagpur.

Shri P. S. Wathode, Advocate for applicant.

Shri S. S. Doifode, Additional Public Prosecutor for respondent No.1.

Shri H. S. Hurduke, Advocate for respondent Nos.2 and 3.

**CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.**

DATED : 09/08/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Admit.** Heard finally with the consent of learned counsel appearing for the parties. The respondent Nos.2 and 3 appeared suo motu through Advocate Shri H. S. Hurduke.

2. This is an application seeking to quash FIR along with charge sheet relating to Crime No.0408/2022 registered for the

offence punishable under Section 326 of the Indian Penal Code on account of mutual settlement between the parties.

3. Informant – Dilip Baburao Shende was serving as a Supervisor in a Construction Company namely; A. S. Iyer Construction Pvt. Ltd. In the same company, applicant as well as respondent No.3 - Bhushan Tulsiram Uprikar (injured) were serving as Site Engineer. All were working together on construction site. On 11/09/2022 at 10.00 a.m., there was quarrel in between the applicant and injured on account of providing Grinder machine. While they were quarrelling with each other, informant - Dilip Shende came and saw that the applicant picked up a nearby iron rod and struck at the head of injured causing bleeding injury. After seeing the assault, the informant went to concerned police station and lodged the report. The police carried out the investigation and filed final report for the offence punishable under Section 307 of the Indian Penal Code.

4. The concerned Magistrate committed the case which is now numbered as Sessions Case No.754/2022, presently pending on the file of District Judge-13 and Additional Sessions Judge, Nagpur. It is informed that yet charges have not been framed.

5. During the pendency of proceedings, the parties have settled the dispute as they were co-employees in the same Construction Company. They have filed a Settlement Deed to that effect. In fact, the informant is formal one as he does not sustain injury, however, he witnessed the incident, hence, lodged the report.

6. We have examined the FIR as well as the statement of injured Bhushan Tulsiram Uprikar recorded by police during the course of investigation. It is evident that in said quarrel besides Bhushan Uprikar, no other person was injured. Soon after the incident, Bhushan Uprikar was admitted to the hospital and was discharged within one week. Later on, he was again admitted and discharged. Having regard to the abrupt incident and their long standing relationship being co-employee, both have settled the dispute. Today, informant as well as injured are present before us who are identified by Advocate Shri H. S. Hurduke.

7. We have enquired with the informant on which he has admitted about the settlement, execution of settlement deed and their no objection to quash the proceedings. Particularly, injured stated that act was not intentional, he is fully recovered and having regard to the close relations, he does not wish to prosecute

the criminal case. It is also informed that the employer has taken care of medical treatment and the rest was borne out of medical claim policy of the injured.

8. We have brought to the notice of applicant that though the act appears unintentional, however, the consequences are disastrous that one person was at the verge of loss of life. Moreover, the police are required to investigate and file the charge sheet. At this juncture, applicant's learned counsel upon instructions, showed willingness to pay cost of Rs.20,000/-.

9. The offence with which the applicant is charged is of attempt to commit murder punishable under Section 307 of the Indian Penal Code. In the case of **Narender Singh and others Vrs. State of Punjab and another**, reported in **(2014) 6 SCC 466**, it has been expressed by the Hon'ble Apex Court that though the offence under Section 307 of the Indian Penal Code has been invoked, however, the Court shall consider all the surrounding circumstances, which are relevant with the incident. The relevant observation made in Para No.26 of the decision runs as below :-

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard

realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/charge-sheet incorporates the provision of Section 307 IPC would not, by itself, be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely, whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used, etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessarily included in the charge-sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties."

10. In the light of above decision, as well as the principles laid down therein, we have examined the entire material. Notably,

yet charges have not been framed. Though the injured sustained head injury, however, the incident was outcome of momentary loss of control. The applicant was not carrying weapon, but in sudden quarrel, he merely picked up a nearby rod for assaulting the other. We are swayed by one another fact that both applicant and injured are co-employees and still, they are serving in the same company. Certainly, the settlement would further to maintain peace and cordial relations with each other. Taking overall view of the above circumstances, we are of the opinion to accept the settlement and to quash pending proceeding.

11. In view of the above, application is allowed. We hereby quash and set aside the FIR along with charge sheet relating to Crime No.0408/2022 registered for the offence punishable under Section 326 of the Indian Penal Code along with Sessions Case No.754/2022 pending on the file of District Judge-13 and Additional Sessions Judge, Nagpur.

12. The applicant shall deposit costs of Rs.20,000/- in this Court till 23/08/2023. On deposit of said amount, respondent No.3 - Bhushan Tulsiram Uprikar (injured) is entitled for withdrawal of the same.

13. Registry shall disburse the said amount to the injured namely; Bhushan Tulsiram Uprikar.

14. The matter be kept for noting compliance on 24/08/2023.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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