



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

CRIMINAL APPLICATION NO.1136 OF 2023

1. Akhil Bhaurao Pohankar, Age 35 years,
Occ. Business, R/o Plot No. 15, Kurkur
Layout, Suraksha Nagar, Nagpur.
2. Amit Sahebrao Thakre, Age 34 Years,
Occ. Private Job, r/o Ward No. 17, Near
Gajanan Temple, Kalmeshshwar, Nagpur.
3. Omprakash Ashok Choure, Age 39 Years,
Occ. Business, R/o Plot No. 864,
Waddhamna Rao Lay-out, Near Kavle
Kirana, Nagpur.
4. Chandrashekhar C. Parasmode, Age 39
years, Occ. Private Job, R/o Rao Layout,
Waddhamna Post. Wadi, Nagpur.
5. Shriram Ishwar Ikhankar, Age 48, Occ.
Private, R/o Ward No. 01, Surabardi,
Takiya, Nagpur.

... APPLICANTS.

VERSUS

1. State of Maharashtra, through
Police Station Officer, Wadi Police
Station, Tah. Nagpur, Dist. Nagpur.
2. Vikki Sunil Aaglave, Age 28 years,
Occ. Labour, R/o At Kalambi, Post.
Kalmeshwar, Near Nagdwar Temple,
Nagpur.

... NON-APPLICANTS.

Shri S.P. Bhandarkar, Advocate for the applicants.
Shri Rode, A.P.P. for the non-applicant/State.
Shri Rohan Malviya, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 18.08.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. Learned A.P.P. waives notice for the non-applicant/State whilst learned Counsel Shri Rohan Malviya *suo moto* appeared for the non-applicant no. 2 and waives notice.

3. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

4. This is an application seeking to quash the First Information Report as well as related charge-sheet in Crime No.314 of 2019 registered with the Wadi Police Station, Nagpur City for the offence punishable under Sections 143, 147, 148, 149, 342 and 307 of the Indian Penal Code (IPC), on account of mutual settlement.

5. At the instance of the report lodged by the injured namely Vikki Aaglawe, the crime has been registered. Applicant no.1 Akhil Pohankar was running a transport business wherein the informant was employed as a Driver. On 26.07.2019, the owner Akhil Pohankar gave sum of Rs.30,000/- to the informant Driver for transporting certain Goods to longer destination. However, the informant has spent entire money on the luxuries and, thus he could not transport the Goods. After realizing the things, the owner Akhil has called the informant at his office on 27.07.2019. On inquiry, he learnt that that money which was meant for transportation was spent on liquor and food, therefore, owner got annoyed. Thereafter, all applicants have tied the informant with the aid of rope and beat him with leather belt, iron pipe and had inserted the pipe at his anus. After some time the applicants themselves gave primary medical aid to the informant. While the informant was being beaten at that time the applicants have video graphed the occurrence, which appears to be made viral. The Police came across the video clip on which they inquired the matter with the informant and the report.

6. Learned Counsel Shri Bhandarkar for the applicants would submit that the incident is unfortunate, however there was no strong motive for the applicants to beat their own servant. We have been taken

through the injury report to impress that there is no anal injury and the injury were of simple nature. Learned Counsel for the applicant placed reliance on the decision of the Supreme Court in case of ***State of Madhya Pradesh vs. Laxmi Narayan and others (2019) 5 SCC 688*** to contend that merely because the police have invoked Section 307 of the IPC, the Court is not precluded from looking to the facts. Particularly, our attention has been invited to paragraph 15.4 of the decision, which reads as below :

“15.4 Offences under Section 307 IPC and the Arms Act, etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act, etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. 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 framing 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/delicate parts of the body, nature of weapons used, etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge-sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paras

29.6 and 29.7 of the decision of this Court in Narinder Singh should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;”

7. True, in said decision, it has been expressed that though the Police have invoked Section 307 of the IPC, it would be open for this Court to go by the nature of injury sustained, whether the injury was inflicted on the vital part and the nature of weapon used. Besides those aspects, this Court can also look into the circumstances under which the crime has been committed.

8. The Police have completed the investigation and filed the charge-sheet in the Court. It is informed that charges were framed. The prosecution has examined one of the panch witness who turned hostile and thereafter, there is no progress. Since the stage of settlement is also material, we have noted the said fact by relying on the statement of the learned Counsel for the applicant. The informant Vikki Aaglave is present before the Court, who is identified by his Counsel Shri Rohan Malviya. He has filed an affidavit-cum-reply stating about the settlement and his no objection to quash the proceedings. On our inquiry, he stated that since he has spent the owner's money, he has been beaten by them and now, from last one year he is serving with the applicants as a Driver. He would submit that his bread and butter is depending on the service with the applicant and therefore, he do not

wish to prosecute the criminal case.

9. We have reassessed the entire material. We do not see any strong motive for the applicants to commit the offence. Medical report suggests that there were simple injuries at the back and though the allegations were of insertion of pipe into the anus, but there was no injury. Therefore, the applicability of the provisions of Section 307 of the IPC is also a matter of doubt. The applicants have not used any sharp edged weapon in the occurrence. The injuries which were found by the Medical Officer were only at the back, that too of simple nature, which cannot be termed as life threat.

10. We have also considered the fact that presently the informant is serving with the applicants and he is not interested to prosecute the matter. Certainly, his evidence would not be available in the trial in view of the settlement. Having regard to the peculiar facts about the relationship between the parties, disposal of criminal case would further to strengthen their relations.

11. At this juncture, we have pointed another aspect to the learned Counsel that due to the occurrence the Police are required to carry investigation, obtain reports from the experts and file charge-sheet. Moreover, the Trial Court has to spend time in dealing with the

matter for considerable period. At this juncture, learned counsel for the applicants, do agree that government machinery was utilized and therefore, he made a statement that the applicants are ready to deposit sum of Rs.75,000/- towards the costs.

12. The very intent of the inherent powers is to secure the ends of justice. Having regard to the entire episode, it reveals that the incident was an outcome of an anger of master with his servant. There was no deep rooted enmity nor dangerous weapon was used. The informant has sustained simple injury at his back. Particularly, at present, the informant is serving as a Driver with the applicant. Having regard to all above facts, we are inclined to exercise our inherent jurisdiction, hence the following order :

- (a) The application is allowed.
- (b) We hereby quash and set aside the First Information Report in Crime No.314 of 2019 registered with the Wadi Police Station, Nagpur City for the offence punishable under Sections 143, 147, 148, 149, 342 and 307 of the Indian Penal Code along with related charge-sheet bearing Sessions Case No.679 of 2019 pending on the file of Additional Sessions Judge, Nagpur.
- (c) The applicants shall deposit total sum of Rs.75,000/- with

the High Court Bar Association, Nagpur within two weeks from today.

13. Matter be placed on 04.09.2023 for noting the compliance.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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