

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

CRIMINAL APPLICATION (APL) NO. 1483/2022
WITH
CRIMINAL APPLICATION (APL) NO. 1481/2022
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CRIMINAL APPLICATION (APL) NO. 1483/2022

1. Umar Beg Vakil Beg,
Aged about 27 yrs., Occ. Labour,
2. Akil Beg Gulshar Beg,
Aged about 58 yrs., Occ. Labour,
3. Yasin Beg Vakil Beg,
Aged about 27 yrs., Occ. Labour,
4. Wasim Beg Wakil Beg,
Aged about 38 yrs., Occ. Labour,
5. Nazim Beg Akil Beg,
Aged about 23 yrs., Occ. Labour,
6. Vakil Beg Gulshar Beg,
Aged about 58 yrs., Occ. Labour,
7. Shakil Beg Gulsher Beg,
Aged about 54 yrs., Occ. Labour,
8. Nasim Beg Vakil Beg,
Aged about 33 yrs., Occ. Labour,
9. Matin Beg Vakil Beg,
Aged about 26 yrs., Occ. Labour,
All R/o. Hiwarkhed, Tah. Telhara,
Dist. Akola.

APPLICANTS

VERSUS

1. State of Maharashtra,
through Police Station Hiwarkhed,
Dist. Akola

2. Sheikh Riyaz Sheikh Riyasu,
Aged 34 yrs., Occ. Agriculturist
R/o. Vikas Maidan, Hiwarkhed,
Dist. Akola.

NON-APPLICANTS

Mr. M. N. Ali, Advocate for applicants.
Mr. A. M. Kadukar, APP for non-applicant No. 1/State.
Mr. Shahrukh Shah, Advocate for non-applicant No.2.

WITH

CRIMINAL APPLICATION (APL) NO. 1481/2022

1. Abdul Sakib Abdul Asif,
Age 22 yrs., Occ. Labour,
2. Nazir Khan Shardul Khan,
Age 41 yrs., Occ. Labour,
3. Ansar Khan Samsher Khan,
Age 19 yrs., Occ. Labour,
4. Wasim Khan Nasim Khan,
Age 20 yrs., Occ. Labour,
5. Sheikh Riyaz Sheikh Riyasu,
Age 32 yrs., Occ. Labour,
6. Sheikh Amir Sheikh Zamir,
Age 30 yrs., Occ. Labour,
7. Taslim Khan Shamsheer Khan
Age 20 yrs,

Applicant Nos. 1 to 7 R/o. Hiwarkhed,
Tah. Talhara, Dist. Akola.

APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station, Hiwarkhed,
Dist. Akola.
2. Umar Baig Wakil Baig Mirza,
Aged 27 yrs., Occ. Agriculturist,
R/o. Khobragade Plot, Chichari
Road, Hiwarkhed, Dist. Akola.

NON-APPLICANTS

Mr. Shahrukh Shah, Advocate for applicants.
Mr. A. M. Kadukar, APP for non-applicant No.1/State.
Mr. M. N. Ali, Advocate for non-applicant No.2.

CORAM

**: VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.**

DATE OF JUDGMENT : 15.03.2023

JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. Both applications are seeking to quash respective First Information Report ('FIR') and pending criminal cases on account of settlement. Since these are the rival cases, for the sake of convenience, we take them together for disposal.

4. Criminal Application No. 1481/2022 has been filed by seven applicants seeking to quash FIR in Crime No. 277/2018 registered with the Police Station Hiwarkhed, Dist. Akola for the offence punishable under Sections 307, 324, 323, 143, 147, 148,

149, 506 of the Indian Penal Code read with Sections 4, 25 of the Arms Act. The said crime was registered at the instance of report of informant Umar Beg Mirza lodged on 28.11.2018. It is his contention that on that day around 12.00 noon, on account of old dispute while he was passing from the Tea Stall, all the applicants arrived and assaulted him. So also, applicants also assaulted his uncle Shakil Beg, brother Nasim Beg and one Yasin Beg, for which report has been lodged.

5. Criminal Application No. 1483/2022 is filed by total nine applicants. Similarly seeking to quash FIR in Crime No. 276/2018 registered with the same Police Station for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 506 of the Indian Penal Code read with Sections 4, 25 of the Arms Act. The said crime was registered at the instance of Sheikh Riyaz Sheikh Riyasu alleging that at the same time and place, the applicants have assaulted him as well as his father Sheikh Riyasu (dead) and brother Sheikh Jamir and therefore, the report dated 28.11.2018.

6. In rival cases, the Police have completed investigation and filed charge-sheet. Yet, the Trial Court has not framed charges in both criminal proceedings. Both parties are resident of Village Hiwarkhed, Tah. Telhara, Dist. Akola. There was no bitter enmity, however on flimsy reason, incident occurred. Having regard to said

aspect, with the mediation of villagers and old persons, both parties have settled the differences to maintain peace in the small village. Informant and injured of each crime have filed and verified reply stating that the matter is settled and they do not want to prosecute criminal cases.

7. Particularly in Crime No. 276/2018, informant Sheikh Riyaz and injured Jamir are present before us who are identified by Mr. Shahrukh Shah, learned counsel. It is informed that third injured Riyasu who is father of informant Riyaz is no more. Both informant and injured Jamir on inquiry, submitted that considering the interest of both families, the matter is settled and they do not want to prosecute criminal cases.

8. So far as Crime No. 277/2018 is concerned, informant Umar Beg as well as injured Shakil Beg, Nasim Beg, Yasin Beg identified by their Advocate Mr. M. N. Ali. On inquiry, they equally stated that due to advise of villagers, the matter is settled and they do not want to prosecute pending criminal cases.

9. In both cases, respective informant and injured have pardoned the act of other side with a view to maintain peace in the village. Both sides are residing in the proximity in small village and all the time, they have to pass from the area of residence of other side. In view of the interest of villagers, they have decided to settle

the matter and not to prosecute with respective criminal cases.

10. In Crime No. 277/2018, we have gone through the statements of injured and in particular injury certificates. In the said crime, complainant Umar Beg has sustained only three abrasions like is the case of Yasim. The injured Nasim sustained only one laceration whilst injured Shakil sustained two lacerations and one abrasion. All injuries are stated to be caused by hard and blunt object. Having regard to the nature of injuries, they are not caused by sharp edged weapon. In view of that even on prima facie basis, the offence under Section 307 of the Indian Penal Code would not attract.

11. In crime No. 276/2018, the informant Riyaz, his father Riyasu and brother Jamir sustained injury. Informant Riyaz sustained two contusions caused by hard and blunt object, injured Jamir sustained laceration, contusion and abrasion similarly caused by hard and blunt object. We are in agreement that these injuries caused by hard and blunt object coupled with their statements cannot make out the definite intention to cause death. The applicability of Section 307 of the Indian Penal Code is also in serious doubt. The learned counsel appearing for the applicants would submit that merely because the Police have invoked the provision of Section 307 of the Indian Penal Code, it would not

preclude this Court from exercising inherent powers vested under Section 482 of the Code of Criminal Procedure. In this regard, our attention has been invited to the observations made in para 28 by the Supreme Court in case of ***Narinder Singh & Ors. Vs. State of Punjab & Anr, 2014 ALL MR (Cri) 1886 (S.C.)***. Para 28 is reproduced below:-

“28. 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 unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

12. In the light of said decision as well as the principles laid down therein, we have examined the entire material. Notably, the matter has not traveled far as even charges are not framed in both the cases. Having regard to the nature of injuries sustained and particularly as no sharp aged weapon was used, we deem fit to

exercise our inherent jurisdiction. More so, we are swayed by the fact that both parties are staying in the small hamlet and would be confronted with each other in day to day life. The settlement would certainly further to maintain peace and harmony in the village. Taking over all view of all above circumstances, we are of the opinion to accept the settlement and to quash respective proceeding.

13. In view of above, both applications are allowed. We hereby quash and set aside FIR in Crime No. 276/2018 registered with the Police Station Hiwarkhed, Dist. Akola for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 506 of the Indian Penal Code read with Sections 4, 25 of the Arms Act and related criminal case bearing Sessions Trial No. 13/2019 pending on the file of Sessions Court, Akot. We also quash and set aside FIR in Crime No. 277/2018 registered with the same Police Station for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 506 of the Indian Penal Code read with Sections 4, 25 of the Arms Act along with related criminal case bearing Sessions Trial No. 10/2019 pending on the file of Sessions Court, Akot.

14. Both applications stands disposed of in above terms.