

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

CRIMINAL APPLICATION (APL) NO. 1641 OF 2022

1. Mr. Himalaya s/o Ramchandra Joshi,
Aged about 33 years, Occ.: Police Sub-
Inspector.

2. Mr. Ramchandra s/o Narayan Joshi,
Aged about 58 years, Occ.: Retired.

3. Sau. Vidyalata w/o Ramchandra Joshi
Aged about 65 years, Occ.: Retired,
All R/o. Near Nimbalkar Hospital,
Bhigwan, Indapur, District – Pune.

... Applicants

Versus

1. State of Maharashtra,
Through Police Station Officer, Police
Station Pendhri, District : Gadchiroli.

2. Mrs. Renuka w/o Himalaya Joshi
Aged about 32 years, Occupation: Legal
Councilor, R/o. C/o. Dhyneshwar
Bhagwanrao Shete, Shivaji Nagar, Tamri
Vibhag, Osmanabad.

... Non-applicants

Mr. Rajnish Vyas, Advocate for applicants.

Mr. S.S. Doifode, APP for non-applicant No.1.

Ms. Kirti Deshpande, (appointed) Advocate for non-applicant No.2.

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

DATE : 25.01.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Heard finally by consent of the learned counsel for
the parties.

(2) This is an application in terms of Section 482 of the Code of Criminal Procedure, seeking to quash charge-sheet bearing No.16/2017 numbered as Sessions Case No.3/2018, pending on the file of learned Additional Sessions Judge, Gadchiroli, for the offences under Section 307, 498-A, 312 and 506 of the Indian Penal Code.

(3) The applicants are husband and parent-in-law of informant lady. The couple got married on 16.04.2016. The informant resumed to cohabit along with applicants at her matrimonial house. After initial few days, the applicants started to harass the informant at the instance of monetary demand. On 19.07.2016, at the instance of applicant – husband, informant was caused to abort her child. There were physical advances too at the hands of father-in-law. The informant stated that all the while her parents-in-law were insisting her for divorce.

(4) It is informant's case that on 30.11.2016 in the late hours the applicants beat her. While she was alone in the bedroom with her husband, the later who is serving in police department took out his AK-47 rifle. The husband started to threaten her by show of rifle however, in the rakshak bullet was fired in the roof. It is

informant's case that applicant – husband was about to kill her by firing bullet however, it was missed, therefore, she has lodged a report with the Police Station Pendhri, District Gadcholi. On receipt of information regarding cognizable offence, the police registered crime bearing No.16/2017 for aforesaid mentioned offences. The police carried investigation which culminated into filing of final report in the Court of jurisdictional magistrate. The case was committed to the Court of sessions where the same is pending for framing of charge.

(5) It is applicant's contention that since beginning the marriage does not run smoothly. There were temperamental differences in between the couple. During the pendency of trial, with the intervention of relatives and friends, the parties have settled the dispute out of Court. The couple has decided to disassociate from each other with a hope to lead peaceful life with a partner of their choice.

(6) In view of settlement arrived between the parties, they have jointly approached to the Family Court, Osmanabad, seeking divorce by way of mutual consent. They have incorporated the terms of settlement in the divorce petition itself. Primely, it has been agreed

that husband shall pay sum of Rs.14,50,000/- (Rs. Fourteen Lakhs Fifty Thousand Only) to wife towards one time maintenance and the parties would withdraw or assist to withdraw the rival cases. So also, towards the settlement, it was decided to obtain a decree by mutual consent. In accordance with that the parties made a statement before Family Court, who in turn has passed a decree of divorce by mutual consent on 23.01.2023 of which copy is tendered on record.

(7) The informant-wife has appeared in the Court and conceded about the amicable settlement. She has specifically admitted that she has received the agreed sum of Rs.14,50,000/- (Rs.Fourteen Lakhs Fifty Thousand Only) and has no objection to quash the concerned criminal case.

(8) Besides, the offence punishable under Section 307 of the Indian Penal Code, the rests offences are of compoundable nature in terms of Section 320 of the Code of Criminal Procedure. The learned counsel appearing for applicants would contend that though the crime is registered under Section 307 of the Indian Penal Code however, no injury was caused in the occurrence. Moreover, it is submitted that in order to maintain harmony and to secure peaceful

relationship, the parties have arrived on settlement, as well as the entire agreed sum has been paid to the informant. In the circumstances, he would submit that it is a fit case to exercise inherent jurisdiction of this Court to secure the ends of justice.

(9) Undoubtedly, this Court has inherent powers under Section 482 of the Code of Criminal Procedure, to exercise the same in befitting cases. The very object is to prevent the abuse of the process of Court or to secure the ends of justice. In reported case of ***Gian Singh Vs. State of Punjab and anr. (2012) 10 SCC 303***, the Hon'ble Supreme Court has emphasized that in exceptional circumstances Court can exercise its power having due regard to the nature and gravity of the crime and its social impact. It was followed by the decision of Supreme Court in case of ***Narinder Singh and Ors. Vs. State of Punjab and anr. (2014) 6 SCC 466***. In said case, the legal position has been summed up in paragraph 29 of the decision by expressing that if the parties have settled the matter and the offence does not fall in the category of heinous nature, depending upon facts, the Court can exercise its discretion. Particularly, in paragraph 29.6 of the decision, it has been guided that in respect of offence punishable under Section 307 of the Indian Penal Code, the Court should see the nature of injury

sustained, whether such injury is inflicted on the vital part of the body, nature of weapon used, medical report, and the surrounding circumstances. On these parameters, we have examined the contents of First Information Report. Basically, the incident erupted due to matrimonial dispute. The husband being in police service was supposed to have a weapon with him. It is to be noted that though he fired from the weapon it was at the roof meaning thereby no injury was caused at all. The informant was vulnerable harmless lady so he could have caused harm to her, if desired so. Since, the matter is settled the possibility of conviction is remote and bleak. Continuation of such prosecution would be a futile exercise. Always time of settlement also placed a crucial role. Undisputedly, though the charge-sheet has been filed till date, charges have not been framed meaning thereby the evidence is still at infancy stage. Considering the factum of settlement followed by paying entire agreed sum and a decree of divorce, we deem it fit to exercise out discretion in peculiar facts of this case. On the basis of FIR police carried investigation, file charge-sheet and the matter was pending before trial Court for a considerable. Having regard of these facts, we deem it appropriate that the applicant shall deposit certain costs to the State.

(10) In view of above, the criminal application is allowed. FIR bearing Crime No.07/2017 registered with Police Station Pendhri, District – Gadchiroli, along with related Session Case No.03/2018, pending on the file of learned Session Judge, Gadchiroli, is hereby quashed and set aside.

(11) The above order is subject to the applicants depositing costs of Rs.50,000/- to be deposited with District Legal Service Sub-Committee, Gadchiroli. The trial Court shall pass formal order of disposal of case after ensuring the deposit of cost amount. Deposit shall be made within a period of two weeks from today.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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