



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.997 OF 2024

1. Shaikh Azhar Shaikh Moin,
age 25 years, Occ. Not known,
Indian Inhabitant, residing at
Aurangabad, Tq. & Dist. Aurangabad.
2. Shaikh Moin Shaikh Suleman,
age 52 years, Occ. Not known,
Indian Inhabitant, Residing at
Mukhed, Tq. Mukhed, Dist. Nanded.
3. Shaikh Abdul Mujahid Shaikh Rahim,
age 34 years, Occ. Business,
Indian Inhabitant, Residing at Vishnupuri,
Tq. & Dist. Nanded.
4. Abdul Rajjak Abdul Wahid Alishaikh,
age 60 years, Occ. Pensioner,
Indian Inhabitant, Residing at Karodi Vasti,
Tq. Haveli, Dist. Pune. Petitioners.

Versus

1. The State of Maharashtra,
Through the Public Prosecutor,
High Court, Bombay, Aurangabad Bench.
2. Altafkhan P. Aayubkhan,
aged 22 years, Occ.-wager,
Indian Inhabitant, residing at
Navghat, Near Karbalaroad, Pathan
Grocery, Itwara, Nanded. Respondents.

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Advocate for Petitioners : Mr. M D Shinde
APP for Respondent 1 : Mr. A V Lavte
Advocate for Respondent no.2 : Mr. A A Khande

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CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

Reserved on : 18th October, 2024.

Pronounced on : 24th October, 2024.

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ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioners have approached this Court under Article 226 of the Constitution of India with prayer to quash and set aside the criminal proceeding in crime no.815 of 2023 registered with Police Station, Nanded (Rural) and consequential proceeding in Sessions Case No.76 of 2024 pending against the petitioners for the offences punishable under sections 307, 324, 323, 34 of the Indian Penal Code (for short IPC), section 3/25 and 3/27 of the Arms Act so also section 135 of the Maharashtra Police Act.

2. Mr. M.D. Shinde, learned advocate appearing for the petitioners submits that the FIR has been registered as regards to the incident dated 11.11.2023 on the report given by respondent no.2. However, due to intervention of the common friends, accused and respondent no.2 have arrived at amicable settlement. Now, respondent no.2 has no grievance against the accused persons. Even injured/victim is not interested to go ahead with the prosecution. However, since the offences are non-compoundable, present writ petition is filed invoking the inherent powers of this Court under section 482 of the Criminal Procedure Code as well as writ jurisdiction under section 226 of the Constitution of India for quashment of the FIR and consequential proceeding.

3. Mr. M.D. Shinde, would point out that respondent no.2 has filed affidavit confirming the settlement. Mr. Shinde, would further point out that in fact, son of petitioner no.4 had suffered the injury of bullet. He filed affidavit in support of quashment of the FIR. He would further submit that although the offences are non-compoundable, in light of the law laid down by the Supreme Court of India in case of **Gian Singh Vs. State of Punjab** and another reported in (2012) 10 SCC 303, and **Narindar Singh Vs. State of Punjab** (2014) AIR SCW 2065, it is permissible to quash and set aside the FIR and the proceeding on the basis of the settlement between the parties. Mr. Khande learned advocate for respondent no.2 accepts contentions of the petitioners.

4. Per contra, Mr. A.V Lavte, learned APP appearing for respondent no.1-State opposed the prayer contending that apart from the offences under Indian Penal Code, offences under Arms Act, 1959 is also incorporated in the FIR and charge-sheet. The material on record clearly establish use of Pistol at the time of incident causing injury of bullet to the victim. He would urge that, in view of gravity of the offences, this is not a fit case to exercise inherent powers in favour of the petitioners.

5. We have considered the submissions advanced on behalf of learned advocates appearing for the respective parties. The report as regards to criminal antecedents of the petitioners was also called from the concerned Investigating officer, who confirms that no other offence is registered against the petitioners. There are no criminal antecedents on record.

On the other hand, offence in crime no.817 of 2023 was registered against the respondent no.2 Altaf Khan. In pursuance of said offence, RCC No.319 of 2024 is pending. As such except present FIR, petitioners are not named as accused in any other crime.

6. Considering the past history of the petitioners and material in the charge-sheet, we find that allegations regarding use of pistol is only against the accused Shaikh Abdul Razak i.e petitioner no.4. However, the bullet hit his son Mohammad Rafiq Shaikh, who has filed affidavit that he recovered from the injury and he has no grievance against the accused persons. He states that he is not sure about who fired bullet that hit him. No other person appears to have received any serious injury in the incident.

7. We find that incident occurred owing to civil dispute due to rival claims of ownership in respect of the plot between the parties. The bullet fired at incident hit to son of petitioner no.4. He filed affidavit that he is not sure about who fired bullet. Similar affidavit filed by informant. Hence, no purpose would serve by continuing proceeding for offences under the Indian Penal Code.

8. In that view of the matter, we find it appropriate to entertain the writ petition to the extent of quashment of the offences punishable under section 307, 324, 323, 34 of the IPC and section 135 of the Maharashtra Police Act as against the petitioners herein, however, we decline to entertain the prayers as regards to the offences punishable under section 3/25 and

3/27 of the Arms Act since use of the pistol in public place thereby causing injury to the victim will have to be treated crime against the State and cannot be given status of personal dispute as is the case for offences under Indian Penal Code in facts of this case. Resultantly, we proceed to pass the following order.

ORDER

- i. Criminal Writ Petition is **partly allowed**.
- ii. The First Information Report in crime no.815 of 2023 registered with Police Station, Nanded (Rural), Tq & District Nanded and consequential proceeding in Sessions Case No.76 of 2024 pending against the petitioners for the offence punishable under sections 307, 324, 323, 34 of the Indian Penal Code and section 135 of the Maharashtra Police Act is hereby quashed and set aside as against the petitioners herein. However, the proceeding shall continue against the petitioners to the extent of offences punishable under section **3/25 and 3/27** of the Arms Act.

3. Writ Petition stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

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