



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3030 OF 2024

- 1) Ashpak Shaikh Isak Shaikh,
Age 32 years, Occu: Business,
R/o-1-22-24, Shaha Bazar,
Chhatrapati Sambhajnagar,
- 2) Shaikh Sohel Shaikh Sattar,
Age-21 years, Occu: Business,
R/o-Arish Masjit, Rahat Colony,
Chhatrapati Sambhajnagar,
- 3) Sofiyan Kalim Shaikh,
Age-34 years, Occu: Business,
R/o-Plot No.66/1, Galli No.1,
Opp. Rubi Hospital, Abrar Colony,
Chhatrapati Sambhajnagar

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
City Chowk Police Station,
Aurangabad,
- 2) Shaikh Adnan Shaikh Mushir,
Age-20 years, Occu: Labour,
R/o-Ahmed Raza Road, Shahbazar,
H. No.2-3-85, Near Champa Masjid,
At Post-Harsul, Bashir Nagar,
Chhatrapati Sambhajnagar.

...RESPONDENTS

...
Mr. Vishal A. Bagdiya Advocate for Applicants.
Mr. S.A. Gaikwad, A.P.P. for Respondent No.1.
Mr. G.R. Syed Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : 14th DECEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 371 of 2023 registered with City Chowk Police Station, Aurangabad and later on byway of amendment, for quashing the proceedings in Sessions Case No.351 of 2024 pending before the learned Sessions Judge, Aurangabad for the offence punishable under Sections 307, 364, 323, 504, 506 read with Section 34 of the Indian Penal Code.

2. Respondent No.2 appeared through Advocate *suo moto* on 6th August 2024 and tendered affidavit-in-reply stating that he does not want to proceed with the matter. On that date the charge-sheet was not filed and therefore, this Court had directed the learned APP to get the police papers. By the passage of time the charge-sheet came to be filed and the amendment has been carried out. Copy of the charge-sheet is now made available. If

we consider the contents of the affidavit-in-reply filed by respondent No.2, it is to be noted that he says that he has resolved the dispute between he himself and the applicants and he has no objection if the FIR is quashed and set aside.

3. The learned APP submits that as against applicant No.1, there are three cases pending, one is Crime No.302 of 2018 for the offence punishable under Section 302 of the Indian Penal Code registered with Chhawani Police Station, another is Crime No.41 of 2016 registered with Phulambri Police Station for the offence punishable under Section 395, 392, 438 read with Section 34 of the Indian Penal Code and Crime No.66 of 2022 registered with City Chowk Police Station, for the offence punishable under Section 336 of the Indian Penal Code and Section 4 punishable under Section 25 of the Indian Arms Act.

4. The charge-sheet does not show that any weapon has been seized from any of the accused persons. As regards Section 307 of the Indian Penal Code is concerned, the medical certificate shows that respondent No.2 has sustained three injuries, i) blunt trauma over head with hard and blunt object, nature of injury is simple, ii) blunt trauma over both upper limbs

with hard and blunt object, nature of injury is simple and
iii) blunt trauma over right leg with hard and blunt object, nature
of injury is simple. X-ray and other departments notice would
also show that there was no grievous injury.

5. One more aspect to be noted is that the statement of
respondent No.2. was recorded under Section 164 of the Code of
Criminal Procedure by the learned Judicial Magistrate First Class,
Aurangabad, in which it was clearly stated by him that he had
given the FIR in the rage of anger and he does not want to
proceed with the matter. Certainly, the case is definitely not
made out to attract the ingredients for the offence punishable
under Section 307 of the Indian Penal Code. The weapon
allegedly used, is stated to be knife, which has not been seized
and it does not show that any vital part of the body of the
informant had received injury which could have been resulted
into death. As regards the other offences are concerned, as
aforesaid, the informant does not want to proceed with the
matter and therefore this would be a fit case to exercise our
powers under Section 482 of the Code of Criminal Procedure.

6. Now, as regards the criminal background of applicant No.1 is concerned, it cannot be taken into consideration for the simple reason that as regards the present case, the facts do not attract any serious offence and even as per the say of the informant the FIR was given in rage of anger. However, the said fact is taken note of for imposing the cost as the entire machinery of the police as well as judiciary has been exercised by both the parties. Therefore, while allowing the proceedings to be quashed, we impose the cost on the parties.

7. As regards the cost amount to be deposited is concerned, we are considering the Judgment of the learned Single Bench of this Court in *Writ Petition No.2318 of 2019 (Minakshi Chitra Mandir vs, the State of Maharashtra and others)*, decided on 6th March 2023, wherein note was taken of the medical dispensary available at the High Court, which is run by the State has basic facilities but it is not able to cope up with the emergent situations for want of some necessary machinery. Note was taken that if a person suddenly suffers from heart attack in the High Court premises, then it would take at least forty five minutes to transport such person to the nearest hospital and therefore, in the said case a three members Committee,

consisting of the President of the Bar Association of High Court, Aurangabad, Dr. Sanjay Varade, Medical Officer of the High Court Medical Dispensary and Registrar (Administration) of the High Court Bench at Aurangabad was constituted. The Registry was entrusted to receive the payment byway of cost and then to make payment of the machinery or any other instrument purchased, as per the directions of the Committee. However, so far as the present matter is concerned, we consider that in the present matter it is not necessary to protect the financial interest of the Bar Association. Therefore, we direct that in the present matter the Committee should be consisting of Dr. Sanjay Varade, Medical Officer of the High Court Medical Dispensary and the learned Registrar (Administration) of the High Court, Bench at Aurangabad.

8. With these observations, we proceed to pass the following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in Sessions Case No.351 of 2024 pending before the learned Sessions Judge, Aurangabad for the offence

punishable under Sections 307, 364, 323, 504, 506 read with Section 34 of the Indian Penal Code, arising out of the First Information Report vide Crime No. 371 of 2023 registered with City Chowk Police Station, Aurangabad, stands quashed and set as against all the applicants i.e. 1) Ashpak Shaikh Isak Shaikh 2) Shaikh Sohel Shaikh Sattar and 3) Sofiyan Kalim Shaikh, subject to deposit of cost of Rs.10,000/- (Rupees Ten Thousand only) by each of the applicants and respondent No.2, before 20th December 2024.

(III) We are making it clear that deposit of the cost is a condition precedent. Failure on the part of the applicants and respondent No.2 to deposit the said cost amount, would revive the proceedings before the learned Sessions Judge, Aurangabad.

(IV) The applicants and respondent No.2 to deposit the cost with the Registry i.e. the Committee consisting of Dr. Sanjay Varade, Medical Officer of the High Court Medical Dispensary and the learned Registrar (Administration) of the High Court, Bench at Aurangabad, as indicated in Paragraph No.7, before 20th December 2024. After the deposit of the said amount, the Committee is at liberty to utilize the said amount for purchase of articles / instruments useful for the patients visiting the Medical Dispensary situated in the High Court premises.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE