

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3141 OF 2018**

Lancy Louis Mascarenhas
v/s.

.... Petitioner

The State of Maharashtra and anr.

.... Respondents

Mr. J.S. Kini a/w. Mr. Aum Kini i/b. Mr. Suresh Dubey for the Petitioner.
Mrs. A.A. Takalkar, APP for the State.
Mr. Milind Deshpande for Respondent No.2.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATED : 02nd APRIL, 2024.

P. C. :-

1) Petitioner, accused in R.C.C.No.2324 of 2021 pending on the file of J.M.F.C., Vasai, arising out of C.R.No.97 of 2018 registered with Waliv Police Station, District Palghar for the offence punishable under Section 326 of the Indian Penal Code by the Respondent No.2, informant, has filed this Petition for quashing of said crime.

2) Mr. Kini, learned counsel appearing for the Petitioner submitted that, it was the perception of the Petitioner that, his daughter was being harassed by the Respondent No.2 and therefore on the date and time of the incident, it is alleged that, the Petitioner assaulted Respondent No.2 with a knife.

2.1) He submitted that, taking into consideration the injuries mentioned in the Injury Certificate and the fact that, the Respondent No.2 was hospitalized barely for a period of 02 days, the application of Section

326 of IPC to the present crime is misplaced.

2.2) He further submitted that, even otherwise during the pendency of the present Petition, the Petitioner and Respondent No.2 have resolved their disputes and differences and the Respondent No.2 has given his consent for quashing of the present crime. The Respondent No.2 has filed an Affidavit dated 01st August, 2018, giving his consent for quashing of the crime in question. He therefore prayed that, the said crime may be quashed with the consent of Respondent No.2.

3) Mr. Deshpande, learned Advocate appearing for Respondent No.2 conceded to the fact of filing of an Affidavit dated 01st August, 2018 by Respondent No.2 duly affirmed before the Assistant Registrar of this Court. In his affidavit, the Respondent No.2 has admitted the fact of amicable settlement between the parties and has given his consent for quashing of the crime in question.

3.1) Mr. Deshpande, on instructions of Respondent No.2, reiterates the contents of his Affidavit dated 01st August, 2018 and 'no objection' of Respondent No.2 for quashing of the crime in question.

4) Perusal of the chargesheet indicates that, there is substance in the contention of learned counsel for the Petitioner that, the application of Section 326 of IPC to the present crime is misplaced. Though the medical certificate mentions about grievous wounds, it is not specified, as to which wound is grievous. The nature of injuries mentioned in the injury

certificate indicates that, at the most offence under Section 325 of IPC can be said to have been made out.

5) In view of the above and taking into consideration the fact that, the Respondent No.2 has given his consent for quashing of the crime in question, we are inclined to quash C.R.No.97 of 2018 registered with Waliv Police Station, District Palghar.

6) As we expressed our opinion for quashing of said C.R.No.97 of 2018 registered with Waliv Police Station, District Palghar, learned Advocate for the Petitioner on instructions submitted that, the Petitioner will pay a cost of Rs.25,000/- to the Advocates' Association of Western India Generation Next Fund, Mumbai within a period of two weeks from the date of uploading of Order. The said statement is accepted as an undertaking given to this Court.

7) We therefore direct the Petitioner to pay a cost of Rs.25,000/- to the Advocates' Association of Western India Generation Next Fund, Mumbai, within a period of two weeks from the date of uploading of present Order on the official website of Bombay High Court.

7.1) Details of the bank account for payment of cost are as under :-

Account Name	:-	Advocates Association of Western India Generation Next.
Account Number	:-	000110110007807.
Bank Name	:-	Bank of India.
Branch Name	:-	Mumbai Main.
IFSC Code	:-	BKID0000001.

7.2) Petitioner to deposit the said cost of Rs.25,000/- within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

8) In view of the above and subject to payment of cost, Petition is allowed in terms of prayer clause (a).

9) It is made clear that, if the cost is not paid within stipulated period as mentioned above, the Petition shall stand revived automatically and in that event, the trial Court will proceed with the hearing of said case expeditiously.

10) List the Petition on board on 24th April, 2024 under the caption 'for reporting compliance' of present Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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