



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1791 OF 2024

1. Deepak Anand Gaware,
Age 54 Years, Occu: Service,
2. Chetan Deepak Gaware,
Age 27 years, Occu: Service,
3. Sanket Deepak Gaware,
Age 25 years, Occu: Service,
4. Harsh @ Monty Deepak Gaware,
Age 22 years, Occu: Service,
All residing at Beside New Ratio Shop,
Budha Vihar, Behind Sarvodaya,
Hospital, Ghatkopar (West),
Mumbai – 400 086.

.....Petitioners

Vs.

1. The State of Maharashtra,
(Ghatkoper Police Station, C.R.No.82 of 2019)
2. Ravi Shankar Bhatkar,
Age 42, Occu: Real Estate Agent,
Residing at Kajolkar Society,
Beside New Ration Shop,
Bhimnagar, Behind Sarvodaya Hospital,
Ghatkopar (West), Mumbai – 400 086.

.....Respondents

WITH

CRIMINAL WRIT PETITION NO.1788 OF 2024

Ravi Shankar Bhatkar,
Age 45 years, Occupation: Estate Agent,
Residing at Kajolkar Society,
Beside New Ration Shop, Bhimnagar,

Behind Sarvodaya Hospital,
Ghatkopar (West), Mumbai – 400 086.

...Petitioner

Versus

1. The State of Maharashtra
At the instance of Ghatkoper Police Station,
In C.R.No.83 of 2019.

2. Deepak Anand Gaware,
Age 57 years, Occupation: Service,
Residing at Beside New Ration Shop,
Budha Vihar, Behind Sarvodaya Hospital,
Ghatkopar (West), Mumbai – 400 086.

...Respondents

Mr. Prakash Wagh with Mr. Ankush Gangurde, for the Petitioners in
WP/1791/2024 and for Respondent No.2 in WP/1788/2024.

Mr. Mahesh B. Gupta, i/b. Mr. Pradyumna Waghmare, for Petitioner in
WP/1788/2024 and for Respondent No.2 in WP/1791/2024.

Smt. Madhavi H. Mhatre, APP, for Respondent No.1-State in both Petitions.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.**

DATE : 9th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale) :-

1) Rule. Rule is made returnable forthwith and with consent of
the parties, Petitions are taken up for final disposal.

1.1) Learned APP waives notice on behalf of the Respondent No.1-
State in both Petitions and learned counsel Mr. Mahesh Gupta represents
Respondent No.2 in Writ Petition No.1791 of 2024 and Mr. Prakash Wagh
represents Petitioners in Writ Petition No.1791 of 2024 and Respondent
No.2 in Writ Petition No.1788 of 2024.

2) The Petitioners in W.P.No.1791 of 2024 seek to quash and set
aside criminal proceedings bearing Sessions Case No.1580 of 2019 pending

before the learned Sessions Court, Greater Bombay arising out of FIR bearing No.82 of 2019 dated 3rd February 2019 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 307, 323 and 504 read with 34 of the Indian Penal Code, 1860 ("IPC").

3) Petitioner in W.P.No.1788 of 2024 seek to quash and set aside criminal proceedings bearing No.593/PW/2020 pending before the Metropolitan Magistrate, 49th Court, Vikroli, Mumbai arising out of F.I.R. bearing No.83 of 2019 dated 3rd February 2019 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 324, 323 and 504 read with 34 of the IPC.

4) The complaint of Ravi Bhatkar, i.e., Respondent No.2 in W.P.No.1791 of 2024 in the F.I.R. is that on 2nd February 2019, there was an electric failure in his house. The electrician was called. In order to check the fault in the electricity lines, the main switch was turned off resulting in disconnecting some of the lines in the locality. The complainant in the other F.I.R. came to the premises and questioned Mr. Bhatkar regarding switching off the main line. It is the grievance of the other complainant Mr. Deepak Gaware that, there was a marriage function in his house when the lights went off and hence he went to Mr. Bhatkar to enquire about the same. The arguments gradually led to a scuffle and one of them was hit with a Bamboo pole. This is the long and short of the contents of both F.I.Rs.

5) It appears that in the interregnum, the parties decided to amicably resolve their dispute as they are neighbors living in same vicinity, having good relations with each other.

6) Both the complainants have filed their respective consent Affidavits dated 24th April 2024 and 25th April 2024 attested before a Notary Public. They specifically state in their Affidavits that, neither of the complainants have any objection to quash the impugned F.I.Rs. They also state that, the entire sequence of events happened on account of misunderstanding between parties.

7) Mr. Wagh and Mr. Gupta submit that, one of the alleged offences in question although registered under Section 307 of the I.P.C., primarily arises out of a dispute among the neighbors residing in the same locality and can be resolved amicably, hence quashing of the impugned F.I.Rs. shall result in harmony between them, improving their relationship. The dispute arose out of an inadvertent spontaneous scuffle between parties and now they are desirous of settling the matter.

8) We have heard the learned counsels and have pursued the documents on record with their assistants. The law as laid down in the decision of the Supreme Court in the matter of *Narinder Singh vs. State of Punjab*¹, and followed in a series of cases and more recently affirmed by a Bench of three Judges of the Supreme Court in the case of *State of Madhya*

¹ (2014) 6 SCC 466

*Pradesh vs. Laxmi Narayan and Ors.*² is summarized as under:

- i) the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
- ii) such power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;
- iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely based on compromise between the victim and the offender;
- iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under

² (2019) 5 SCC 688

Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR, or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it, or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of the Supreme Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

- v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which

are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

9) After careful analysis of the facts in the present cases, in the light of the legal position as summarized above, we are of the considered opinion that, the incident in the F.I.Rs. impugned arose out of misunderstanding between the neighbors in the locality, on the spur of momentary anger. The offence although serious, does not have a serious impact on the society. We have also perused the injury certificates placed on record. The nature of injury recorded in the certificate indicates a Contused Lacerated Wound and three abrasion on left hand and head respectively of Mr. Bhatkar, which are simple as indicated in the injury certificates itself and therefore the application of Section 307 of the I.P.C. may not be legally tenable.

10) Petitioners are present in the Court today. On instructions, Mr. Wagh and Mr. Gupta, respective learned counsels for the complainants state that, in view of the settlement, the complainants have no objection to quash

the criminal proceedings bearing Sessions Case No.1580 of 2019 and No.593/PW/2020 pending before the learned Sessions Court, Greater Bombay and Metropolitan Magistrate, 49th Court, Vikroli, Mumbai. Considering the statements in the consent Affidavits, the settled legal position, and the reason on account of which the quarrel took place resulting in the incident, we are inclined to quash the F.I.Rs. to secure the ends of justice.

11) In view thereof, we are inclined to quash criminal proceedings bearing Sessions Case No.1580 of 2019 pending before the learned Sessions Court, Greater Bombay arising out of FIR bearing No.82 of 2019 dated 3rd February 2019 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 307, 323 and 504 read with 34 of the I.P.C. and criminal proceedings bearing C.C.No.593/PW/2020 pending before the learned Metropolitan Magistrate, 49th Court, Vikroli, Mumbai arising out of F.I.R. bearing No.83 of 2019 dated 3rd February 2019 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 324, 323 and 504 read with 34 of the IPC.

12) As we expressed our opinion for quashing of criminal proceedings bearing Sessions Case No.1580 of 2019 and 593/PW/2020, pending before the Sessions Court, Greater Bombay and Metropolitan Magistrate, 49th Court, Vikroli, Mumbai, Mr. Wagh and Mr. Gupta, learned Advocates for the respective Petitioners on instructions submitted that

Petitioners in W.P.No.1791 of 2024 will pay a cost of Rs.5,000/- each, totaling to Rs.20,000/- jointly or severally and Petitioner in W.P.No.1788 of 2024 will pay a cost of Rs.5,000/-, to the Central Police Welfare Fund of Maharashtra Police within a period of two weeks from uploading the present Order on the official website of High Court of Bombay. The said statement is accepted as an undertaking to the Court.

13) In view thereof, we direct the Petitioners in both the Petitions respectively to pay a cost of Rs.20,000/- and Rs.5,000/- respectively to the Central Police Welfare Fund within a period of two weeks from the date of uploading of present Order on the official website of High Court of Bombay.

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

Bank Name :- Axis Bank Limited.

Branch Name :- Worli, Mumbai (M.H.), Mumbai-400 025

Account Name :- Central Police Welfare Fund

Account Number :- 914010029005759

IFSC Code :- UTIB0000060

13.2) Petitioners in both the Petitions to deposit the said cost of Rs.20,000/- and Rs.5,000/- respectively within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

14) In view of above and subject to payment of cost, Petitions are allowed in terms of prayer clauses (a) in respective Petitions.

15) It is made clear that, if the cost is not paid by the Petitioners in both the Petitions within stipulated period as mentioned above, the Petitions shall stand revived automatically and in that event, the trial Court shall proceed with the criminal proceeding expeditiously

16) List the Petition on board on 1st August 2024, under caption 'for reporting compliance' of present Order

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)