

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2843 OF 2024**

1. Sunny @ Ashwajeet Vasant Phulpagare,
Age 20 Years, Indian Inhabitant,
R/o.Room No.218, Dr. Ambedkar Nagar,
Bhatwadi, Ghatkoper (W), Mumbai.
2. Jitendra Narendra Phulpagare,
Age 35 Years, Indian Inhabitant,
R/o. Room No.218, Dr. Ambedkar Nagar,
Bhatwadi, Ghatkoper (W), Mumbai.
3. Vasant Shivram Phulpagare,
Age 47 Years, Indian Inhabitant,
R/o. Room No.218, Dr. Ambedkar Nagar,
Bhatwadi, Ghatkoper (W), Mumbai.Petitioners

Vs.

1. State of Maharashtra,
Through Sr. Inspector of Police,
Ghatkoper Police Station, Mumbai,
In FIR No.793/2018.
2. Mr. Amol Devram Sonawne,
Age 28 Years, Indian Inhabitant,
R/o. Khandoba Tekdi, Ashtavinayak Soc.,
Panchsheel Nagar, Bhatwadi, Ghatkoper (W),
Mumbai – 400 086.Respondents

Mr. Shreyas Chaudhari, for the Petitioners.
Mr. Vinit A. Kulkarni, APP, for Respondent No.1-State.
Mr. Datta Mane, for Respondent No.2.
Mr. Amol D. Sonawne, Respondent No.2 is present.

WITH

CRIMINAL WRIT PETITION NO. 2841 OF 2024

1. Amol Devram Sonawne,
Age 32 years, Indian Inhabitant,
R/o:-Khandoba Tekdi, Ashtavinayak Soc,
Pachsheel Nagar, Bhatwadi, Ghatkoper,
(West), Mumbai-400 086.
2. Pravin Manohar Shinde
Age 39 Years, Indian Inhabitant,
R/o:- Room No. 43, Khandoba Tekdi,
Ashtavinayak Soc, Pachsheel Nagar,
Bhatwadi, Ghatkoper (W), Mumbai-86
3. Harshal Ashok Tapase
Age 31 Years, Indian Inhabitant,
R/o:- Room No. 100, Khandoba Tekdi,
Ashtavinayak Soc, Pachsheel Nagar,
Bhatwadi, Ghatkoper (W), Mumbai-86.
4. Akshay Ashok Tapase,
Age 34 Years, Indian Inhabitant,
R/o:- Room No. 100, Khandoba,
Tekdi, Ashtavinayak Soc, Pachsheel Nagar,
Bhatwadi, Ghatkoper (W), Mumbai-86.
5. Sudhir Arun Waghmare,
Age 41 Years, Indian Inhabitant,
R/o:- Room No. 5, Khandoba Tekdi,
Ashtavinayak Soc, Pachsheel Nagar,
Bhatwadi, Ghatkoper (W), Mumbai-86
6. Chetan Bhagwan Sonawne
Age 26 Years, Indian Inhabitant,
R/o: - Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86
7. Aniket Dilip Divekar
Age 28 Years, Indian Inhabitant,
R/o: - Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86

8. Sagar Prakash Sonawne
Age 26 Years, Indian Inhabitant,
R/o: - Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86
 9. Rahul Prakash Sonawne
Age 30 Years, Indian Inhabitant,
R/o: - Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86
 10. Paras Popat Kharat
Age 27 Years, Indian Inhabitant,
R/o: - Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86
 11. Hemant Suresh Adhav
Age 27 Years, Indian Inhabitant,
R/o: - Room No.107, Ambedkar Nagar,
Behind Muktabai Hospital, Bhatwadi,
Ghatkoper (W), Mumbai-86
 12. Mayur Satyawar Sathe
Age 25 Years, Indian Inhabitant,
R/o:- Ambedkar Nagar, Near
Naland Buddha Vihar, Near Indumati,
Kirana Stores, Bhatwadi,
Ghatkoper (W), Mumbai-86.
 13. Abhijit Suresh Adhav
Age 30 Years, Indian Inhabitant,
R/o:- Room No.107, Ambedkar Nagar,
Behind Muktabai Hospital, Bhatwadi,
Ghatkoper (W), Mumbai-86.
- ...Petitioners

Versus

1. State of Maharashtra
Through Sr. Inspector of Police,
Ghatkoper Police Station, Mumbai,
In FIR No.793/2018
2. Sunny @ Ashwajeet Vasant Phulpagare
Age 25 Years, Indian Inhabitant,
R/o: - Room No. 218, Dr. Ambedkar Nagar
Bhatwadi, Ghatkoper (W), Mumbai. ...Respondents

Mr. Datta Mane, for the Petitioners.

Mr. V. N. Sagare, APP, for Respondent No. 1 – State.

Mr. Shreyash Chaudhari, for Respondent No. 2.

Mr. Sunny @ Ashwajeet Phulpagare, Respondent No.2 is present.

**CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.
DATE : 3rd JULY, 2024.**

JUDGMENT (Per Dr. Neela Gokhale) :-

- 1) Leave to amend to correct the name of Petitioner No.1 in Writ Petition No.2843 of 2024 and Respondent No.2 in Writ Petition No.2841 of 2024. Amendment be carried out forthwith.
- 2) Rule. Rule is made returnable forthwith and with consent of the parties, Petitions are taken up for final disposal.
 - 2.1) Learned APP waives notice on behalf of the Respondent No.1, State in both Petitions and learned counsel Mr. Datta Mane represents Respondent No.2 in Writ Petition No.2843 of 2024 and Mr. Shreyas Chaudhari represents Respondent No.2 in Writ Petition No.2841 of 2024.
- 3) The Petitioners in W.P.No.2843 of 2024 seek to quash and set aside criminal proceedings bearing Sessions Case No.344 of 2020 pending

before the learned 49th Additional Chief Metropolitan Magistrate, Vikroli, Mumbai arising out of FIR bearing No.793 of 2018 dated 16th December 2018 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 307, 337, 323, 504 and 506 read with 34 of the Indian Penal Code, 1860 (“IPC”).

4) The Petitioners in W.P.No.2841 of 2024 seek to quash and set aside criminal proceedings bearing No.1114/PW/2021 pending before the learned 49th Additional Chief Metropolitan Magistrate, Vikroli, Mumbai arising out of F.I.R. bearing No.794 of 2018 dated 16th December 2018 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 452, 326, 336, 337, 323, 144, 143, 147, 148, 149, 427, and 504 of the IPC.

5) The Petitioners in both proceedings are accused in cross F.I.R.’s against each other. The incident arose out of disputes between youths residing in the same locality. A dispute arose between the parties on a trivial matter as to allowing one of them to light up a chillim from the bonfire lit by one side of the parties. A verbal altercations took place leading to a scuffle, where one of them was hit by a stone on his forehead. One thing led to another and a full-blown physical fight took place. It is alleged that, thereafter the person hit, along-with his friends went to the others’ house to settle scores and once again there was a scuffle. These are the facts that can be discerned from a collective reading of both the F.I.R.

6) It appears that in the interregnum, the parties decided to amicably resolve their dispute after the intervention by the local community people.

7) Both the complainants have filed their respective consent Affidavits dated 1st July 2024 attested before the Notary Public. They specifically state in their Affidavits that, the F.I.Rs. were lodged by them on a misunderstanding and therefore they do not wish to pursue their proceedings. Neither of the complainants have any objection to quash the impugned F.I.Rs.

8) Mr. Chaudhari and Mr. Mane submit that, the alleged offence in question although registered under Section 307 of the I.P.C., primarily arises out of a dispute among youth 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 a pure misunderstanding between parties and now they are desirous of settling the matter.

9) 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.

10) 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 disagreements amongst youths 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 on forehead and a temporal region which is simple in nature, as indicated in the injury certificates itself.

11) Petitioners are present in the Court today. On instructions, Mr. Mane and Mr. Chaudhari, 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.344 of 2020 and C.C.No.1114/PW/2021 pending before the learned 49th Additional Chief

Metropolitan Magistrate, 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.

12) In view thereof, we are inclined to quash criminal proceedings bearing Sessions Case No.344 of 2020 pending before the learned 49th Additional Chief Metropolitan Magistrate, Vikroli, Mumbai arising out of FIR bearing No.793 of 2018 dated 16th December 2018 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 307, 337, 323, 504 and 506 read with 34 of the I.P.C. and criminal proceedings bearing C.C.No.1114/PW/2021 pending before the learned 49th Additional Chief Metropolitan Magistrate, Vikroli, Mumbai arising out of FIR bearing No.794 of 2018 dated 16th December 2018 registered with Ghatkopar Police Station, Mumbai for offences punishable under Sections 452, 326, 336, 337, 323, 144, 143, 147, 148, 149, 427, and 504 of the IPC.

13) As we expressed our opinion for quashing of criminal proceedings bearing Sessions Case No.344 of 2020 and C.C.No.1114/PW/2021 pending before the learned 49th Additional Chief Metropolitan Magistrate, Vikroli, Mumbai, Mr. Mane and Mr. Chaudhari, learned Advocates for the respective Petitioners on instructions submitted that Petitioners will pay a cost of Rs.5,000/- each, totaling to Rs.15,000/- in W.P.No.2843 of 2024 and Rs.65,000/- in W.P.No.2841 of 2024 jointly or

severally, 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 given to the Court.

14) In view thereof, we direct the Petitioners in both the Petitions respectively to pay a cost of Rs.15,000/- and Rs. 65,000/- 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.

14.1) 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

14.2) Petitioners in both the Petitions to deposit the said cost of Rs.15,000/- and Rs.65,000/- respectively within stipulated period as noted above and submit receipt of the same in the Registry of this Court.

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

16) 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 said criminal proceedings expeditiously

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

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)