



Judgment

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1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 67 OF 2024.

Sitaram s/o Pandurang Gunjkar,
Aged about 60 years,
Occupation – Labourer, resident of
Ukali, Taluka Mahekar,
District Buldhana (In Jail). ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Borkhedi,
District Buldhana.

2.Vaishali w/o Karan Jire @ Vaishali
d/o Sitaram Gunjkar,
Aged about 23 years, Occupation –
Household, resident of Neharunagar,
Taluka Motala, District Buldhana. ... **NON-APPLICANTS.**

Mr. V. Awchat, Advocate for the Applicant.
Mr. J.Y. Ghurde, A.P.P. for Non-applicant No.1.
Mr. K. Bhoskar, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : FEBRUARY 12, 2024.

Rgd.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. This is an application seeking to quash the charge sheet bearing Sessions Case No.71/2023 pending before the District and Sessions Court, Malkapur, Buldhana arising out of first information report bearing Crime No.376/2023 registered with Borkhedi Police Station, District Buldhana for the offence punishable under Section 307 of the Indian Penal Code.

3. The accused is husband of victim and father of the informant girl. At the instance of a report dated 23.08.2023, lodged by daughter Vaishali, the aforesaid crime came to be registered. It is the prosecution case that the accused got married with the mother of informant, namely Sangeeta long back. Due to matrimonial dispute, both husband and wife were residing separately since last 10 years.

Rgd.

However, the accused intermittently used to visit the house of the victim i.e. his estranged wife.

4. On 23.08.2023 around 7 a.m. the accused went to the house of the victim and picked quarrel. In the afternoon, the accused dealt repeated blows by sickle at the person of the victim causing bleeding injuries. The informant-daughter was present, who has witnessed the occurrence and lodged the report. Police have completed the investigation and filed charge-sheet.

5. The accused was arrested and till date he is languishing in jail. The matter was amicably settled. The victim wife has filed this application on behalf of her husband seeking to quash the criminal proceeding on account of mutual settlement. The victim-mother as well as the informant-daughter both have filed affidavit stating about the settlement and their urge to quash the prosecution. Both have appeared before us through their Advocate, and stated about settlement. The victim-Sangeeta has specifically stated that though her relations with the accused were strained, however, intermittently

they used to meet. She stated that pendency of the criminal prosecution may adversely affect her hope of re-union.

6. The accused is charged for commission of offence punishable under Section 307 of the Indian Penal Code. In case of **Narinder Singh and others .vrs. State of Punjab and another – [2014] 6 SCC 466**, the Supreme Court has observed that mere invocation of Section 307 of the Indian Penal Code would not preclude, but, the Court has to examine the factual aspect while considering the case for quashing. The relevant observations made in paragraph no.29.6 of the said decision is as under :

“29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. 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 proving 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. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.”

7. In the light of above observations we have examined the police papers and injury certificate in particular. No doubt sickle has

been used in commission of the offence. Injury certificate discloses that there were total 5 injuries out of which 4 were of simple nature. 5th injury was a fracture, however, it was at index finger. Though the accused was armed with sickle, however, it appears that it was not used on the neck, chest or stomach, nor blows were forcible. Always the nature of weapon and medical report are the guiding factors. Having regard to the nature of injuries and the place of body where they are inflicted, the applicability of provisions of Section 307 of the Code is a matter in question.

8. The facts are peculiar one. The assailant is husband, while the victim is wife, who herself has approached to this Court for quashing of the prosecution. The marriage in between them is still in subsistence. Though the relations are strained, however, intermittently they used to live together. The wife is still desirous or under a hope of re-union. She has specifically expressed before us that continuation of prosecution would foreclose her desire and hope of re-union. Considering these peculiar facts, coupled with the nature of injuries, interest of justice would be secured by quashing the criminal proceedings. One can very well foresee that since the

7

victim lady is seeking quashing, there are less chances of victim leading evidence against her husband. In that case, the chances of conviction are remote and bleak. It is informed by the learned counsel for the applicant that yet the trial Court has not framed charges. In view of above facts and circumstances, we are inclined to exercise our inherent powers. Hence, the following order.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The Sessions Case No.71/2023 pending before the District and Sessions Court, Malkapur, Buldhana arising out of first information report bearing Crime No.376/2023 registered with Borkhedi Police Station, District Buldhana for the offence punishable under Section 307 of the Indian Penal Code, is hereby quashed and set aside.
- (iii) The concerned Sessions Court shall pass necessary orders for release of the accused and disposal of muddemal property in accordance with the law.

JUDGE**JUDGE**