



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1760 OF 2024

- 1) Pradip S/o Santukrao Khomne,
Age-57 years, Occu:Agri.,
R/o-D-202, Tirupati Plaza,
Jalna, Taluka and District-Jalna,
- 2) Dilip S/o Santukrao Khomne,
Age-65 years, Occu:Artist,
R/o-Dahisar-East, Sangita Apartment,
Flat No.404, Mumbai,
- 3) Ravi S/o Pradip Khomne,
Age-34 years, Occu:Education,
R/o-D-202, Tirupati Plaza,
Jalna, Taluka and District-Jalna

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Investigating Officer,
Kadim Jalna Police Station,
Jalna, Taluka an District-Jalna,
- 2) Manish S/o Govind Bhale,
Age-56 years, Occu:Business,
R/o-C/o- Adv. M.G. Bhale,
Near Childhood School,
Besides Vrandavan Nursery,
Bhagyanagar, Jalna,
Taluka and District-Jalna.

...RESPONDENTS

...
Mr. S.V. Deshmukh Advocate for Petitioners.
Mr.A.D. Wange, A.P.P. for Respondent No.1 – State.
None present for Respondent No.2 though served.
...

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

DATE : 24th MARCH, 2025

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

1. Present Petition has been filed, for quashing for quashing the Charge-sheet No.95 of 2015 i.e. the proceedings in R.C.C. No. 531 of 2015 pending before the learned Judicial Magistrate First Class, Court No.7, Jalna arising out of the First Information Report (for short "the FIR") vide Crime No. 34 of 2015 registered with Kadim Jalna Police Station, Jalna, District-Jalna for the offence punishable under Sections 394, 452, 323, 504, 506, 201 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. S.V. Deshmukh for the petitioners, learned APP Mr. Wange for respondent No.1. Respondent No.2 served but failed to appear.

3. Learned Advocate for the petitioners submit that the relationship between the informant and the petitioners is that of tenant and landlord, in respect of the shop owned by them. There were some disputes earlier, however, when Civil Miscellaneous Application was filed, there was compromise

between them and it can be so evident from the photocopy of the order passed by the concerned Court on 6th February 2016. By accepting the huge amount of Rs.10,00,000/- as monetary compensation, the proceedings had come to an end. The informant had accepted the said amount and had given consent to withdraw all the civil and criminal litigations between them. Such compromise was also recorded in R.C.S. No.74 of 2015, filed by the informant seeking injunction. That Civil Suit was also disposed of. However, the informant had then filed an application i.e. Misc. Criminal Application No.184 of 2015 for directing investigation under Section 156(3) of the Code of Criminal Procedure in respect of the alleged offence that had taken place around 7.00 p.m. on 8th February 2015 in his house. The present FIR also relates to the same incident. The said Miscellaneous Application contended that the offence under Sections 307, 395, 452, 427, 323, 504, 506 of the Indian Penal Code has been committed. The matter was put up for arguments but it appears that thereafter it was never persuaded further.

4. Learned Advocate further submits that one more application was filed by the informant bearing Criminal M.A. No.392 of 2015, in respect of the alleged incidents taken place between 17th February 2015 to 26th March 2015, for the offence

punishable under Sections 120-B, 188, 406, 420, 463, 465, 467, 471 of the Indian Penal Code. In that matter, by a detailed order dated 27th August 2015, the learned Judicial Magistrate First Class, Court No.4, Jalna had directed the applicant therein i.e. present informant to obtain sanction, however, it was not produced and therefore, by order dated 12th September 2022, the concerned Court had dismissed the proceedings. Yet the FIR was managed to be lodged by the informant on 23rd February 2015, in respect of alleged incident dated 8th February 2015, which can be said to be after the suppression of the criminal application for investigation under Section 156(3) of the Code of Criminal Procedure. Now, even after the acceptance of huge amount of Rs.10,00,000/-, the informant is not coming forward to reiterate the compromise. Even on merits, it can be seen that there is delay in lodging the FIR. The incident is stated to have occurred in the house of the informant and it is stated that all the three accused, after forcibly entering the house of the informant, by latching the door, started assaulting him stating that as to why he had gone to the Court i.e. as to why he has filed the proceedings. When his mother tried to rescue him, she was also assaulted. His mobile phone having two SIM cards along with the cash of Rs.5,000/- was forcibly taken away by

petitioner Ravi. Mother's mobile was also snatched. Motorcycle key as well as key of the shop which were on the hook of the wall, were forcibly taken. His signatures were taken on blank stamp papers. He was tried to be throttled. Damage was caused to the belongings and by giving threats, the petitioners left the house. In the supplementary statement, the informant has tried to give further explanation.

5. It has been submitted on behalf of the petitioners that, it is to be noted from the statement of his mother that she was not knowing anybody and refers all of them as unknown persons. She has stated that somebody had latched the door after entering into the house and her son was man-handled, tried to be strangled. She raised her voice in rescue but she was slapped. She opened the front door of the house and went outside and thereafter all those persons also went away. While going, those persons had taken her mobile. Her supplementary statement has been recorded, wherein later on she has made improvements. There are statements of other two witnesses also who had initially stated that they had seen some persons going inside the house of the informant, but then in their supplementary statements by making improvements, they say that from the informant they could gather the information as to

why those persons had come and who were they. With this background, it would be unjust to ask the petitioners to face the trial.

6. The learned APP submits that though the matter has been compromised as alleged, yet respondent No.2 has not appeared before this Court and has not reiterated. When there is ample evidence against the petitioners, the FIR and the charge-sheet cannot be quashed.

7. At the outset, it is required to be noted the events in chronological manner. Here the incident which is alleged to have taken place first is dated 8th February 2015. Initially the FIR of the informant was not taken and therefore, he had approached the concerned Magistrate by filing Criminal Misc. Application No. 184 of 2015. It appears that the said matter was put up for arguments, but prior to the assignment of that matter to 4th Joint Judicial Magistrate First Class, Jalna by the learned Chief Judicial Magistrate, Jalna on 24th February 2015, it appears that the present FIR vide Crime No.34 of 2015 was registered on 23rd February 2015. That fact appears to have not been disclosed by the informant to the concerned Court.

8. Further, the documents on record would show that one FIR vide Crime No.248 of 2015 was registered on 29th October 2015, which was even inclusive of the incident dated 8th February 2015. There were other subsequent incidences also about which the reference has been made in the FIR. After the matter was investigated, the investigating officer had submitted the report, in which there is specific reference to the compromise that has been arrived. Statement of informant, present respondent No.2 has been recorded by way of supplementary statement on 29th January 2016 in that matter, stating that there was compromise between him and accused persons on 29th January 2016 and that compromise was in fact in respect of all the civil and criminal matters between them. The copy of the compromise deed was presented before the investigating officer and the informant has accepted that he has received amount of Rs.10,50,000/- towards the compromise. The informant has also made a statement that he has no complaint to make now neither want to proceed with the complaint. After perusal of the said report which was presented before the learned Magistrate, it appears that on 16th March 2016, notice was issued to the informant. What order has been passed in that matter, we do not know. But, then the fact remains that there is support to the

statement of the present petitioners that there is compromise between them and respondent No.2. The orders passed in civil matters as well as in criminal matters are before this Court, some of which speak about the compromise.

9. Now, it appears that respondent No.2 – informant though properly served, is intentionally not appearing before this Court to reiterate that he has accepted the amount and compromised the matter. The Court is not then powerless under such circumstances. Already compromise has been read and recorded by a competent Court and those terms can be considered here in the present matter also, wherein in the said compromise it was stated by the informant that he will not proceed further with the civil or criminal litigations.

10. Even on merits also, except the bare statement of the informant there is no concrete evidence. No identification parade appears to have been held for the mother of the informant who was not knowing the present petitioners. Under such circumstance, this is a fit case where we should exercise the powers under Section 482 of the Code of Criminal Procedure, as the case is squarely covered under the guidelines laid down

in *State of Haryana vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604. Therefore, we proceed to pass the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The Charge-sheet No.95 of 2015 i.e. the proceedings in R.C.C. No. 531 of 2015 pending before the learned Judicial Magistrate First Class, Court No.7, Jalna, arising out of the First Information Report vide Crime No. 34 of 2015 registered with Kadim Jalna Police Station, Jalna, District-Jalna for the offence punishable under Sections 394, 452, 323, 504, 506, 201 read with Section 34 of the Indian Penal Code, stands quashed and set aside as against petitioner Nos. 1 to 3 i.e. - 1) Pradip S/o Santukrao Khomne, 2) Dilip S/o Santukrao Khomne and 3) Ravi S/o Pradip Khomne.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25