



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3988 OF 2023

1. Nitin Prakash Jadhav
Age: 45 years, Occu.: Business,
R/o. Renuka Nagar, Shivajinagar,
Aurangabad, Tq. And Dist. Aurangabad.
2. Buntty @ Devesh Chandresh Dixit
Age: 33 years, Occu.: Business,
R/o. Ellora Steel Co. Ltd.,
N-7, CIDCO, Aurangabad,
Tq. And Dist. Aurangabad.
3. Prashant Ramesh Thorat
Age: 40 years, Occu.: Business,
R/o. CL-8, 60/3, 12th Scheme,
Shivajinagar, Aurangabad,
Tq. And Dist. Aurangabad.

.. Applicants

Versus

1. The State of Maharashtra
2. Parmeshwar Sakharam Wagh
Age: 25 years, Occu.: Service,
R/o. Wankhede Nagar, HUDCO
Corner, Aurangabad.

.. Respondents

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Mr. Satej S. Jadhav, Advocate for applicants.

Mrs. P. R. Bharaswadkar, APP for respondent No.1/State.

Mr. D. S. Ingole, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.**

DATE : 10 FEBRUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Leave is granted to amend the application and file copy of the charge-sheet on record. Amendment to be carried out immediately.

2. Present application has been filed under Section 482 of the Code of Criminal Procedure initially for quashing the FIR vide Crime No.179 of 2023 dated 30.05.2019 registered with Kranti Chowk Police Station, District Aurangabad and later on, by way of amendment, for quashing the Charge-sheet No.115 of 2019 i.e. the proceedings in R.C.C. No.13660 of 2019 pending before the learned Chief Judicial Magistrate, Aurangabad for the offences punishable under Sections 307, 326, 324, 341, 427 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act, under Section 135, 142 of the Maharashtra Police Act, 1951.

3. Learned Advocate for the applicants and respondent No.2 submit that the parties have arrived at compromise and the settlement deed has been produced. There was no previous enmity between them, but due to the intervention of respectable persons they have decided to give a full stop to the dispute and

voluntarily want to give no objection for quashment of the FIR and the proceedings. A duly notarized document has been produced on 05.12.2023, however, there was some defect in the earlier compromise deed as the name of injured was not mentioned in compromise deed. Therefore, fresh compromise deed has been prepared and submitted. Both the learned Advocates reiterate the same. As regards applicant Nitin Jadhav is concerned, learned APP submits that there were criminal antecedents and applicant No.2 was externed from Aurangabad area. Therefore, the State has objection in the matter.

4. In view of the fact that the charge-sheet has been produced, we have considered the facts also. Respondent No.2 submits that when he was proceeding out of Court, at that time, his car was intercepted in Sillekhan Chowk, accused Bunty Dixit had come there on two wheeler. According to him, accused Bunty Dixit had taken out gun from his scooter and with the help of said gun he had hit glass of the car as a result of which glass got damaged. Thereafter, accused Nitin took out sword from the dickey of the car and came near the car of the informant. He also gave blow of the sword by placing his hands from the portion of glass, which was damaged. As a result of the said blow, informant received

injury to his mouth, nose and because of that he lost his two teeth. He was taken out of the car and was assaulted by rod and sword. His friend Rameshwar Gaware was also assaulted by accused Nitin by sword. In the meantime accused Prashant came on motorcycle and assaulted informant with gun from the backside, as a result of which he fell down. Thereafter, 4-5 persons came there and he was given kicks and fists blows. According to him, all this has been done in order to commit his murder. There is provisional injury certificate of the informant which states that he had received four injuries i.e. (i) blunt trauma to the mouth, which might have been caused by hard and blunt object and the nature of the injury was simple, (ii) contused lacerated wound to inner side of mouth, 3 x 2 x 1 in size, caused with hard and blunt object and the nature of injury was simple, (iii) blunt trauma to the nose caused with hard and blunt object and the nature of injury was simple and (iv) contused lacerated wound over left eyebrow, 2 x 2 x 1 in size, caused with hard and blunt object and the nature of injury was simple. The remark shows that he was referred to Surgery Department, Ophthalmology Department and ENT Department. No further reports appears to have been collected, though there is

communication to that effect. Therefore, as on today, taking into consideration the said medical certificate where it does not show that any sharp edged weapon has been used and also that there is no endorsement that he had lost two teeth, at the most it appears that the offence would be covered under Section 324 of Indian Penal Code. Even as regards the medical certificate of his friend Rameshwar Gaware, there were two injuries. One is CLW over frontal region caused with hard and blunt object and the nature of injury is simple and the second is blunt trauma on left ear caused with hard and blunt object and the nature of injury is simple. Therefore, the medical evidence does not support the offence under Sections 307, 326 of Indian Penal Code. Another fact to be noted is that in the supplementary statement of the informant which was recorded on 03.06.2019 he has stated that in fact, he was frightened on 30.05.2019 and was unable to remember exactly what had happened. Though he had told that accused Prashant and Bunty Dixit had damaged the glass of the car with gun, now he remembers that they were not having gun, but Bunty Dixit had damaged the glass of the car with rod. So there is major twist in his statement, however, he says that accused Nitin was having sword which had caused injury to

himself and his friend. Statement of injured Rameshwar Gaware is on the line of supplementary statement of the informant. We cannot ignore that on the same day around 21.26 hours i.e. just one hour later, accused Nitin has lodged FIR against the present informant and witness Rameshwar Gaware i.e. FIR vide Crime No.180 of 2019 registered with the same Police Station for the offences punishable under Sections 326, 324, 195-A, 341, 506 read with Section 34 of Indian Penal Code. So there were cross-complaints. The sword has been seized from the spot, therefore, when there is a cross case, it becomes difficult to consider as to exactly who had used it. There are statements of eye witnesses wherein it is stated that even police had arrived at the spot immediately and states that iron rod and sword were kept in the dickey of the informant. In the statement under Section 164 of the Code of Criminal Procedure, those two eye witnesses have not given the names of accused persons and, in fact, here there is no identification parade that was held. Under such circumstance, when these lacunas are coming and there is a compromise and also the fact that the evidence does not support the charge-sheet for the offences punishable under Sections 307, 326 of Indian Penal Code, we consider this to be a fit case where we can

exercise our powers under Section 482 of the Code of Criminal Procedure. However, since the entire machinery has been used, we propose to impose cost on both the sides. Hence, following order :

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.179 of 2023 dated 30.05.2019 registered with Kranti Chowk Police Station, District Aurangabad as well as the Charge-sheet No.115 of 2019 i.e. the proceedings in R.C.C. No.13660 of 2019 pending before the learned Chief Judicial Magistrate, Aurangabad for the offences punishable under Sections 307, 326, 324, 341, 427 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act, under Section 135, 142 of the Maharashtra Police Act, 1951, stand quashed and set aside as against the present applicants.
- III) The applicants to deposit cost of Rs.50,000/- each and respondent No.2 to deposit cost of Rs.50,000/- with the Registry i.e. the Committee consisting of learned Registrar (Administration) of the High Court, Bench at Aurangabad and the Medical Officer of the High Court Medical Dispensary, Aurangabad on or before 28.02.2025.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm