

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 5231 OF 2024

1. Mr.Vijay Rambabu Sonkar,
Age 30, Occ- Service,
 2. Mr.Deepakumar Rambabu Sonkar,
Age 32 Years, Occ- Service,
Both 1 & 2 Residing at : Room No. 132,
Sheetal Compound, Akashawani,
Near Gausiya Masjid, Gate No. 07,
Malwani Malad (west),
Maharashtra – 400 095.
 3. Mr.Ranjit Rajput Sonkar,
Age 26 Years, Occ- Service,
 4. Mr.Rohit Rajput Sonkar,
Age 24 Years, Occ- Service,
Both 3 & 4 Residing at: Sheetal Compound,
Abdul Hamid Road, Near Akashwani,
Rathodi Village, Malwani, Malad (West),
Mumbai 400 095
- ... Petitioners

Versus

1. State of Maharashtra
(At the instance of Malwani Police Station)
 2. Mrs.Shirin Faizan Shaikh @ Shirin,
Age 28, Occ- Housewife,
Room No. 08, Sheetal Compound,
Gate No. 07, Near Nirankar Nagar,
Malwani Malad (West),
Mumbai – 400 0095
- ... Respondents.

AND
WRIT PETITION NO. 5233 OF 2024

1. Mrs. Shirin Faizan Shaikh @ Shirin,
Age 28, Occ – Housewife,
Room No 08, Sheetal Compound,
Gate No 07, Near Nirankar Nagar,
Malwani Malad (West), Mumbai 400095.
2. Mrs. Heena Sameer Ansari @ Heena
Age 39 Years, Occ - Housewife
Residing at: Room No 132/10,
Sheetal Compound, Azmi Nagar,
Gate No 07, Near Nirankar Nagar,
Malwani Malad (west),
Maharashtra - 400017.
3. Mrs. Mehrunnisa Raheman Sayed @ Munni
Age 51 Years, Occ - Housewife
Residing at: Sheetal Compound,
Gate No 07, Behind Nirankar Nagar,
Akashwani, Malwani, Malad (West),
Mumbai 400095.
4. Mrs. Sajida Khatun Mohammed Imtiyaz Alam @Sajida
Age 42 Years, Occ - Housewife,
Residing at: Sheetal Compound,
Gate No 07, Behind Nirankar Nagar,
Akashwani, Malwani, Malad (West),
Mumbai 400095.
5. Mr. Zahid Ali Shaikh @ Zahid,
Age 50 Years, Occ - Business
Room No 01, Gani Chawl, Sheetal
Compound, Behind Gausiya Masjid,
Malwani Malad (West), Mumbai 400095.
6. Mr. Salman Raheman Sayed @ Salman
Age 33 Years, Occ - Service
Residing at: Room No 08, Sheetal Compound,

Gate No 07, Malwani Malad (West),
Mumbai 400095.

7. Mrs. Kamal Sultana Alamgeer Khan @ Kajal
Age 26 Years, Occ - Housewife
Residing at: Room No 08,
Plot No 132, Garib Nawaz Sagar,
W/F Soc, Azmi Nagar, Gate No 07,
Near Nirankar Nagar,
Malwani Malad (west), Maharashtra - 400017.
8. Mr. Sohail Raheman Sayed @ Sohail
Age 31 Years, Occ - Service
Residing at: Sheetal Compound,
Behind Nirankar Nagar, Akandivalik,
Gate No 07, Akashwani, Malwani,
Malad (West), Mumbai 400095.
9. Mrs. Kaushar Bano Shaikh @
Kausar Mohd Sufail Shaikh
Age 45 Years, Occ - Housewife,
Residing at: 132/20, Shital Compound,
Near Nirankar Nagar, Gate No 07,
Malwani, Malad (West),
Mumbai 400095.
10. Mrs. Sanad Mohd Sameer Ansari @ Sana
Age 17 Years, Occ - Student
Residing at: Jan Seva Chawl, Linking Road,
Behind Raghwendra Mandir Oshiwara,
Jogeshwari (West), Mumbai-400102. ... Petitioners

Versus

1. State of Maharashtra
(At the instance of Malwani Police Station)
2. Mrs. Sadhna Rahul Sonkar,
Age 27 years, Occ. Housewife,
Currently Residing at: Room No 32,
Sheetal Compound, Kadiya Chawl,

Gate No 07, Malwani, Malad (West)
Mumbai-400095

... Respondents

...

Mr.Shane Illahi Turkey with Mr.Karim Pathan for the Petitioners in WP No. 5231 of 2024.

Mr.Fazlurrahman Shaikh for the Petitioners in WP No. 5233 of 2024.

Ms.P.N.Dabholkar, APP for the Respondent -State in WP No. 5231 of 2024.

Mr.R.M.Pethe, APP for the Respondent -State in WP No. 5233 of 2024.

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**CORAM : RAVINDRA V. GHUGE AND
RAJESH S. PATIL, JJ.**

DATE : 2nd January, 2025

JUDGMENT (*Per Ravindra V. Ghuge, J.*)

1. **Rule.** Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioners in Writ Petition No.5231 of 2024 have approached this Court setting forth prayer clause 9 (a), which reads as under :

“(a) This Hon’ble Court may kindly issue writ of certiorari and quash/ de-register the criminal proceedings in C.R. No. 1349 of 2024 registered at Malwani Police Station, Mumbai for offences punishable u/s 115 (2), 352, 79 & 3 (5) of BNS 2023”.

3. We have considered the submissions of the learned Advocates appearing for the parties and the learned APPs. With their assistance, we have gone through the Petition paper-books and the record available.

4. A First Information Report (FIR) bearing No. 1349 of 2024 was registered on 12th October, 2024 at 00:29 hours (00.29 am) with the Malwani Police Station, Brihan Mumbai City.

5. The Informant has approached the Police Station and lodged a complaint, leading to the invoking of Sections 115 (2), 352, 79 and 3 (5) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as BNS 2023).

6. The First Informant belonging to the Muslim community, is a 27 years lady who has approached the said Police Station. The FIR reveals that a religious function was performed by a community of people belonging to the Hindu religion. On the occasion of the marriage of the Complainant's brother, which was in the offing, the family members of the Complainant were preparing to visit the market for

shopping purposes, on 11th October, 2024 between 5.00 pm to 5.30 pm. A person, namely, Vijay, residing in the same lane, was sitting in the pandal along with his mother. The Complainant approached the mother of Vijay and uttered a sentence as "आंटी ये सब गलत हैं". This one simple sentence evoked an unprecedented/unexpected reaction and Vijay, along with Rohit, Ranjit and Deepchand, abused the Complainant in foul and filthy language by using the words "रंडी साली मादरचोद". The Complainant's brothers, namely, Salman Sayyed, Sahel Sayyed and Shohaib Bhai and the mother of the Complainant, namely, Mehrunnisa Sayyed, heard the abuses and came close to the Complainant. The Accused assaulted the male members of the Complainant's relatives, including the Complainant and her mother. Physical injuries were suffered by Mehrunnisa and a friend of the Complainant, namely, Kamal Sultana. This has led to the registering of an FIR.

7. It is alleged that the other side filed an FIR bearing No. 1348 of 2024, only to counter the first FIR.

8. The learned Advocates for the Petitioners in both these Petitions, submit that now both the parties desire to live peacefully and they have decided to settle the issue. They pray that the FIRs be quashed

and the criminal proceedings be brought to an end.

9. A copy of the affidavit in reply of the Complainant in relation to the FIR bearing No. 1349 of 2024 (page Nos. 27 to 32), dated 24th October, 2024 and a copy of the affidavit in reply of the Complainant in FIR bearing No. 1348 of 2024 (page Nos. 48 to 55), dated 24th October, 2024 are placed on record. Reliance is placed on a judgment delivered by the Hon'ble Supreme Court in ***Narinder Singh & Ors. Vs. State of Punjab & Anr.***¹, more specifically on the principles culled out by the Hon'ble Supreme Court below paragraph 31, which read as under :

“31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

¹ (2014) 6 SCC 466

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a 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. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) 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.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On

the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.

10. The learned APPs have strenuously opposed these Petitions contending that this issue/ crime would not fall within clause (IV) below paragraph 31. The present case is not a criminal case arising out of a commercial transaction or having overwhelmingly and pre-dominantly civil character or arising out of matrimonial relationship or family disputes, which could be quashed when the parties come together. They contend that on a simple sentence/utterance of the Complainant (in the first FIR), led to a serious reaction by the Accused, who not only used abusive and filthy language, but even went on to address the lady members, including a Complainant, as prostitutes. The ladies were beaten up and they have suffered injuries. This is a crime against the

society. They, therefore, submit that the scope of Section 482 of the Code of Criminal Procedure (Cr.PC) should not be enlarged to include even such a case.

11. Ms.Dabholkar, the learned APP, submits that the cross complaint in the nature of FIR bearing No. 1348 of 2024, registered on 12th October, 2024 at 00:05 hours, indicates that an offence was allegedly committed by the Complainant and her close relatives who had lodged the first FIR. It is alleged that these Complainants had objected to the Hindu community from performing religious ceremonies and insisted that the loudspeaker should not be used. It is alleged that they climbed up on the stage in the pandal and desecrated the statute of a deity and the male members were beaten up with fists and kicks. There is an allegation of injuries being suffered by these persons who lodged the second FIR. The investigation is complete according to the learned APP. The learned APP further submits that the charge-sheet is ready and would be filed before the appropriate Court. It appears that the communal frenzy between the two communities has led to the scuffle. Offences are clearly made out in both the FIRs.

12. In view of the above, we find that the present case, in the

light of *Narinder Singh & Ors. (supra)*; *Rajeev Kourav Versus Baisahab and Others*²; *Kaptan Singh Versus State of Uttar Pradesh and Others*³ and *State of Odisha Versus Pratima Mohanty and Others*⁴, needs to be tried before the Competent Court. Specific contentions of offences are found in both the FIRs. The process of law would take its own course through the trial. We are not convinced that we should exercise our jurisdiction under Section 482 of the Cr.PC and ends of justice would not be met by quashing both the FIRs.

13. Both these **Writ Petitions stand dismissed.**

14. Rule stands discharged.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)

2 (2020) 3 SCC 317

3 (2021) 9 SCC 35

4 (2022) 16 SCC 703