

(2012) 10 BOM CK 0015

In the Bombay High Court

Case No : Criminal Application No. 4105 of 2012

Shailesh and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 307
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(i)(x)

Citation : (2013) ALLMR(Cri) 57

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : Kingaonkar Subodh S, for the Appellant; Ghanekar and Nilesh S. for R/2 to 7, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—Heard learned respective counsel for the parties. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, matter is taken up for final hearing. This is an application preferred by the applicant no. 1 i.e. original complainant and applicant nos. 2 and 3 injured persons u/s 482 of the Code of Criminal Procedure for the quashment of RCC No. 1337/2012 filed by them against the respondent nos. 2 to 7 herein i.e. original accused for the offence p/u/s 307, 120-B, 147, 148, 149, 341, 324, 506 of Indian Penal Code and u/s 3 (i) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. The applicant No. 1 Shailesh since minor represented through his natural guardian mother namely Shobha Sunil Pagare is the first informant, whereas, applicant no. 2 Ramesh Magare and applicant no. 3 Nikhil Kokne are the injured persons in Crime No. 1-116/2012 registered with City Chowk Police Station, Aurangabad. The respondent no. 1 is the state of Maharashtra, whereas, respondent nos. 2 to 7 are the original accused in the aforesaid crime which was

filed on 7.7.2012, for the offence punishable u/s 307, 120B, 147, 148, 149, 341, 324, 506 of Indian Penal Code and u/s 3 (i) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, pending before Judicial Magistrate F.C. Aurangabad.

3. The incident in question took place on a trifle ground on 6.7.2012, when the applicant no. 1 Shailesh was returning from his shop and, he saw some persons gathered in city chowk police station and, therefore, he went there and, on inquiry learnt that said mob had gathered to lodge the complaint of outraging modesty of one Komal. It is further alleged that after lodging the report when they were returning at about 10.30 p.m. on the bridge, the aforesaid accused persons stopped them and accused no. 2 Rashid gave abuses on caste and assaulted on back of the complainant by sword. It is also alleged that accused no. 3 Mohammad Khaled assaulted by knife on head of injured i.e. applicant No. 2 Ramesh. It is further alleged that accused no. 4 Abdul Jameel assaulted by baseball whereas accused no. 6 Abdul Juber assaulted the complainant and injured by hockey stick. Copy of the First Information Report is annexed at Exh."A",

4. According to the applicants there was no enmity or previous dispute between them. The applicant no. 1 i.e. first informant and applicant nos. 2 and 3 injured and their family members as well as respondent nos. 2 to 7 original accused desire to maintain brotherly and good relations and intends to put an end to all the litigations between them to live a peaceful life. Accordingly, the applicants do not want to proceed with the case and therefore, applicants and respondents have entered into a settlement/compromise which is annexed herewith at Exh.B.

5. Moreover, the applicants contend that in the facts and circumstances, provision of Section 307 of Indian Penal Code cannot be attracted and offence which can be at the most made out is compoundable and just because section 307 is added in the FIR matter cannot be compounded. Hence, the applicants are required to file the present application. According to the applicants, incident took place on a trifle reason of spilling water and on inquiry of the same. It is also contention of the applicants that even after without adding or subtracting anything from the F.I.R. no offence constitute against the present respondent nos. 2 to 7.

6. It is submitted by learned counsel for the applicants that applicants have filed application for quashing of First Information Report bearing Criminal Application No. 3328/2012 and same was withdrawn as charge sheet was filed before learned Judicial Magistrate F.C. and copy thereof is annexed at Exh.C. Now, after carrying out investigation, investigating officer has filed charge sheet before learned Judicial Magistrate F.C., Aurangabad which is registered as RCC No. 1337/2012 and copy thereof is annexed at Exh."D". It is also submitted that, the case is not yet committed to the court of Sessions, Aurangabad. Hence, the applicants have preferred present application for the prayers as stated out herein above.

7. I have perused the deed of settlement Exh.B annexed hereto. It appears to have been executed between the complainant and injured on one part and accused nos. 1 to 6 on the other part. It is stated in the said application that relationship between the party no. 1 and party no. 2 is cordial and they desire to settle the matter amicably. It is also stated that dispute between them arise out of trifle ground and in misunderstanding and therefore, party no. 1 lodged the report against party no. 2. However, there after they realized that they should not have lodged the report against party no. 2 i.e. respondent nos. 2 to 7 herein. It is further stated that party nos. 1 and party no. 2 are residents of same vicinity and, are having good relations and also wants to maintain cordial relations and desire to put an end to the litigation and reside peacefully. According to them, they are not having enmity and there is no previous dispute between them and both the parties want to maintain brotherly and good relations in between them. Thus, party no. 1 is not willing to proceed further in the matter.

8. The applicant no. 1 Shailesh since minor is represented through his natural guardian mother Shobha Sunil Pagare and both are present today in the court as well as applicant no. 2 Ramesh and applicant No. 3 Nikhil alleged injured persons are also present in the court, as well as accused nos. 1 to 6 i.e. respondent nos. 2 to 7 herein are also present today in the court.

They admitted their respective signatures on the deed of settlement and contents thereof dated 6.9.2012. They have sworn in affidavit below said deed of settlement. Accordingly, the aforesaid parties expressed their desire to settle the matter and to put an end to the dispute between them. Accordingly, said deed of settlement is taken on record and marked as document "X"

9. It is apparently clear from the averments made in the present application and contents in the deed of settlement that the complainant party and accused party have settled their dispute amicably out of the court and, they intend to maintain peaceful and cordial relations between them, since the dispute arose between them is on trifle ground. Moreover, it is also apparent that the aforesaid parties intend to put an end to the said dispute and to reside peacefully as they belonged to said vicinity, Moreover, first informant is not willing to prosecute the complaint lodged by him against accused persons. However, since offence punishable u/s 307 of Indian Penal Code and offences u/s 3 (i) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, are non compoundable u/s 320 of the Code of Criminal Procedure, the parties have approached this court for quashing of the proceedings pending before learned Judicial Magistrate F.C., Aurangabad.

10. In the circumstances, it is amply clear that first informant as well as injured persons do not intend to prosecute the complaint RCC No. 1337/2012 further more, which is pending before learned Judicial Magistrate F.C. Aurangabad and therefore, in this scenario prosecuting the said RCC further would be abuse of process of court. Moreover, considering the settlement between the parties as

recited in the deed of settlement and, as also averred in the present application, there is no possibility of getting conviction against respondent/accused persons in the said R.C.C. as the first informant is not willing to prosecute further more and hence, proceeding with the said RCC pending before learned Judicial Magistrate F.C. Aurangabad will be a futile exercise. Therefore, having regard to the settlement between the parties, inherent powers of this court u/s 482 of the Code of Criminal Procedure are required to be invoked to prevent abuse of process of court and, also to secure the ends of justice and consequently, proceedings in RCC No. 1337/2012 pending before learned Judicial Magistrate F.C. Aurangabad deserves to be quashed and set aside. Accordingly, present application deserves to be allowed. In the result, present application is allowed in terms of prayer clause "B" thereof and proceedings in RCC No. 1337/ 2012 pending before Judicial Magistrate First Class, Aurangabad, against the respondent nos. 2 to 7 herein for the offence punishable under sections 307, 120-B, 147, 148, 149, 341, 324, 506 of Indian Penal Code and u/s 3 (i) (x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act stands quashed and set aside. Rule is made absolute in the aforesaid terms. Registry to inform the concerned court accordingly.