

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 954 OF 2015

Shri Mayur Batra and others

.....Applicants

V/s.

Smt. Amita Javeri and another

....Respondents

Mr. Manoj J. Bhatt for Applicant
Mrs. A. A. Mane APP for the State.
Mr. Jivlesh H. Gawit. Police Constable
M.R.A. Marg Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 28, 2015.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Learned counsel for the petitioner submits that respondent i.e. original complainant Smt. Amita Javeri is present in the Court and that parties have amicably settled the dispute and therefore, it is prayed that order issuing process be quashed by consent.
- 4) The facts of the case are as follows.
- 5) The respondent Amita Javeri filed a complaint before 38th Addl

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Chief Metropolitan Magistrate at Mumbai alleging therein that she has been cheated by present applicants. It is alleged that she is the constituent of the accused company. That she is trading with shares. According to the complainant, respondents had not conducted the business in accordance with law. That she had deposited shares mentioned in the complaint. It is further alleged that complainant had deposited the shares of various companies from various accounts in account no. 120347000014480 which happens to be account of present petitioner's company. She had also given delivery instruction slips and had entrusted her shares with accused nos. 2 & 3 i.e. managers of said M/s MSB Securities. According to the complainant, company had started trading in the cash segment without even raising a margin and allowed to illegally hold on to shares for several days without any adherence to the rules and regulations of SEBI. She has narrated several issues to substantiate that petitioners had not conducted the business in accordance with law. She has further alleged that she has deposited shares more than Rs. 40 lacs and that petitioners had issued duplicate contract notes to her and that she had realized it

subsequently. Contract notes were not given to her within the stipulated time. Complainant has submitted that the petitioners had cheated her due to which she has suffered huge losses. It is also alleged that accused had induced her to deliver her shares to the accused and as a result of which she was deceived by the accused persons. Upon perusal of complaint, learned Magistrate by an order dated 27/06/2007 had issued directions under section 156 (3) of Code of Criminal Procedure, 1973.

6) Pursuant to the said direction, M.E.C.R. No. 6 of 2007 was registered against accused at M.R.A. Marg Police Station, Mumbai and the accused were being prosecuted for offence punishable under sections 406, 409, 418, 420, 504, 506 r/w 34 of Indian Penal Code. Investigating agency had investigated the complaint. Investigating agency had conducted the investigation in respect of each of the allegations levelled against accused by the complainant. On 17/12/2007, senior Police Inspector of M.R.A. Marg Police Station filed report before concerned Court and had demonstrated that upon meticulous investigation, he has arrived at a conclusion that complaint

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has been filed due to mistake of fact i.e. by misconstruing the facts. According to the investigating agency, there was no material to substantiate the allegations levelled by the complainant and therefore, he had requested the court to accept the 'C' summary. However, learned court was of the opinion that despite there being an investigation, a thorough inquiry is necessary and therefore, learned Magistrate had issued process against accused for offence punishable under section 409, 420 r/w 34 of Indian Penal Code by an order dated 17/05/2008.

7) It is a matter of record that petitioner had not filed revision application under section 397 of Code of Criminal Procedure, 1973 seeking relief of quashing of issuance of process. Petitioners have approached this Court seeking relief of quashing of order of issuance of process as no case is made out.

8) Learned APP submits that the impugned order is passed on 17/05/2008 whereas present application is filed on 07/09/2015 i.e. practically after more than six years of the passing of the order and therefore, present application should not be entertained.

9) Learned counsel for the petitioner submits that there is absolutely

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no progress in the matter in the last six years and proceedings are at a stand still and therefore, applicants had made every endeavour to arrive at an amicable settlement. Applicants had therefore, consulted the complainant and had decided to convince her that no criminal case is made out against applicants. It is decided between the parties that applicants would pay amount of Rs. 16 lacs by demand draft to the complainant. Complainant had agreed to accept the said draft and put an end to the criminal proceedings.

10) Parties have amicably settled the matter. Today, they have filed consent terms before this Court. Consent terms are taken on record and marked as article 'X' for the purpose of identification. Learned APP has verified the identity of the complainant. It is submitted by the complainant that she has voluntarily agreed not to prosecute the applicants in the said complaint as she is satisfied with the consent terms recorded voluntarily. Complainant is present before the Court and has accepted the demand draft through learned counsel for the petitioners for an amount of Rs. 16 lacs.

11) It is true that offence punishable under section 409 of Indian
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Penal Code is not included in the list annexed to section 320 of Code of Criminal Procedure, 1973. Upon perusal of the complaint and report filed by investigating agency, this Court is also of the opinion that offence under section 409 of Indian Penal Code is prima facie not made out and since the complainant desires to withdraw the complaint and prays that criminal case be quashed, this Court is inclined to allow the parties to compound the offence punishable under section 409 of Indian Penal Code.

12) In view of the aforesaid discussion, application is allowed in terms of prayer clause 'a'. Proceedings initiated against present applicants in C. C. No. 48 of 2008 38th Additional Chief Metropolitan Magistrate at Mumbai are hereby quashed and set aside. Needless to say that order of issuance of process is also quashed and set aside.

13) Rule made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.