

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3641 OF 2015

Jamal Ahmed Jabir Ali Khan ..Petitioner.

Versus

State of Maharashtra & Anr. ..Respondents.

Mr. K.A.Khan, advocate for petitioner.

Mr. J.P.Yagnik, APP for the State.

Mr. V.J.Jain, advocate for respondent no.2

Coram : RANJIT MORE &
R.G.KETKAR, JJ.

Date : 29th September, 2015.

P. C. :

Heard learned counsel appearing for the respective parties.

2 This petition is filed under Article 226 of the Constitution of India read with the provisions of Section 482 of the Code of Criminal Procedure, 1973 to quash and set aside the proceedings of the Criminal Case No.172/PW/2013 pending on the file of learned Metropolitan Magistrate, 69th Court, Sewri (Mazgaon), Central Bombay. The said case arises out of registration of the F.I.R. bearing C.R.No.229 of 2012 with Nagpada Police Station at the instance of respondent no.2 for the offence punishable under Section 381 read with 34 of the Indian Penal Code, 1860. After investigation, charge-sheet was filed against the petitioner under Section 380 of the Indian Penal Code, 1860.

3 Perusal of the F.I.R reveals that an amount of Rs.22 Lakhs was kept with the respondent no.2-First Informant by following persons Ahmed Muktar Khan respondent no.2 (First Informant) Rs.6,70,000/-, Jamal Ahmed Jabir Ali Khan (Petitioner-Accused) Rs.3,30,000/-, Mr. Mohammed Hamid Ishar Khan Rs.6,30,000/-, Abdul Hafij Istakhar Khan Rs.3,10,000/- and Hamid Abdul Samad Khan Rs.2,60,000/-. These amounts were alleged to have been stolen by the petitioner and, therefore, charge-sheet as stated above, is filed against him.

4 During the investigation, an amount of Rs.20,50,000/- was recovered from the petitioner and in pursuance of the order dated 4.7.2015 passed by the Additional Sessions Judge, Sewree, Bombay in Criminal Revision Application No.154 of 2013,, respondent no.2-Original Complainant was directed to be paid an amount of Rs.6,70,000/- and one Mr. Hamid Abdul Samad Khan was directed to be paid an amount of Rs.2,60,000/- and the balance of Rs.11,20,000/- was directed to be invested in nationalized bank. The learned counsel for the petitioner makes a statement that he has no objection if Mohammed Hamid Ishar Khan and Abdul Hafij Istakhar Khan are paid amounts of Rs.6,30,000/- and Rs.3,10,000/- respectively out of the amount of Rs.11,20,000/- invested in nationalized bank. He also makes a statement that after making payment to the said Mr. Mohammed and Mr. Abdul, remaining amount of Rs.1,80,000/- approximately would be accepted by the petitioner towards full and final satisfaction of his claim of Rs.3,30,000/- as alleged to have been contributed by him.

Statements accepted.

5 In the above circumstances, parties have settled their disputes amicably during the pendency of the trial and have approached this Court for quashing the proceedings of the subject criminal case by consent. Respondent no.2 has, accordingly, filed affidavit dated 10.9.2015. In paragraphs 6 and 7, he has given no objection to quash and set aside the proceedings of the subject criminal case. Respondent no.2 is personally present in the Court. On specific query, he states that matter is settled between the parties and, therefore, he has no objection to quash the proceedings of the subject criminal case. Mr. Mohammed Hamid Ishar Khan and Mr. Abdul Hafij Istakhar Khan are also present in the Court. They have also 'no objection' to quash the proceedings of the subject criminal case since the petitioner has agreed that amount recovered from him, which is deposited in nationalized bank would be paid by the trial Court towards the amounts contributed by them upon making an application as per the statements made by the petitioner here-in-above.

6 It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of **Narinder Singh vs. State of Punjab** **[2014 AIR SCW 2065]**, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the

Criminal Courts which are already overburdened. However, at the same time, costs need to be saddled on the parties for using the police and judicial mechanism for settling their personal disputes.

7 Accordingly, the petition is allowed in terms of prayer clause (a) subject to payment of costs of Rs.10000/- by the petitioner to the **“Tata Memorial Hospital”** an institution that takes care of the advanced and terminally ill cancer patients. The petitioner shall pay the said costs and produce the receipt thereof on the file of this Court within a period of two weeks from the date of receipt of this order, failing which, the criminal writ petition shall stand dismissed automatically without further reference to the Court.

8 Subject to above, the criminal writ petition stands disposed of.

9 Mohammed Hamid Ishar Khan and Abdul Hafiz Istakhar Khan as well as petitioner are at liberty to apply to the trial Court for return of the amount and the trial Court upon receiving the afore-said application shall pass appropriate orders in the light of observations made here-in-above.

[R.G.KETKAR, J.]

[RANJIT MORE, J.]

CERTIFICATE

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