

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4260 OF 2015

Parvez Jilani Shaikh
and Another.

..Petitioners.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. M. M. Khan for the Petitioners.

Mr. K. V. Saste, learned APP for the State.

Coram : RANJIT MORE &
V. L. ACHLIYA, JJ.

Date : **December 18, 2015.**

P. C. :

1. By this petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioners have approached this Court with a request to invoke the jurisdiction of this Court to quash the proceedings of Case No. 3160 of 2015 pending on the file of Metropolitan Magistrate, 9th Court, Bandra. The said case is the result of FIR bearing CR No.429 of 2015 registered with Khar Police Station at the instance of Respondent No.2, for the offences punishable under sections 385 and 451 read with 34 of the Indian Penal Code, 1860.

2. Respondent No. 2 who is appearing in person and the learned Counsel appearing for the Petitioners made a joint statement that with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petition is filed for quashing the above FIR / criminal proceedings, by consent of Respondent No.2.

3. An Affidavit dated 21st October 2015 has been filed by Respondent No.2 wherein he has stated that dispute between himself and the Petitioners has been settled amicably and they have decided to put an end to the disputes. In paragraph 5 of the said affidavit, he has stated that he has no grievances or claims against the Petitioners. He has further solemnly affirmed that he has no objection for quashing the FIR / proceedings in question.

4. Respondent No.2 is personally present before the Court. On specific query made by us, he submitted that he has made the said affidavit on his own free will, without there being any pressure or undue influence. He has further confirmed that he has no objection for quashing the criminal proceedings in question initiated by him against the Petitioners for the offence

punishable under sections 385 and 451 read with 34 of the Indian Penal Code, 1860.

5. Though parties had settled the matter out of Court and decided not to precipitate the matter further, as we had doubts about the antecedents of the Petitioners, we called upon learned APP to place on record police record of the Petitioners. Accordingly, APP has filed a report of the Senior Inspector of Police, Khar Police Station. The learned APP pointed out that there are three CRs pending against Petitioner No.1. This statement was disputed by learned Counsel appearing for the Petitioners. He submitted that in one CR, Petitioner No.1 has already been discharged. He submitted that only one CR namely, CR No.60 of 2013, which is for the offence punishable under section 307 is pending against Petitioner no.1. Learned Counsel appearing for the Petitioners submitted that the Petitioners have realised their mistakes and in future they will not indulge in such activities. Learned Counsel appearing for the Petitioners states that the Petitioners are ready and willing to do community service as an act of repentance and as a condition precedent for quashing of the subject proceeding and FIR. He submitted that in view of the

undertaking given by the Petitioners and settlement of disputes with Respondent No.2, this Court may in exercise of its extraordinary jurisdiction be pleased to quash the subject proceedings.

6. It can, thus, be seen that the matter has been amicably settled between the parties. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by keeping the criminal proceedings pending except burdening the Criminal Courts which are already overburdened.

7. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the considered view that there is no impediment in quashing the criminal proceedings. At the same time, we propose to direct the Petitioners to undertake some community service and pay cost to some Hospital or Institute as a condition precedent for grant of relief of quashment.

8. We, therefore, dispose of this writ petition in following terms :

[1] Criminal Case No.3160 of 2015 pending on the file of learned Metropolitan Magistrate, 9th Court, Bandra as well as FIR bearing No. 429 of 2015 registered with Khar Police Station is hereby quashed subject to the Petitioners rendering community service and paying costs as under :

[a] The Petitioners shall render community service at B.A.R.C. Hospital, Anushakti Nagar once in a week for the period of three months. The Petitioners shall report to the Head of the BARC Hospital with a copy of this order. The Investigating Officer shall also forward a copy of this order to the said Hospital. The Head of the said Hospital shall allocate appropriate works/ services to be performed / rendered by the Petitioners in his Hospital as part of community service. The Petitioners shall obtain certificates from the Head of the said Hospital of having rendered community service satisfactorily for the period of three months and place the same on the record of this petition. The quashment of FIR is subject to both the Petitioners producing the certificates from the said Hospital and placing the same on the record of this Court within 5 months from today.

[b] The Petitioners are also saddled with the cost of Rs.10,000/- each, which shall be paid to the “**Shanti Avedna Sadan**” an institution that takes care of the advanced and terminally ill cancer patients.

[2] Failing to comply with conditions embodied in Clauses (a) and (b) above, the order quashing criminal proceeding and FIR shall stand recalled automatically and petition shall stand dismissed automatically

without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

- [3] It is clarified that the Petitioners voluntarily submitting before this Court to undertake community service shall not be taken as an admission of guilt by the Petitioners.

[V. L. ACHLIYA, J.]

[RANJIT MORE, J.]