

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

CRIMINAL WRIT PETITION NO. 1012 OF 2016

Shri Avinash Shantaram Borkar ... Petitioner.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. D. V. Morajkar a/w. Mr. Vikas S. Kapile, Advocate for the
Petitioner.

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

Mr. P. M. Rustomkhan, Advocate for Respondent No.2.

**CORAM : NARESH H. PATIL AND
A. M. BADAR, JJ.**

DATE : 20th APRIL, 2016.

P.C. :

1 By this Petition under Articles 226 and 227 of the
Constitution of India, read with section 482 of the Code of
Criminal Procedure, 1973, the Petitioner/ Accused in FIR
bearing Crime No. 85 of 2015, registered against him at the
Police Station, Malabar Hill, Mumbai for the offence
punishable under section 385 of the Indian Penal Code,
1860, is praying for quashing and setting aside the Criminal
proceedings bearing Criminal Case No. 5709/PW/2015
pending on the file of the learned Metropolitan Magistrate, 40th

Court at Girguam, Mumbai, which came to be registered on the basis of the chargesheet filed pursuant to the said FIR lodged by the Respondent No.2. The petition came to be filed on the basis of consent given by Respondent No.2/informant for quashing the proceedings.

2 We have heard Shri Morajkar, learned counsel appearing for the Petitioner/Accused and Shri Rustomkhan, learned counsel appearing for Respondent No.2/original informant. Both of them have unanimously submitted that the Petitioner as well as Respondent No.2/informant were working in same office where the unfortunate incident took place. They both have further submitted that the Petitioner/Accused has tendered an unconditional apology to Respondent No.2/Informant in writing and Respondent No.2/Informant has accepted the said apology and decided not to proceed with the trial of the Criminal Case arisen out of the FIR registered at her instance.

3 We have also heard the learned APP appearing for the State. He argued that after registration of the offence, the chargesheet against the Petitioner/Accused is filed before the court of Metropolitan Magistrate, Girguam, Mumbai.

4 With the assistance of the parties, we have carefully perused the FIR as well as resultant chargesheet leading to the

registration of the criminal case against the Petitioner. It is seen from the averments made in FIR and from the material collected during the investigation, the Petitioner had attempted to extort money from Respondent No.2/informant by putting her in fear that her reputation would be maligned if the amount so demanded is not paid to him. Putting the informant in a fear of injury to her reputation, the Petitioner/accused attempted to extort amount from the informant. During investigation, the investigating officer had recorded statements of witnesses. Printouts of the text messages sent by the Petitioner/Accused were sent for forensic report. The call details are also collected from the telephonic companies.

5 It is seen that both the parties have decided to settle the matter and accordingly the Petitioner has tendered a written apology, which is accepted by the Respondent No.2. Respondent No.2 has tendered an affidavit on record, stating that the apology expressed by the Petitioner/accused in writing is accepted by her and, therefore, she does not wish to proceed with the trial. Her learned counsel also reiterated the same stand of Respondent No.2/informant. It is seen that settlement is arrived at between the parties and trial is yet to be began. No evidence is recorded in the criminal case, which is sought to be quashed by the parties because of their settlement. From perusal of the affidavit of Respondent No.2/informant, it is seen that continuation of the prosecution of the Petitioner/

accused despite a settlement between the parties would result in abuse of process of court and, therefore, for securing ends of justice, inherent powers of this court are to be invoked. At the same time, it needs to put on record that as the police machinery and court machinery were put in action by the parties, prior to settlement of their dispute, we find it appropriate to saddle the present Petitioner with some costs payable to the Police Welfare Fund, Mumbai. We quantified this amount at Rs.10,000/- and the Petitioner should pay the same to the Police Welfare Fund, Mumbai within a period of one week from today in order to make this order, which we wish to pass, operative.

6 Hence, the following order :

I) Writ petition is allowed subject to payment of costs of Rs. 10,000/- by the Petitioner to Police Welfare Fund, Mumbai within a period of one week from today.

II) Upon payment of costs so directed, the proceedings in Criminal Case No. 5709/PW/2015 initiated on the basis of the chargesheet filed by the police in pursuant to FIR No. 85 of 2015 for the offence punishable under section 385 of the Indian Penal Code, registered at the instance of Respondent

No.2/informant against the present Petitioner- Avinash S. Borkar is quash and set aside.

III) Put up for compliance of the direction in respect of cost on 28th April, 2016.

(A. M. BADAR, J.)

(NARESH H.PATIL,J.)

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