

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2462 OF 2016

Mr. Rajkumar Thirunavukkarasu	 Petitioner
V/s	
The State of Maharashtra & Anr.	 Respondents

Mr. Santosh H. Chari for the Petitioner.
Ms. M.H.Mhate, APP for the Respondent No.1/State.
Mr. Hrishikesh Chavan for the Respondent No.2.

CORAM : A.S. OKA &
A.A. SAYED, JJ.
DATED : 26 SEPTEMBER 2016

ORDER:

1 Rule. The learned APP waives service for the first Respondent. The learned Counsel appearing for the second Respondent waives service. Forthwith taken up for final disposal.

2 Prayer in this Petition under Article 226 of the Constitution of India and section 482 of the Code of the Criminal Procedure, 1973 is for quashing the criminal proceedings for the offences punishable under section 419, 420, 465, 468, 471 read with section 34 of the Indian Penal Code and section 66C and 66D of the Information Technology Act, 2008.

3 Allegation in short of the second Respondent is that on the website www.eBay.in., the Petitioner uploaded an advertisement offering to sell a

cell phone of a particular brand. It is alleged that the second Respondent was induced by the Petitioner to transfer sum of Rs.38,100/- in the account of the Petitioner for a supply of a cell phone. The Petitioner failed to supply the cell phone and therefore, First Information Report was filed by second Respondent. On completion of the investigation, charge-sheet has been filed. The Consent terms executed by and between the Petitioner and the second Respondent is annexed as Exhibit-B to the Petition. Under the Consent Terms, it is recorded that the Petitioner has paid a sum of Rs.40,000/- to the second Respondent in full and final settlement of the claim of the second Respondent. In view of the said settlement, the Consent of the second Respondent is recorded for quashing the First Information Report.

4 In substance the dispute between the Petitioner and the second Respondent is about the sale of movable property. The dispute has predominantly a civil flavor. In view of the monetary settlement between the Petitioner and the second Respondent, chances of conviction are very bleak. Moreover, the offences alleged against the Petitioner cannot be said to be against the society at large. Therefore, law laid by the Apex Court in the case of **Gian Singh vs. State of Punjab**¹ will be applicable. In the present case, the Petitioner and the second Respondent have deposited a sum Rs.10,000/- each with the Police Welfare Fund. The

¹ (2012) 10 SCC 303

documents evidencing the payment of the said amounts by banker's cheque/pay orders have been placed on record. Therefore, this is a fit case to exercise the power of this Court under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 for quashing the criminal proceedings. Accordingly, we pass following order:

ORDER

- i) Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) By issuing appropriate writ order by direction, the proceedings against the Petitioner in Court Case No.113/PW/2016 arose out of C.R. No.44 of 2014 registered by Cyber Police Station and pending before the Ld. Addl. Chief Metropolitan Magistrate's 37th Court at Esplanade, Mumbai may kindly be quashed and set aside;”

- ii) In the Consent Terms, the second Respondent has recorded his no objection for return of the seized goods to the Petitioner. In view of the said no objection, it will be open for the Petitioner to take out the appropriate proceeding before the concerned Court.
- iii) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J.)

(A.S. OKA, J.)