

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.744 OF 2013

Chandmal Bhawarlal Jain & Anr.

..... Applicants

V/s

Hemendra Pranjivan Bosmiya & Anr.

..... Respondents

Mr. Subhash Jha i/b Law Global for the Applicant.

Mr. Abbas Zaidy i/b Mr. Zohair & Co. for the Respondent No.1.

Dr. F.R. Shaikh, APP for the Respondent No.2.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 22 JUNE 2016

ORDER:

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

2 By this Application under section 482 of Code of Criminal Procedure, 1973, (for short "CrPC") the prayer is for quashing First Information Report for the offences punishable under sections 415, 417, 418, 463, 464, 465, 466, 467, 468, 471 read with section 34 of the Indian Penal Code.

3 The prayer for quashing of First Information Report under section 482 of the CrPC is sought on the basis of the Deed of Settlement dated 27 November 2015 a copy of which has been tendered on the record. The same is marked 'X-1' for identification.

4 We have perused the First Information Report subject matter of challenge. We have perused the Deed of Settlement dated 27 November 2015. The first Respondent is the first Informant who is a party to the said settlement who has been described as a settlee along with the two others. There are large number of proceedings pending between the parties, a list of which is a part of the Deed of Settlement on pages 13 to 15. The learned Counsel appearing for the first Respondent on instructions states that the first Respondent has executed the said Deed of Settlement dated 27 November 2015. Today, he has placed on record a communication dated 21 June 2016 which is taken on record and marked Exhibit X-2 for identification in which he has stated that the dispute has been settled out of the Court and therefore, the first Respondent has instructed his Advocate to co-operate for quashing of the proceedings.

5 On perusal of the First Information Report, we find that essentially dispute has overwhelmingly a civil flavor. A dispute over an immovable

property led to the registration of the First Information Report. In the facts of the case, the offence does not have a serious impact on the society. The Deed of Settlement shows that now the basic property dispute is completely settled and therefore, total 17 proceedings pending between the parties listed in the Deed of Settlement stand settled.

6 In view of the overall settlement in relation to the property dispute, it is a fit case to exercise the power under section 482 of the CrPC in view of the decision of the Apex Court in the case of **Giyan singh vs. State of Punjab and another**¹.

7 Accordingly, the Application must succeed and we pass the following order:

i) Rule is made absolute in terms of prayer clause (a) and (b) which read thus:

“a) that this Hon'ble Court may be pleased to call for the investigation papers concerning FIR No.329/12 of Waliv police station, Vasai, Dist. Thane and after examining the legality, validity and/or propriety of the same being vogue as against the applicants may be pleased to quash and set aside the same;

b) that this Hon'ble Court may be pleased to call for the records and proceedings concerning OMA No.262/12 from the court of Ld. JMFC, Vasai and after examining

¹ (2012) 10 SCC 203.

the legality, validity and/or propriety of the order dated 5.9.2012 passed therein may be pleased to quash and set aside the same;”

- ii) We permit amendment, to be carried out to the prayer clause (b) for incorporating the correct number (OMA No.266 of 2012). The formal amendment shall be carried out within a period of three weeks from today.
- iii) All concerned to act upon an authenticated copy of this judgment and order.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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