

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2735 OF 2016

Rakesh Sohan Shah & Anr. .. Petitioners
Vs
The State of Maharashtra and Another. .. Respondents

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Shri Girish Kulkarni i/b Shri Madhusudan D. Pareek for the Petitioners.
Mrs.S.V. Sonawane, APP for the Respondent State.
Shri Kiran Kulkarni and Ms. K. Padmashri i/b Kulkarni & Associates for
the Respondent No.2.

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CORAM : A.S. OKA & A.K. MENON, JJ
DATED : 14TH SEPTEMBER 2016

PC.

1. Rule. The learned APP waives service for the first Respondent. The learned counsel appearing for the second Respondent waives service.

2. The prayer in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report and the criminal case registered for the offence punishable under Sections 380, 454 and 457 read with 34 of the Indian Penal Code. The Petitioners are relying upon a Memorandum of Recording dated 1st September 2016 to which the second Respondent and the father of the first Petitioner are parties. The said Memorandum of Recording records that there is a

settlement of disputes between the parties. The Clause (3) of the said Memorandum records that the second Respondent has given No Objection for quashing the criminal proceedings which are subject matter of challenge in this Petition. There is an affidavit filed by the second Respondent reiterating the settlement and recording of his No Objection for quashing the criminal proceedings.

3. We have perused the FIR and the statement on the basis of which FIR was registered. Essentially, the dispute is regarding the possession of a bedroom forming part of a flat of the second Respondent more particularly described in the Memorandum of Recording. The Memorandum of Recording annexed to the Petition shows that now there is a complete settlement of the dispute. In fact, the Annexure A to the Memorandum shows that several cases pending between the parties in this Court and the Small Cause Court have been settled.

4. The dispute subject matter of the criminal proceedings has predominantly a civil flavour. Therefore, in view of the law laid down by the Apex Court in the decision in the case of ***Gian Singh v. State Bank of Punjab***¹, a case is made out for exercising the power under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973.

¹ (2012) 10 SCC 303

5. As the criminal law was set in motion by the second Respondent which is purely a civil dispute, he voluntarily agreed to pay a donation of Rs.25,000/- to the Police Welfare Fund. Accordingly, a cheque in the sum of Rs.25,000/- has been paid to the Police Welfare Fund on 9th September 2016. A letter confirming the receipt by the office of the Joint Commissioner of Police (Administration), Mumbai and a xerox copy of the cheque are taken on record and marked "A1" Collectively for identification.

6. We may note here that in large number of Writ Petitions/Criminal Applications for quashing the criminal proceedings, this Court is directing deposit of costs with the Police Welfare Fund. This Court has noticed that the Police Welfare Fund is not accepting the donations given by cheques unless there is a specific order to that effect by the Court. The learned APP will take instructions on this aspect and will disclose the reasons as to why the Police Welfare Fund is not accepting the donations.

7. Hence, we dispose of the Petition by passing the following order:

ORDER :

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

“(b) That this Hon'ble Court may be pleased to quash and set aside the Complaint bearing C.C. No.728/PW/2014, pending before the Learned Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai arising out of F.I.R. registered with Marine Drive Police Station vide C.R. No.128 of 2013 dated 5th September 2013 under Sections 380, 454, 457 read with Section 34 of the Indian Penal Code filed at the instance of Respondent No.2.”

- (b) Though the Petition is disposed of, for reporting compliance to the directions issued regarding acceptance of donations by the Police Welfare Fund, the Petition shall be listed under the caption of “Directions” on 13th October 2016;
- (c) All concerned to act upon an authenticated copy of this order.

(A.K. MENON, J)

(A.S. OKA, J)