

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1061 OF 2016

Neville Eruch Gheewalla

..... Applicant

V/s

The State of Maharashtra & Anr.

..... Respondents

Mr. Jehangir M. Khajotia for the Applicant.

Mr. K.V. Saste, APP for the Respondent No.1/State.

Ms. Purnima G. Bhatia for the Respondent No.2.

AND

CRIMINAL APPLICATION NO.1062 OF 2016

Mohd. Hanif Bharucha & Anr.

..... Applicants

V/s

The State of Maharashtra & Anr.

..... Respondents

Mr. Aabad H.H. Ponda i/b Mr. Jehangir M. Khajotia for the Applicant.

Dr. F.R. Shaikh, APP for the Respondent No.1/State.

Ms. Purnima G. Bhatia for the Respondent No.2.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 25 OCTOBER 2016

ORDER:

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

2 The prayer in both the Applications under section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is for quashing the charge-sheet filed on the basis of First Information Report registered at the instance of the second Respondent for the offences punishable under sections 420, 406, 120B, 465, 467, 468, 471 read with section 34 of the Indian Penal Code.

3 The second Respondent has filed Common Consent Affidavit executed by her before a Notary Public - California, San Diego Country in the State of California on 21 October 2016. She has stated that during the pendency of these Applications, she has arrived at a settlement with the Applicants. Paragraph 4 of the said Affidavit reads thus:

“4. During the pendency of the aforesaid case, the parties have arrived at an amicable settlement and have decided to resolve the issues out of the Hon'ble Court. The settlement has been arrived at between Mr. Mohammed Hanif Bharucha, Mrs. Nafisa Hanif Bharucha and Neville Gheewala of one part and myself i.e. Ms. Frennie Fitter of the other part for an amount of Rs.14,50,000/-. The said Mr. Mohammed Hanif Bharucha and Mrs. Nafisa Hanif Bharucha Applicant Nos.1 and 2 will pay an amount of Rs.7,16,000/- and Neville Gheewala – Accused No.3 will pay Rs.7,34,000/- aggregating to Rs.14,50,000/- by pay order drawn from the Nationalized Bank along with Confirmation Letter of the said Nationalized Bank for confirmation of the Demand Draft and issued in my name. Both the pay orders

totally amounting to Rs.14,50,000/- be handed over to my Advocate representing me in this Hon'ble Court or appearing on my behalf and under my instructions at the time of quashing the FIR the Charge-Sheet and the Supplementary Charge-Sheet by this Hon'ble Court, the said pay orders totally amounting to Rs.14,50,000/- be handed over to my Advocate on my behalf at the time of quashing of the abovesaid F.I.R. and charge-sheet along with the bank letter confirming that the said DD will be honoured.”

4 In paragraph 5, she has stated that the amount of Rs.1,00,000/- deposited by the Applicant in Criminal Application No.1061 of 2016 together with interest accrued thereon be paid to the said Applicant.

5 As stated in paragraph 4 of the Affidavit, certain amounts have been paid by Demand Drafts by the Applicants to the second Respondent which Demand Drafts have been accepted by the learned Counsel appearing for the second Respondent on behalf of the second Respondent.

6 Thus, there is a monetary settlement between the Applicants and the second Respondent who is the first informant.

7 Perusal of the charge-sheet shows that the alleged offences have predominantly a civil flavour. Now considering the monetary settlement,

no purpose will be served by continuing the criminal prosecution. Law laid down by the Apex Court in the case of **Gian Singh vs. State of Punjab**¹ squarely apply to the facts of the case.

8 It is pointed out that the amount of Rs.1,00,000/- deposited by the Applicant in Criminal Application No.1061 of 2016 has been deposited by the Senior Inspector of Police, GB, CB, CID, Mumbai in a bank account in the State Bank of India, Churchgate Branch, Mumbai.

9 It is pointed out that the bank accounts of the Applicants have been freezed. In terms Common Consent Affidavit, after the charge-sheet is quashed, necessary steps will have to be taken by the police to defreeze the bank accounts. Accordingly, we pass following order:

ORDER

i) In Criminal Application No.1061 of 2016 rule is made absolute in terms of prayer clause (c) which reads thus:

“(c) That this Hon'ble Court be pleased to quash and set aside the C.C.No.1044/PW/2003 along with C.C. No.361/PW/2010 being Supplementary Charge-Sheet, pending before the Learned Metropolitan Magistrate, 19th Court at Esplanade, Mumbai arising out of C.R. No.81 of 2002, the investigation being transferred to E.O.W. u/s. 420, 406, 465, 467, 468, 471, 120(b) r/w 34 I.P.C. registered by Economic Offences Wing and the Applicant be acquitted in the facts and

1 (2012) 10 SCC 303

circumstances of the case and the bail bond of the Applicant be cancelled;”

ii) In Criminal Application No.1062 of 2016 rule is made absolute in terms of prayer clause (c) which reads thus:

“(c) That this Hon'ble Court be pleased to quash and set aside the C.C.No.1044/PW/2003 along with C.C. No.361/PW/2010 being Supplementary Charge-Sheet, pending before the Learned Metropolitan Magistrate, 19th Court at Esplanade, Mumbai arising out of C.R. No.81 of 2002, the investigation being transferred to E.O.W. u/s. 420, 406, 465, 467, 468, 471, 120(b) r/w 34 I.P.C. registered by Economic Offences Wing and the Applicants' be acquitted in the facts and circumstances of the case and the bail bond of the Applicants be cancelled;”

iii) We direct the Investigating Officer to refund sum of Rs.1,00,000/- deposited by the Applicant in Criminal Application No.1061 of 2016 to the said Applicant along with interest accrued thereon. The amount shall be refunded within a period of one month from the date on which an authenticated copy of operative part of the judgment and order is served by the Applicants to the concerned Officer of the Police;

iv) As a result of this order, Investigating Officer shall take steps for defreezing the bank accounts of the Applicants which were freezed during the course of the investigation;

- v) All concerned to act upon an authenticated copy of the operative order of this judgment and order.

(A.A. SAYED, J.)

(A.S. OKA, J.)

katkam