

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPLICATION NO. 1189 OF 2016

Mr. Rajan Dattatraya Mahajan and Another. .. Applicants
Vs
State of Maharashtra and Another. .. Respondents

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Shri Mayur Khandeparkar along with Shri Shailesh Shukla, Shri Pratik Pawar and Ms. Shanaya Cyrus Irani i/b J. Sagar Associates for the Applicants.

Mrs. S.V. Sonawane, APP for the Respondent No.1.

Shri Nausher Kohli i/b DSK Legal for the Respondent No.2.

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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 24TH OCTOBER 2016

PC.

1. Heard the learned counsel appearing for the Applicants.
Rule. The learned APP waives service for the first Respondent. The Advocate for the second Respondent waives service. Forthwith taken up for final disposal.

2. The prayer in this Application under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”) is for quashing the First Information Report (FIR) filed by one Aidan Kevin Morrissey, the authorized representative of the second Respondent, on the basis of an order made by the learned Metropolitan Magistrate of 62nd Court at Dadar under Sub-section (3) of Section 156 of the CrPC.

3. The Applicants are the shareholders in a Joint Venture Company known as Peddington Lubrimetal Private Limited. The first Applicant is the Managing Director of the said Company and the second Applicant is the Executive Director of the said Company. There was a Joint Venture Agreement dated 12th February 2004 entered into by and between the Applicants and the second Respondent.

4. The prayer for quashing is made on the basis of the consent terms filed in Company Appeal Nos.79 of 2015 and 97 of 2015. The present Applicants, the second Respondent and the said Company M/s. Peddington Lubrimetal Private Limited are the parties to the consent terms. Clause (ii) of Paragraph 5 of the consent terms provided that in terms of the settlement dated 27th July 2016, the parties to the Agreement will immediately and unconditionally withdraw all allegations made against each other and their respective servants and agents in any civil and/or criminal proceedings. The Settlement Agreement dated 28th July 2016 has been annexed to the said consent terms. There is a specific clause under the Settlement Agreement recording withdrawal of all the pending cases between the parties. The Company Appeals were disposed of by the learned Company Judge by an order dated 28th July 2016 in terms of the consent terms.

5. An affidavit has been filed by Shri Aidan Kevin Morrissey, the authorized representative of the second Respondent who had registered FIR in which he has stated that in view of the aforesaid settlement, the second Respondent has no objection for quashing the FIR.

6. Perusal of the allegations made in the Complaint on the basis of which FIR was registered as well as the statement on the basis of which FIR was registered show that the dispute between the parties has predominantly a civil flavour. The dispute was a commercial dispute. Now, there is a complete settlement of the commercial dispute as reflected from the consent terms filed before the learned Company Judge. In view of the complete settlement of a commercial dispute, the law laid down by the Apex Court in the decision in the case of *Gian Singh v. State Bank of Punjab*¹ will apply. The offence alleged cannot be said to be against the Society at large. Hence, we pass the following order.

ORDER :

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

¹ (2012) 10 SCC 303

“(a) this Hon'ble Court after perusing the records and (i) Complaint No.986/MISC/2015 being Exhibit “B” hereto (ii) the Order dated 7th October 2015 of the Learned Magistrate being Exhibit “C” hereto and (iii) the FIR No.444 of 2015 being Exhibit “D” hereto, be pleased to quash and/or set aside Complaint No.986/MISC/2015 being Exhibit “B”, the Order dated 7th October 2015 being Exhibit “C” and the FIR No.444 of 2015 being Exhibit “D” registered by the Worli Police Station, Mumbai”.

(b) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)