

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO.3604 OF 2016

Mr.Allauddin Umar Sange	...	...Petitioner
v/s.		
State of Maharashtra & Anr.		...Respondents

...

Ms.Tahera Abdul Rashid Qureshi for the Petitioner.
 Mr.Khalid Ansari for the Respondent No.2.
 Ms.M.H.Mhatre, APP for the Respondent No.1.

...
CORAM : A.S.OKA &
A.A. SAYED, JJ.

DATED : 19 OCTOBER 2016

P.C.:

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

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 (for short "CrPC") is for quashing the First Information Report registered at the instance of the second Respondent.

3. The grievance of the second Respondent is that the Petitioner who was claiming to be a trustee of a Trust running a school represented to him that he will be given employment in the school run by the said Trust as a

Shikshan Sevak. He demanded a sum of Rs.4,50,000/- from the second Respondent. The second Respondent paid a sum of Rs.50,000/- and thereafter on his request, his friend Mr.Abrar Imtiyaz Pattalbab , paid a sum of Rs.4,00,000/- to the Petitioner by transferring the amount from his account. The Petitioner is relying upon the memorandum of understanding dated 7 October 2016. The memorandum of understanding records that a sum of Rs.50,000/- has been paid by the Petitioner to the second Respondent in cash. A declaration signed by Mr.Abrar Imtiyaz Pattalbab is also annexed to the Petition, which shows that he received a sum of Rs.4,00,000/- by a demand draft dated 6 October 2016 from the Petitioner. There is an Affidavit filed on 13 October 2016 by the second Respondent consenting to quashing of the impugned First Information Report, in view of settlement reflected from the memorandum of understanding. Today, another affidavit is filed by the second Respondent, in which the apology is tendered for certain statements made in the memorandum of understanding.

4. Considering the peculiar facts of the case, we are of the view that the dispute between the Petitioner and the second Respondent has predominantly a civil flavour. Even the statement of the second Respondent records that after holding an interview, he was given a letter of appointment

as Shikshan Sevak and thereafter he assumed the charge of his post on 10 March 2014. The allegation is that he was not paid the salary as there was no approval granted by the State Government.

5. Considering the peculiar facts of the case, it cannot be said that the offence alleged is against the petitioner society at large. Considering the settlement between the Petitioner and the second Respondent, chances of conviction are very bleak. Hence, in view of law laid by the Apex Court in the case of **Gian Singh v/s. State of Punjab and anr.**¹ this is a fit case to exercise the power under section 482 of CrPC.

6. Accordingly, we pass the following order:

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

(a) To quash the FIR registered by Jail Road Police Station being C.R.No.320/2016 on 23.03.2016 on the complaint of Mr.Makhmoor Abdul Kadir Shahpure the 2nd Respondent herein, for offences punishable u/s 420, 406 of IPC and all consequential actions/proceedings initiated by the Jail Road Police Station in connection there of in the interest of justice;

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

(A.A. SAYED, J.)

(A.S.OKA, J.)

¹ (2012) 10 SCC 303