

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4807 OF 2015

Kalpesh Harshad Mehta and Another. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Mohd. Shine for the Petitioners.

Mr. D. N. Kadam for Respondent No. 2.

Mrs. S. V. Sonavane, learned APP for the State.

Coram : RANJIT MORE &
K. R. SHRIRAM, JJ.

Date : **January 27, 2016.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties and learned APP for the State. By this petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 , the Petitioners are seeking to quash the proceedings of CC.No.1168/PW/2010 pending on the file of learned Metropolitan Magistrate, 47th Court at Esplanade, Mumbai. The said case has arisen from FIR registered against the Petitioners with EoW, Unit-II, Mumbai, being CR No. 4 of 2009. The allegations levelled against the Petitioners in the said FIR pertain to the offences punishable under sections 465, 467, 468, 471 and 420 read with 34 of the Indian Penal Code, 1860.

2. The learned Counsel appearing for the respective parties submitted that with the help and intervention of friends and well-wishers, the parties have amicably settled their differences by way of mutual settlement and pursuant to the understanding arrived at between them, the instant petition is filed for quashing the above criminal proceedings qua the Petitioners herein, by consent of complainant Respondent No. 2 herein.

3. One Mr. Ashok Gancheria has filed an affidavit dated 18th January 2016 wherein he has stated that he has been authorised by the Company - Adarsh Industrial Estate Private Limited to give no objection for quashing the proceedings against the Petitioner herein, which was launched by the then Partner of Adarsh Industrial Estate which is now converted into a private limited company. Mr. Ashok Gacheria has placed on record a resolution under which he has been authorised by the Company to take steps in the matter. He has also placed on record copies of the agreements and the deeds of assignment whereby the rights of the erstwhile Adarsh Industrial Estate are transmitted to Adarsh Industrial Estate Private Limited. In his affidavit, in paragraph he has given no objection for quashing the subject proceedings as against the Petitioners herein.

4. The said FIR is filed by Mr. Mohan M. Deshmukh Respondent No.2 in his capacity as a partner of Adarsh Industrial

Estate. He is present in the Court. On personal query he submitted that he has retired from the partnership firm in the year 2010 and subsequent to his retirement, said Adarsh Industrial Estate was converted into private limited company, by name Adarsh Industrial Estate Pvt. Limited. He further submitted that has no objection for quashing the subject criminal proceedings as against the Petitioners herein.

5. Mr. Ashok Gancheria is present in the Court. On specific query made by us, he submitted that he has made the said affidavit as per the directions given by his company, which is without there being any pressure or undue influence. He has further confirmed that Company has no objection for quashing the criminal proceedings in question initiated by the predecessor in interest of his company against the Petitioners.

6. It can, thus, be seen that the matter has been amicably settled between the parties. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of Madan Mohan Abbot vs. State of Punjab, [(2008) 4 SCC 582], we find that no purpose would be served by continuing the criminal proceedings against the Petitioners.

7. In the light of the principles laid down by the Apex Court in the aforesaid decision as well as in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065] we are of the

considered view that there is no impediment in quashing the subject criminal proceedings qua the Petitioners only. Accordingly, the the petition is made absolute in terms of prayer clause (a). The subject proceedings are quashed qua the Petitioners herein only. It is made clear that as against other accused persons, the proceedings will go on in accordance with law.

8. However, in the facts and circumstances of the case we are of the view the Petitioners need to be saddled with the costs. The Petitioners shall pay cost of Rs.20,000/- each, to **"Shanti Avedna Sadan"** an institution that takes care of the advanced and terminally ill cancer patients. For the quashment to take effect, the Petitioners shall pay the said cost and produce the receipts thereof on the file of this Court within the period of four weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*. Registry will then intimate the concerned . Magistrate that subject proceedings shall not be treated to have been quashed and that police / Magistrate shall proceed against the Petitioners in accordance with law.

[K. R. SHRIRAM, J.]

[RANJIT MORE, J.]