

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.27 OF 2017

1. Tahir Vasanali Isani,
Major of age,
s/o Vasanali Isani.
 2. Zeenath Isani,
Both major in age,
Indian National,
r/o. Manik Altinho,
Mapusa Goa.
- ... Petitioners

Versus

1. State of Goa
Through P.P. High Court Building
Altinho- Panaji, Goa.
 2. Chowgule & Company Private Limited,
Represented herein by its authorised,
Signatory, Rama alias Ramesh Bhima
Bilguche, Director (S & L) and Company
Secretary of Chowgule and Company
Private Limited, major of age, Resident
of A-1, 'Anukul', Vidyanagar,
Zuarinagar, Goa 403 726.
- ... Respondents.

Shri J. Godinho, Advocate for the petitioners.

Shri P. Faldessai, Additional Public Prosecutor for the
respondent no.1 / State.

Shri P. Karpe, Advocate for the respondents no.2.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 20th April, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri J. Godinho, learned Advocate for the petitioners, Shri P. Faldessai, learned Additional Public Prosecutor for the respondent no.1 / State and Shri P. Karpe, learned Advocate for the respondents no.2.

2. Rule.

3. Heard forthwith with the consent of the learned Advocates appearing for the respective parties. Shri P. Faldessai, learned Additional Public Prosecutor waives service on behalf of the respondent no.1 / State. Shri P. Karpe, learned Advocate waives service on behalf of the respondents no.2.

4. The petitioners seek to quash the F.I.R. registered under No.291/2013 dated 16/07/2013 and the Chargesheet filed against them based on the complaint filed by the respondent no.2 in the Court of the J.M.F.C.,Panaji bearing Criminal Case No.16/2016/D. It was the case of the respondent no.2 that the petitioners with their common intention had trespassed

and lurked into the premises possessed by the respondents no.2 and caused damage by making alteration to the property thereby committing the offences punishable under Section 447, 448, 453 and 427 r/w. Section 34 I.P.C. A Civil Suit too was filed by the respondents no.2 against the petitioners before the Court of the Civil Judge, Senior Division, Panaji, bearing Special Civil Suit No.10/2011/B which was decreed in its favour by the Judgment and Decree dated 26/09/2013. The petitioners had filed the First Appeal bearing No.107/13 before this Court challenging the Judgment and Decree dated 26/09/2013 and Cross Appeal was filed by the respondents no.2 challenging the very same decree to the extent that the Trial Court had not granted the mesne profits which was claimed by them. They had settled the disputes in both the Appeals during the pendency thereof by filing the Consent Terms therein and accordingly the proceedings came to be disposed off. They had agreed to the terms except the one relating to the Criminal Case which could not be withdrawn or compounded as the offence under Section 453 I.P.C. was non-compoundable. Therefore, it was just and proper to exercise the powers under Section 482 Cr.P.C. as the parties had

amicably settled their dispute.

5. We have heard the learned Advocate for the parties. Shri P. Karpe, learned Advocate for the respondents no.2 adverted to the Consent Terms and submitted that on the instructions of his party, the F.I.R. could be quashed and so too the Chargesheet filed against the petitioners. We have examined the Consent Terms pursuant to which the parties hereto had settled their dispute in the First Appeal Nos.107 of 2013 and 120 of 2013. It was also agreed by and between the parties that the Criminal Case filed by the respondents No.2 against the petitioners would be compoundable and/or withdrawn. All the offences except that under Section 453 I.P.C. are compoundable. Since, the parties have amicably settled the dispute between themselves and considering the law laid down by the Hon'ble Apex Court in "**Gian Singh v/s. State of Punjab and another**" [(2012) 10 SCC 303] and that in "**Yogendra Yadav and others Vs. State of Jharkhand and another**" [(2014)9 SCC 653] and that it would be a lame prosecution and amount to a wastage of the Court time, we deem it appropriate in the facts and

circumstances of the case to allow the petition. In the result, we pass following

ORDER

i) Rule is made absolute in terms of prayer clause(a).

(iii) The petition stands disposed off. There shall be no order as to costs.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

mv