

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.141 OF 2017**

Mr. Sadik Ali
 Son of Mohammad Raja,
 Major of age,
 Occupation: Driver,
 Indian National,
 R/o H.N.8/A, Bombarada,
 Verna, Salcete- Goa .. Petitioner
 V/s.

1. State
 Through Police Inspector
 Margo Town Police Station
 Margao, Salcete-Goa
2. Mr. Damodar Gaonkar
 Son of late Rama Gaonkar,
 57 years of age,
 R/o Avedom, Quepem, Goa
3. Public Prosecutor
 High Court of Bombay at Goa .. Respondents

Mr. Galileo Francisco Teles, Advocate for the petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for the respondent nos.1 and 3.

None for the respondent no.2.

CORAM: C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.
DATE : 21st September, 2017.

ORAL JUDGMENT : (Per C. V. Bhadang, J.)

Rule, made returnable forthwith. The learned

Additional Public Prosecutor waives service for the respondent nos.1 and 3. None for the respondent no.2. Heard finally by consent of the parties.

2. By this petition under Article 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, (Code, for short), the petitioner is seeking quashing of the proceedings in Criminal Case No.216/S/14/III and the consequent judgment of conviction and sentence passed by the Magistrate on 21/08/2015, which has been confirmed by the learned Sessions Judge by judgment and order dated 19/06/2017 in Criminal Appeal No.87/2015.

3. The brief facts are that on the basis of a complaint lodged by one Damodar Gaonkar, an offence punishable under Sections 279 and 338 of Indian Penal Code (IPC, for short) was registered against the petitioner. The petitioner was tried in pursuance thereof before the learned Judicial Magistrate, First Class at Margao, in Criminal Case No.216/S/2014/III. The petitioner came to be convicted for the aforesaid offences and was sentenced to undergo Simple Imprisonment for a period of three months for the offence punishable under Section 279 of IPC and

further to undergo Simple Imprisonment for a period of six months for the offence punishable under Section 338 of IPC. The said judgment of conviction and sentence has been confirmed by the learned Sessions Judge in appeal.

4. It is contended on behalf of the petitioner that the original complainant/ victim has settled the matter with the petitioner. It is contended that the complainant has been compensated by the petitioner. The complainant has filed an affidavit dated 18/07/2017, stating that he has no objection for quashing the proceedings and the consequent judgment of conviction and sentence.

5. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of **Vishal Agarwal Vs. State of Goa** (WPCR No.12 of 2014, decided on 20/02/2014), **Pranav Goel Vs. State of Goa** (WPCR No.42/2013, decided on 29/04/2013) and **Gian Singh Vs. State of Punjab and Anr**; 2012(10) SCC 303, in order to submit that in an appropriate case, this Court, in exercise of the inherent powers, can quash an FIR for the offence punishable under Section 279 of Cr.P.C., when the matter has been compounded between the accused and the complainant.

6. The learned Additional Public Prosecutor submits that this Court may pass appropriate orders.

7. We have considered the circumstances and the submissions made.

8. We find from the record that the petitioner had surrendered before the Magistrate on 21/08/2017 and was released under the orders of this Court on 31/08/2017. We thus find that the petitioner has undergone imprisonment for 10 days. That apart, the original complainant, who is the victim and who was injured in the accident, has settled the matter with the petitioner and has filed an affidavit, stating that he has been compensated and that he has no objection for quashing the proceedings and the consequent conviction and sentence.

9. In the case of **Vishal Agarwal** (supra), this Court, placing reliance on the decision of the Supreme Court in the case of **Gian Singh** (supra), has quashed similar offence punishable under Section 279 of IPC. Section 338 of IPC, under which also the petitioner is convicted, is otherwise compoundable. The

petitioner has deposited an amount of Rs.10,000/- with the Goa State Legal Services Authority by way of remorse.

10. Considering the overall circumstances, we find that a case for exercise of powers under Section 482 of the Code, is made out.

11. In the result, following order is passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned judgment of conviction and sentence is hereby quashed and set aside.
- (iii) The petitioner is acquitted of the offence punishable under Sections 279 and 338 of IPC.
- (iv) Bail bonds of the petitioner shall stand cancelled.
- (v) Rule is made absolute in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J. **C. V. BHADANG, J.**
SMA