

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.167 OF 2017**

Shri Sunil Pachauri
Son of Nandkishor Pachauri,
Resident of B-22, A, 2nd Floor,
Duggal Colony, New Delhi
110080

.. Petitioner

V/s.

1. State of Goa, through
Public Prosecutor
2. Police Inspector
Anjuna Police Station
Anjuna, Bardez, Goa
3. Priyanka Katiyal
Wife of late Chetan Katiyal
Major of age, resident of
H. No.468, Ground Floor,
New Rajendra Nagar,
New Delhi.

.. Respondents

Mr. S. G. Dessai, Senior Advocate with Mr. J. Supekar, Advocate for the Petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondent nos.1 and 2.

Mr. R. Menezes, Advocate for the respondent no.3.

**CORAM: C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.
DATE : 3rd November, 2017.**

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

Rule, made returnable forthwith. Shri Rivankar, the

learned Public Prosecutor waives service on behalf of respondent nos.1 and 2. Shri Menezes, the learned Counsel for the third respondent waives service. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code (the Code, for short), the petitioner is seeking quashing of the Criminal Case No.438/2015/D, pending before the learned Judicial Magistrate, First Class at Mapusa.

3. The brief facts, necessary for the disposal of the petition may be stated thus :

The petitioner is working with Inter Globe Aviation Limited (IndiGo Airlines) as, Manager in flight operations, at Indira Gandhi International Airport, New Delhi. The petitioner along with one Mr. Chetan Katiyal, since deceased, had come to Goa in the month of March 2015 for official meet organised by IndiGo Airlines. The deceased Chetan Katiyal also happened to be an employee of IndiGo Airlines. It so happened that on 11/03/2015, while the petitioner and Chetan Katiyal were visiting some tourist places in Goa, they met with an accident, in which the

scooter, on which both of them were travelling, jumped a speed breaker, as a result of which, the petitioner and Chetan Katiyal fell down, in which Chetan Katiyal sustained injuries, to which he subsequently succumbed. Chetan Katiyal was a pillion rider on the scooter, which was being driven by the petitioner. On the basis of a complaint lodged by Head Constable Bhikaji Salgaonkar, an offence came to be registered against the petitioner under sections 279 and 304-A of Indian Penal Code (IPC, for short) and the petitioner is presently facing prosecution in respect of the same in the aforesaid Criminal Case before the Judicial Magistrate First Class at Mapusa.

4. The third respondent Priyanka Katiyal happens to be the widow of Chetan Katiyal. Indisputably, IndiGo Airlines has been gracious enough to provide compassionate employment to the third respondent in the place of her husband and she is presently said to be serving with the Airlines at New Delhi. The third respondent has also withdrawn the Motor Accident Claim filed by her in respect of death of her husband. The third respondent has no objection for quashing the proceedings in Criminal Case No.438/2015/D.

5. It is submitted by Shri Dessai, the learned Senior Counsel for the petitioner that there was no negligence on the part of the petitioner and it was essentially an inevitable accident. It is submitted that there was no indication or signboard on the road, showing that there was a speed breaker ahead. The learned Senior Counsel has referred to a letter dated 10/09/2015 written by the Investigating Officer (IO), Police Station, Anjuna to the Superintendent of Police, in which the IO has mentioned that there are several speed breakers installed from Anjuna to Arpora. However, there is nothing on the road to indicate the location of the speed breaker, nor the speed breakers were painted till 13/02/2015. The IO has specifically mentioned that due to this, the petitioner, who was the rider of the scooter could not take any precaution at the speed breaker. This, according to Mr. Dessai, is sufficient to show that it was an inevitable accident and rules out any element of negligence on the part of the petitioner.

6. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of ***Sampatiya Bai w/o Shravankumar Kaureti Vs. State of Maharashtra, (Criminal Application (APL) No.385/2017, dt. 18/08/2017)*** and ***Pranav Goel Vs. State of Goa and Anr;*** 2014(4) Bom.C.R.(Cri.) 255, two

decisions of the Delhi High Court in the case of ***Shiv Prakash Vs. State of Delhi***, (CRL.M.C. 5186/2015, dt.03/03/2016) and ***Avinash Chawala Vs. State and Anr.***, (CRL.M.C.NO.4942/15, dt.04/12/2015). Reliance is also placed on the decision of the Supreme Court in the case of ***Parbatbhai Aahir Vs. State of Gujarat and Anr***; 2017(12) SCALE 187 : 2017 SCC Online SC 1189. It is submitted that in an appropriate case, this Court can give quietus to the prosecution where the parties have arrived at an amicable settlement or compromise, with a view to preserve their relations or restore peace.

7. Shri Dessai has also submitted that as per the definition of a 'victim', as contained in Section 2(wa) of the Code, a person who has suffered any loss or injury caused by reason of the act or omission, for which the accused person has been charged, would come within the ambit of a victim, who can justifiably compound or compromise or enter into a compromise with the accused. It is submitted that the third respondent being a 'victim', within the meaning of Section 2(wa) of the Code, would be competent to enter into an amicable settlement.

8. Shri Menezes, the learned Counsel for the third

respondent has supported the petitioner. In fact, the third respondent has filed an affidavit stating that she has been given compassionate employment on a permanent job in the Airlines and she is presently working as Assistant Manager (Human Resources). She further stated that the petitioner and the deceased were good friends and both the families are desirous of preserving the cordial relations between them. She has, therefore, expressed no objection for quashing of the proceedings.

9. The learned Additional Public Prosecutor, in all fairness, submits that this Court may pass appropriate orders in the context of the amicable settlement between the parties.

10. We have carefully considered the circumstances and the submissions made.

11. The Supreme Court in the case of ***Pabathbai Aahir*** (supra), after taking a survey of various decisions holding the field, has culled out the following principles, which are germane while considering a prayer for quashing of the proceedings, which read thus :

"15 The broad principles which emerge from the

precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

It can, thus, be seen that invocation of jurisdiction by this Court to quash FIR or criminal proceedings on the ground that settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding of an offence. The inherent power of the High Court in quashing the proceedings is of wide amplitude and it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any Court. The Supreme Court

has further held that the decision as to whether a complaint or FIR should be quashed on the ground that the offender and the victim have settled the dispute, depends upon facts and circumstances of each case. The relevant factors, which would enter consideration while deciding the prayer of quashing, are nature and the gravity of the offence, whether the offence involves mental depravity or an offence is one, which is having predominantly a public character as against the offences, which can be said to be of a private nature not having a serious impact upon the society.

12. Coming back to the present case, the offence cannot be said to be having predominantly a public character or nature. The third respondent, who can be said to be a victim within the meaning of Section 2(wa) of the Code, has entered into settlement with the petitioner. The employer, both of the petitioner as well as the deceased, has provided employment on compassionate ground to the third respondent, who can be said to be affected by the accident. Considering the overall circumstances, we find that this is a fit case, where this Court can exercise jurisdiction under Section 482 of the Code, in putting an end to the prosecution for the ends of justice.

13. In this regard, a useful reference may be made to the decision of this Court in the case of ***Sampatiya Bai*** (supra), in which this Court in a similar situation, involving an offence under Sections 279 and 304A of IPC, has quashed the prosecution in view of the fact that the parties had settled their dispute *interse*. It is not necessary to multiply authorities on the point. However, similar view has been taken by the Delhi High Court in the two decisions cited namely ***Avinash Chawala*** and ***Shiv Prakash*** (supra).

14. In the result, the petition is allowed. The proceedings in Criminal Case No.438/2015/D on the file of the learned Judicial Magistrate First Class at Mapusa are hereby quashed. Rule is made absolute in the aforesaid terms.

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