

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 882 OF 2016

1. Akshay Girijashankar Mehta

and anr.

....Petitioner

V/s.

The State of Maharashtra and Ors.

....Respondents

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Mr. B.J. Joshi a/w. Mr. Prayag Joshi, a/w. Mr. Aashish Satpute, Advocate for the petitioner.

Mrs. A.S. Pai, Additional Public Prosecutor, Advocate for respondent no.1, State.

Mr. Sagar Kursija i/by. Mr. A.D. Aswani, Advocate for respondent no.2.

Petitioners no.1, 2 and respondent no.2 present in person.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

8TH AUGUST, 2017.

P.C. :-

1. The above writ petition filed under Article 226 of the Constitution of India seeks quashing and setting

aside of the proceedings being C.R. No.8 of 2000 filed under Sections 61 and 63 of the Copy Rights Act and Sections 78 and 79 of the Trade Marks Act. Petitioner no.1 is the Director of Medico Remedies Private Limited and petitioner no.2 is the Director of Acquatic Formulations India Limited. The Respondent no.2, which is also involved in the manufacture of pharmaceutical products made a complaint under Section 156(3) of the Criminal Procedure Code alleging offences committed by the petitioners under Sections 78 and 79 of the Trade Marks Act and Sections 51 and 61 of the Copy Rights Act. The gravamen of the allegations in the said complaint was the infringing of the copy right and the alleged passing of the products of the petitioners by purporting them to be the products bearing the registered trade mark of the respondent no.2. The Respondent no.2 i.e. the complainant, has filed an Affidavit dated 18th July, 2017 of one Nishad Gharat, the C.A. of the respondent no.2. In the said Affidavit, the settlement arrived at between the

parties i.e. the petitioners and respondent no.2 has been referred to. After stating the antecedent facts, the affiant, i.e. the Constituted Attorney of the respondent no.2 has stated in para-6 that he has been appointed and authorised to sign and execute the said Affidavit for the purposes of compounding the offence registered by the police authorities pursuant to the complaint of the respondent no.2. It is further stated in para-6, that the dispute as regards the infringement and breach of the Trade Marks Act and Copy Rights Act is mutually and amicably settled between the parties. It is further stated in para-7 that, he has been compensated by the petitioners under mutual arrangement and that there is nothing due and payable by the petitioners to him and vice-a-versa. To the said Affidavit, is annexed the zerox copy of the Resolution passed by respondent no.2 on 14th August, 2015 in the meeting of the Board of Directors of respondent no.2. As has been narrated above, the representative of the respondent no.2, Nishad Gharat has

been authorised to carry out all such acts as are necessary to compound the offence. Insofar as, the offence under Section 51 of the Copy Rights Act is concerned, the maximum punishment in terms of Section 63 is of 6 months. Insofar as, the offence under Section 78 is concerned, the maximum punishment that can be imposed under Section 104 is also six months. Having regard to the dictum of the Apex Court in **Gian Singh V/s. The State of Punjab and Another, reported in (2012) 2 SCC (L&S) 998**, as also, the judgment of the Apex Court in **Narinder Singh V/s. State of Punjab and Another, reported in 2014 6 SCC 466**, it would be just and proper to quash and set aside the complaint bearing C.R. No.8 of 2000 filed under Sections 51 and 63 of the Copy Rights Act and Sections 78 and 104 of the Trade Marks Act. This has to be viewed in the context of the fact, that the dispute between the parties is a commercial dispute and the offence alleged was not such as would impact the Society. The parties are personally

present. The representatives of the petitioner and respondent no.2 are personally present in the Court and they reiterate the terms of the settlement arrived at between the petitioner and respondent no.2. The petition is accordingly allowed, Rule is accordingly made absolute in terms of prayer clause (a).

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)