

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1634 OF 2017

Bhavesh Vinod Shah and Ors.

....Petitioners

V/s.

State of Maharashtra and anr.

....Respondents

* * * * *

Mr. J.B. Mishra, Advocate for the petitioners.

Mrs. S.D. Shinde, APP for State, respondent no.1.

Mr. Ashutosh Mishra, Advocate for respondent no.2.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

16TH AUGUST, 2017.

P.C. :-

1. The writ jurisdiction of this Court is invoked to quash the Criminal Case No. 3536/PS/2016 arising out of FIR No.230 of 2016 registered with the Goregaon Police Station. Insofar as the criminal case is concerned, the

same is pending before the Metropolitan Magistrate, 67th Court, Borivali, Mumbai. The FIR came to be lodged by respondent no.2 herein on account of the death of his brother which was caused on account of the fact that he came into contact with a live wire whilst he was crossing the road. The petitioners are the accused and are the Contractors who have been appointed by the Municipal Corporation of Greater Mumbai ("MCGM" for short) to beautify the flower beds installed on the road divider. The live wire was touching the fencing which was put up on the flower bed. The parties have settled the matter, as a result of which, the first informant i.e. respondent no.2, Suryakant Narayan Chavan, who is the brother of the deceased, has filed his affidavit dated 11th April, 2017 wherein he has stated that the deceased was not married and was residing with his father and two brothers. It is further stated in para-2 that, the petitioners have paid compensation of Rs.10,00,000/- to the father of the deceased by a Demand Draft and that he has agreed to

withdraw the complaint of his own will and consent. It is further stated that, he has no grievance of any nature against any of the petitioners and that he has no objection if this Court quashes the Criminal Complaint No. 3536/PS/2016 pending before the Learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai.

2. Insofar as, the other family members are concerned i.e. father and the two other brothers of the deceased i.e. Narayan Vithal Chavan (father), Chandrakant Narayan Chavan and Vilas Narayan Chavan (brothers), have also filed their affidavit dated 11th April, 2017. In para-2 of the said Affidavit, the factum of the petitioners having paid compensation is accepted by them. They have also stated that, they out of their free will and consent, agreed to withdraw the complaint against the petitioners. They have stated that, they have no objection if the Court quashes the said Criminal Complaint No. 3536/PS/2016 pending before the Learned

Metropolitan Magistrate, 67th Court, Borivali, Mumbai for the offences punishable under Section 304A Indian Penal code. The Learned Counsel appearing on behalf of respondent no.2, Mr. Ashutosh Mishra, identifies the first informant, Suryakant Narayan Chavan. He is also identified by his Aadhar Card bearing No. AICPC8968M. When put in the box and queried, he states that the Affidavit which is on record at Exhibit-C is his. He accepts the fact that, Rs.10,00,000/- has been paid by the petitioner by a Demand Draft to his father. He further accepts that, he has no objection if the criminal proceedings are quashed and set aside. He states that, his father Narayan Vithal Chavan on account of his old age, is unable to remain present in Court today.

3. In view of the aforesaid and in the light of the judgments of the Apex Court in the case of **Gian Singh V/s. State of Punjab**, reported in (2012) 10 SCC 303 and **Narinder Singh V/s. State of Punjab**, reported in

(2014) 6 SCC 466, there is no impediment in quashing the proceedings, though the Learned APP submitted that since the offence is under Section 304A, the relief sought by the above petition may not be granted. We are of the view that the interest of justice would be served if the proceedings are quashed and set aside as no useful purpose would be served by keeping the proceedings pending. The Writ Petition is accordingly allowed and made absolute in terms of prayer clause (a).

4. Mr. Ashutosh Mishra, undertakes to file his Vakalatnama during the course of the week.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)