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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL WRIT PETITION NO.1872 OF 2013

Mr.Brijmohan Tripathi & Anr. ...Petitioners
vs.
The State of Maharashtra & Anr. ...Respondents

Mr.A.K.Shukla i/b M/s.M.P.Mishra & Co. for the
Petitioners
Mr.K.V.Saste, APP for the respondent Nos.1 and 2
Mr.Harishankar S. Pandey for the respondent No.3

CORAM : A.S.OKA, &
SMT.ANUJA PRABHUDESSAI, JJ.
DATE : FEBRUARY 14, 2017

P.C.:

1 This is one more case where we have noticed a sorry state of affairs as far as the conduct of the members of the Bar are concerned. We have noticed in several cases where the petitions are filed for quashing the offences by consent, the members of the Bar who appear for the accused as well as for the complainant are not willing to disclose true and correct facts. Today, the learned APP on instructions pointed out that though the first informant Mr.Vipul Vanmali Makwana (the first respondent) has filed an affidavit giving consent for quashing the FIR, in fact he is not willing to do so. We called upon the learned counsel appearing for the third respondent to take instructions on this aspect. When we realised that the truth is not being told to the Court, we had no option but to

call upon Mr.Vipul Makwana to enter the box. He stated that on 27th April 2015 he signed the affidavit as an assurance was given to him by the petitioners to make balance payment of Rs.34,02,000/-. He states that a sum of Rs.5,00,000/- was paid to him before filing the affidavit. He stated that he is not willing to give consent for quashing the offence as he has not received a sum of Rs.34,02,000/- for last more than two years. It was the duty of the learned counsel for the third respondent to act as an Officer of the Court and point out that his client was not willing to give consent for quashing the offence.

2 In view of the aforesaid statement made in open Court by Mr.Vipul Makwana who is the third respondent, we must make reference to what is stated in the affidavit dated 27th April 2015. Paragraphs 10 to 14 of the Affidavit read thus:

"10 I say that the petitioners have approached me and requested for amicable settlement and agreed to cooperate me for recover the said amount from imla Malik Tiwari Family and paid Rs.5,00,000/- (Rupees five lakhs only) and get entire dispute settled in following manner-

a. Rs.2,00,000/- (Rupees two lakhs only) by way of cash on 10.7.2014.

b. Rs.3,00,000/- (Rupees three lakhs

only) on 11.2.2015 drawn on Samata Sahkari Bank Ltd. Malad (W) Branch, Mumbai - 400 064.

11. I say that I along with the present petitioners are in similar nature of profession and now the every facts become very clear therefore considering the business relationship and for continuing the same in future, I am filling the present consent affidavit and with humble prayer for quashing the FIR being C.R.No.62 of 2013 against the petitioners for the alleged offence punishable u/s.406, 420, 467, 468, 471 r/w 34 of IPC.

12. I say that now we have very good relationship with the petitioner and all the issue regarding the abovesaid C.R.No.62 of 2013 has been resolved and if any unexpected step taken by the Dahisar Police Station then our smooth relationship may become constrained.

13. I say that I have filed present consent affidavit in present writ petition under article 226 of the Constitution of India and under section 482 of Cr.P.C.

14. Therefore humbly prayed that this Hon'ble Court be pleased to take the consent affidavit on record and in view of that consent affidavit be pleased to quash the FIR being C.R.No.62 of 2013 registered by

Dahisar Police Station against the petitioners for the alleged offence punishable u/s.406,420, 467, 468, 471 r/w. 34 of IPC in the interest of justice."

3 When we made a query to the learned counsel for the petitioners whether a sum of Rs.34,02,000/- is payable to the first informant (the third respondent), he is not in a position to give any clear answer.

4 There is a report submitted by the Senior Inspector of Police, Dahisar Police Station dated 27th February 2017. The report indicates that there are other victims of the offence and in fact, statements of some of them have been recorded. The learned APP will place on record a photo copy of the said report and statements.

5 It was the duty of the third respondent while filing the affidavit to set out all the details of the settlement. Though paragraph 9 refers to payment of consideration of Rs.35,52,000/- by the third respondent to the petitioners, he has not stated as to exactly what amount was payable in terms of the settlement. He has merely stated that a sum of Rs.5,00,000/- is paid by the petitioners to him. Thus, the true nature of the settlement is not set out in the affidavit. The petitioners have not disclosed in the petition that there are other victims of the offence. It was the duty of the

learned counsel for the petitioners to point out this important fact. There is no reference of any settlement with the other victims. Therefore, in our considered view, both the petitioners and the third respondent are guilty of abuse of process of law and suppression of material facts. We, therefore, direct the petitioners and the third respondent to pay costs quantified at Rs.50,000/- each to the Police Welfare Fund.

6 Hence, we pass the following order:

- (I) Writ Petition is rejected;
- (II) We direct the petitioners to pay costs of Rs.50,000/- to the Police Welfare Fund within a period of four weeks from today;
- (III) We direct the third respondent to pay costs of Rs.50,000/- to the Police Welfare Fund within a period of four weeks from today;
- (IV) Though the petition is disposed of, we direct that the petition shall be listed on 15th March 2017 under the caption of 'Directions' for reporting compliance.

(ANUJA PRABHUDESSAI,J.)

(A.S.OKA,J.)