

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2022 OF 2016

Mr. Rajesh TiwariPetitioner
V/s.
Mr. Brahmadev L. Gupta & Ors.Respondents

Mr. Swapnil Ambure, Advocate for Petitioner.
Mrs. S.D.Shinde, APP for the Respondent-State.
Mr. Harekrishna Mishra i/by Mr. Mikhail Dey, Advocates for
Respondent No.1.
Mr. Dinesh Tiwari, Advocate for Respondent No.3.

**CORAM :- R.M. SAVANT &
SANDEEP K. SHINDE, JJ.**

DATE :- 22ND SEPTEMBER, 2017.

PC. :-

At the outset, the learned counsel for the Petitioner, Mr. Ambure seeks leave to amend so as to join the First Informant to the FIR No.184 of 2000 Shri Manoj Kumar Singh as party Respondent No.3 to the above Petition. The learned counsel Mr. Tiwari appearing for the proposed Respondent has no objection to the same as also the learned counsel appearing for the Respondent No.1. Amendment to be carried out forthwith.

2 The above Petition has been filed for quashing of the proceedings bearing No.23/S/2001 and 58/P/2002 pending before the learned Metropolitan Magistrate, 5th Court, Bhoiwada, Mumbai. In so far as the proceeding bearing No.23/S/2001 is concerned, it arises out of the private complaint made by the Petitioner against the First Informant who has now been added as the Respondent No.3. The said complaint is alleging an offence under Section 506(II) of the Indian Penal Code, 1860 and the proceeding bearing no.58/P/2002 is also pending before the same Court. The said proceeding has arisen out of FIR No.184 of 2000 registered with the Shivaji Park Police Station by the newly added Respondent No.3 for the offences punishable under Sections 143, 144, 146, 147, 148, 324, 506(II) of the Indian Penal Code, 1860. Though the proceedings are pending since the year 2000 and 2001, the learned counsel for the Petitioner Shri Ambure states that charge has yet not been framed against the Accused.

3 The parties have arrived at an amicable settlement as a consequence of which the Petitioner has filed the instant Petition and the newly added Respondent No.3, i.e., the First Informant of the FIR No.184 of 2000 has filed an affidavit which is tendered by the learned counsel Shri Tiwari today. The said affidavit is dated

21.9.2017 and it is sworn before the Notary Public Shri D.S.Prabhu, Notary, Greater Mumbai and bears Notarial Register No.10689 dated 21.9.2017. In the context of the reliefs sought in the above Petition, paragraphs 3,4 and 6 of the said Affidavit are material and are re-produced hereunder:

“3 I say that in all the above cases, after prolonged litigation, a settlement has taken place due to mediation of certain common friends between me and the Petitioner.

4 I say that in view of the settlement, Petitioner has already handed over to me Gold Chain and Gold Bracelet weighing about 30 gms 980 worth Rs.1,02,390/-, hence I do not intend to proceed with any of the cases which are initiated by me as against the Accused. I say that only in order to have peace, to live in harmony and to avoid wasting of long time, I am intending to consent for withdrawal/closure of all cases as duly settled of all above cases unconditionally.

6 In view of the settlement, I hereby pray for closure of all the cases in which I am standing as the Complainant.”

4 In paragraph 4, it is stated that 30 gms of gold worth Rs.1,02,390/- has been returned to the Petitioner. The Petitioner is personally present in the Court. He is identified by the learned

counsel for the Petitioner Mr. Ambure. He is also identified by his Adhar Card bearing No.2891 0419 7685. When put in the box and queried, he states that the above Petition has been filed by him and that he accepts the contents of the said Petition. He further states that on account of the settlement arrived at between the Parties, he does not wish to proceed with the criminal case arising out of private complaint filed by him. The First Informant in FIR No.184 of 2000 Shri Manoj Kumar Singh is also personally present in Court. He is identified by the learned counsel Mr. Tiwari. He is also identified by his Driving Licence bearing No.5099 2551 0010. When put in the box and queried, he states that the settlement arrived at between the parties is acceptable to him. He further states that affidavit tendered by Mr. Tiwari is his and that the contents of the said affidavit are acceptable to him and that he has signed the said affidavit of his own free will and volition. The Respondent No.1- Brahmadev L. Gupta is also personally present in the Court. He is identified by the learned counsel Mr. Harekrishna Mishra. He is also identified by his Driving Licence bearing No.MH01 1997 0003167. When put in the box and queried, he states that the settlement arrived at between the parties is acceptable to him and that he has no objection if the Court cases which are pending are quashed and

set aside. Hence, having regard to the averments made in the Writ Petition as also the affidavit filed by newly added Respondent No.3- Manoj Kumar Singh as also the statement made by the Respondent No.1 when put in the box, no useful purpose would be served by keeping the proceedings pending having regard to the judgment of the Apex Court in the case of **Narinder Singh v. State of Punjab** reported in (2014) 6 SCC 466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab** reported in (2012) 10 SCC 303 would also lead to the same conclusion. There is, therefore, no impediment in quashing the Criminal Cases bearing No.23/S/2001 and 58/P/2002 pending on the files of the learned Metropolitan Magistrate, 5th Court at Bhoiwada, Mumbai. The Petition is accordingly allowed and made absolute in terms of prayer clause (a). The Petition is accordingly disposed of.

5 Since machinery of this Court has been used to settle the dispute between the parties, the Petitioner and newly added Respondent No.3 to pay cost of Rs.10,000/- each to be deposited with the Cancer Aid Society, Mumbai within six weeks from date. Receipt to be obtained and filed in the Registry.

6 The learned counsel Mr. Tiwari undertakes to file his *vakalatnama* for the Respondent No.3 within one week. Undertaking accepted.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)