

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 867 OF 2016

Percy Soli Chowdhary & ors. ... Applicants
V/s.
The State of Maharashtra & anr. ... Respondents

**WITH
CRIMINAL APPLICATION NO. 814 OF 2016**

Shegufa Adi Haubrich ... Applicant
V/s.
The State of Maharashtra & anr. ... Respondents

...

Mr. Mihir Deepak Gheewala the applicants in APL/867 of 2016 and respondent no.2 in APL/814 of 2016.

Mr. Himanshu Dasondi i/b. H. D. Associates for the applicant in APL/814 of 2016 and for respondent no.2 in APL/867 of 2016.

Mr. F. R. Shaikh, APP for the respondent no.1 – State in both applications.

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**CORAM : A. S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 17 JANUARY, 2017.

P.C. :

1. We issue Rule in both applications. The learned APP waives service in both applications for the first respondent. The learned counsel representing second respondent in both the applications waive service. We have taken up both the applications for final disposal.

2. The prayer made in Criminal Application No.867 of 2016 is for quashing of charge-sheet filed on the basis of MECR No.1 of 2006

registered with MHB Colony Police Station Borivali (E). The first informant is the second respondent in the said application. Though in the FIR, the offences under 307, 354, 326, 330, 323, 120B 109 read with Section 34 of the Indian Penal Code were alleged against the applicants in the said application, while filing charge-sheet, Section 307 of the Indian Penal Code is not invoked and charge-sheet has been filed for the offences punishable under Sections 143, 147, 148, 149, 323, 324, 325, 354 read with Section 34 of the Indian Penal Code.

3. Criminal Application No.814 of 2016 has been filed by the second respondent in Criminal Application No.867 of 2016 for quashing the charge-sheet submitted for the offences punishable under Sections 452, 380, 323, 504, 506 read with Section 34 of the Indian Penal Code. The Second respondent in Criminal Application No.814 of 2016 is the first Informant who is the fourth applicant in Criminal Application No.867 of 2016.

4. In Criminal Application No.814 of 2016, an additional affidavit has been filed by the second respondent therein. It is pointed out in the affidavit that late Rustom S. Irani, the father of Mr. Boman Rustom Irani was the owner of a Bungalow with surrounding land admeasuring 4600 sq. meters situated at Ideal Farm, J. S. Road, Dahisar West, Mumbai. The said Rustom Irani died on 3 June, 1989 leaving behind his last will and testament dated 4 August, 1983 under which the Bungalow and surrounding land admeasuring 4600 sq. meters was bequeathed to his wife who is the mother of Mr. Boman Rustom Irani. The mother died on 27 October, 2002 leaving behind her last will and testament dated 18 December, 2000 under which the said Bungalow and the surrounding land admeasuring 4600 sq. meters was bequeathed to the Mr. Boman

Irani. There was dispute interse between Mr. Boman Irani and Mr. Tehmton Irani, his brother. In the said affidavit, reliance is placed on consent terms filed in Testamentary Suit filed by Mr. Boman Irani to which legal representative of Mr. Tehmton Irani were defendants. By order dated 21 June, 2012, the suit was decreed in terms of the consent terms.

5. In the affidavit, the second respondent has stated that thereafter there was a settlement between him and the applicant. The second respondent in Criminal Application No.867 of 2016 has also filed an affidavit. She has also relied upon the overall settlement.

6. The second respondent in both applications in their affidavits have consented for the quashing of Criminal proceedings in view of the settlement. As far as Criminal Application No.814 of 2016 is concerned, the offence alleged is also under Section 380 of the Indian Penal Code. The learned APP on instructions states that no recovery has been made from the applicant therein, Hence, no case of the offence punishable under Section 380 is made out.

7. Perusal of the both applications show that the alleged incidents have occurred essentially because of the property dispute between two brothers referred above. Now the said property dispute has been completely settled as evidenced by the settlement filed in the Testamentary Suit.

8. In view of the complete settlement of the property dispute, the chances of conviction in both the cases are very bleak. Moreover, after settlement of the property dispute, the continuation of the criminal

proceedings will amounts to abuse of process of law. Therefore, this is a fit case where this Court should exercise its power under Section 482 of Criminal Procedure Code, 1973 by quashing proceedings. Accordingly, we pass the following order;

ORDER

1. Rule issued in Criminal Application No.867 of 2016 is made absolute in terms of prayer clause (b) which reads thus;

“(b) This Hon'ble Court be pleased to pass an order granting interim reliefs of staying the proceedings viz. C. C. No.C.C. No.3639/PW/2008 (Old No.821/PW/2006), C.C. No.3808/PW/2008 (Old No.570/PW/2008) pending before the 68th Metropolitan Magistrate's Court at Borivali, Mumbai, pending the hearing and final disposal of the matter;”

2. Rule issued in Criminal Application No.814 of 2016 is made absolute in terms of prayer clause (a) which reads thus;

“(a) That this Honourable Court may be pleased to admit the above application and to quash the C. C. No.3631/PW/2008 (Old C. C. No.788/pW/2006) pending before the Learned Metropolitan Magistrate's 68th Court at Borivali, Mumbai And MECR No.32 of 2006 of M.H.B. Colony Police Station under Section 482 of the Code of Criminal Procedure;”

3. All concerned are act upon the authenticated copy of this Judgment and order.

(ANUJA PRABHUDESSAI, J.)

(A. S. OKA, J.)