

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 663 OF 2015
IN
CRIMINAL APPLICATION No. 843 OF 2014

Jyoti Assomull.	..Applicant. [Ori. Respondent No. 3]
<i><u>In the matter between</u></i>	
Anil Assomull.	..Ori. Applicant.
<i><u>Versus</u></i>	
State of Maharashtra & Others.	..Respondents.

Mr. Peter Lobo, Mr. Moammad Ashraf i/b R. S. Kohli for the Applicant – original Respondent No. 3 in APL 843 of 2014.

Mr. S. B. Jaisinghani, Senior Advocate along with Mrs. Namrata Shah-Sourashtri i/b K. Ashar & Co., for original Applicant in APL No. 843 of 2014.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **March 10, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. The present application is taken out by original Respondent no.3 for recall of the order dated 18th March 2015 passed in Criminal Application No.843 of 2014 and for restoration of the said application to the file.

2. By the said order, we have quashed the proceedings of FIR No.242 of 2013 registered with Wanwadi Police Station against the original Applicant in Criminal Application No. 843 of

2014, for the offence punishable under sections 403, 406, 419, 420, 463, 464, 465, 467, 468, 471, 474 and 34 of the Indian Penal Code, 1860. It was the case of the original Applicant that the dispute between the parties was amicably settled with the help of conciliator – Mr. Justice D. K. Deshmukh, Former Judge of this Court. The said application was vehemently opposed by Respondent No. 3, i.e., present Applicant. At that time also it was the stand of Respondent No.3 that terms of settlement are not complied with.

3. In the light of above, we examined the settlement deed dated 19th March 2014 between the parties. We also perused the letters dated 22nd May 2014 and 30th June 2014 issued by Respondent No.3 to the Senior Inspector of Police, Wanwadi Police Station and came to the conclusion that terms of the settlement are complied with and accordingly quashed the subject FIR.

4. Mr. Lobo, the learned Counsel appearing for the Applicant submitted that the order dated 18th March 2015 was uploaded on 12th May 2015 and thereafter original Applicant wrote letter to the Secretary of housing society and requested not to delete his name from the share certificate. Mr. Lobo submitted that this letter shows that original Applicant has not complied with the settlement terms, he has played fraud on the Court and therefore the said order is required to be recalled.

5. Mr. Jaisinghani, the learned senior Counsel appearing for the original Applicant submitted that there is no question of fraud. He asserted that settlement terms are complied with and relied upon the correspondence exchanged between the present Applicant and Wanwadi Police Station.

6. For our satisfaction, we have again gone through the settlement terms as well as other correspondence between the present Applicant and the Police Station. In paragraph 5 of the letter dated 30th June 2014, the Applicant has stated thus :

“We have resolved all our disputes and differences and my husband has complied with the conciliation terms which have been drawn up Justice D. K. Deshmukh (Retired Judge of Bombay High Court in the presence of both parties and their respective advocates and in these circumstances my husband the accused and myself are now residing jointly together and we have amicably resolved our disputes and complaint and I want to give my husband an opportunity to reconcile so that we could live a happy a matrimonial life once again together.”

7. The above contents undoubtedly demonstrated that the dispute was amicably settled at the time of passing of the order dated 18th March 2015 and we accordingly relied upon the same and quashed the proceedings of the subject FIR.

8. Even assuming for the sake of argument that

subsequently original Applicant resiled from the terms of settlement, that cannot be ground for recall of the order dated 18th March 2015 and the remedy of present Applicant is somewhere else. We do not find any merit in the present application and the same is accordingly dismissed.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]