

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.963 OF 2014

Shri Ramesh Khimji SawlaApplicant

V/s.

Shri Hitesh Rajendra Bhanushali
& Anr.Respondents

Mr. S.S.Karmarkar, Advocate for Applicant.

Mrs. Uma K. Wagle, Advocate for Respondent No.1.

Mrs. S.V.Sonawane, APP for State.

**WITH
CRIMINAL APPLICATION NO.987 OF 2014**

Shri Hitesh Rajendra Bhanushali ...Applicant

V/s.

Shri Ramesh Khimji Sawla & Anr. ...Respondents.

Mrs. Uma K. Wagle, Advocate for Applicant.

Mr. S.S.Karmarkar, Advocate for Respondent No.1.

Mrs. S.V.Sonawane, APP for the Respondent-State.

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

DATE :- 18TH SEPTEMBER, 2017.

PC. :-

The above Criminal Applications have been filed for quashing and setting aside the proceedings being C.C.No.250/S/2003 arising out of the offences punishable under Sections 323, 324 and 452 of the Indian Penal Code, 1860 (Subject

Shivgan

matter of Application No.987/2014) and C.C.No.569/S/2003 arising out of C.R.No.84 of 2003 registered for offences punishable under Sections 323, 452 and 504 of Indian Penal Code, 1860 (Subject matter of Application No.963/2014). The said cases are in the nature of cross cases filed between the parties . The Respondent to each of the Applications is the Complainant. The parties have amicably resolved their disputes. As a result of which, both the First Informants, i.e, Mr. Ramesh Khimji Sawla, who is the Respondent No.1 in Criminal Application No.987 of 2014 has filed his affidavit bearing today's date, i.e., 18.9.2017. The said affidavit is sworn before the Notary Public Bidhu Panicker, Notary, Government of India bearing Notarial Register No.6673 of 2017. In terms of the reliefs sought in the above Applications, paragraphs 4,6,7 and 8 of the said affidavit are material and are re-produced hereunder:

“4 That, I do not wish to proceed against the Applicant herein taking into consideration his age and career factor.

6 That, I have no objection, if the said Application is allowed and the case against the Applicant herein is quashed/set aside against the Applicant herein.

7 That, I am making this Affidavit without any force, fraud or coercion at the hands of the Applicant or any person on his behalf and I am deposing this on my free will.

8 *I am swearing this Affidavit to support the Application of the Applicant herein to quash the proceedings against the Applicant herein, in connection to the C.C.No.250/S/2003, pending before the Ld. Metropolitan Magistrate's 26th Court, Borivali, Mumbai."*

2 The First Informant in the other case, i.e., Hitesh Rajendra Bhanushali has also filed an affidavit which is in the same terms as affidavit filed by the First Informant Ramesh Khimji Sawla. Paragraphs of the said affidavit are pari-materia. Hence, Paragraph 7 of the said affidavit is re-produced hereunder for ready reference:

"7 I am swearing this Affidavit to support the Application of the Applicant herein to quash the proceedings against the Applicant herein, in connection to the C.R.No.84/03, pending before the Ld. Metropolitan Magistrate's 26th Court, Borivali, Mumbai bearing C.C.No.569/P/2003."

3 The Complainant Ramesh Khimji Sawla is personally present in the Court. He is identified by his Adhar Card bearing NO.9714 3377 7887. When put in the box and queried, he states that the affidavit tendered today by the learned counsel Mr. Karmarkar is his. He has understood the contents of the said affidavit and they are also acceptable to him and that he has signed the said affidavit of his own free will and volition.

4 The First Informant Hitesh Rajendra Bhanushali is also personally present in Court. He is identified by the learned counsel

Mrs. Wagle. He is also identified by his Driving Licence bearing No.MH0220090026007 issued on 4.2.2009. When put in the box and queried, he states that the affidavit tendered today by the learned counsel Mrs. Wagle is his. He has understood the contents of the said affidavit and they are acceptable to him and that he has signed the said affidavit of his own free will and volition.

5 Hence, the affidavits filed by the Complainant and the First Informant coupled with the statements made by them in the witness box disclose that the parties have amicably resolved their disputes and, therefore, do not wish to prosecute the cases filed by them against each other. 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. No useful purpose would therefore be served by keeping the proceedings pending. The above Criminal Applications are accordingly allowed and made absolute in terms of prayer clause (a) of Criminal Application No.987 of 2014 and (b) of Criminal Application No.963 of 2014.

6 The Applicant in Criminal Application No.963 of 2014 to pay the cost of Rs.10,000/- to be deposited with Police Welfare Fund in the Office of the Commissioner of Police, Mumbai within six weeks from date. Receipt to be obtained and filed in the Registry.

7 Both the learned counsel undertake to file vakalatnama for the respective Respondents for whom they are appearing in each others Applications.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)