

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3383 OF 2016

Mandar Babu Shetty ...Petitioner.
V/s.
State of Maharashtra & Ors. ...Respondents.

Mr. M.S.Singh, Advocate for Petitioner.
Mr. K.V.Saste, APP for State.

**WITH
CRIMINAL APPLICATION NO.819 OF 2017**

Rakesh Shiva Shetty & Ors.Applicants
V/s.
Mandar Shetty & Anr.Respondents

Mr. S.V.Marwadi with Ms. Saroj N. Jadhav, Advocates for Applicants.
Mr. K.V.Saste, APP for the Respondent-State.
Mr. M.S.Singh, Advocate for Respondent No.1.

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

DATE :- 16TH AUGUST, 2017.

PC. :-

The above petition has been filed by the complainant against the original accused nos.1 to 3. The above criminal application has been filed by the original accused nos. 1 to 3

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wherein the complainant is the respondent no.1. The FIR is arising out of a commercial dispute between the first informant and the accused. The parties have arrived at settlement which they have reduced into writing by way of 'Consent Terms' bearing today's date i.e, 16.8.2017. The 'Consent Terms' have been executed before the Notary Public Mrs. Aliya N. Pathan, Notary, Greater Mumbai, Government of India bearing Notarial Register No.26187 dated 16.8.2017. In the context of the reliefs sought in the above petition, i.e., in respect of quashing of the proceedings in the Sessions Case bearing No.958 of 2015, clauses 1 and 5 are material which are reproduced hereunder:

“1 The PARTY OF THE SECOND PART has no objection for quashing of the proceedings viz Sessions Case No.958 of 2015 pending before the Hon'ble Sessions Court at Bombay arising out of FIR No.401 of 2014 registered with Nagpada Police Station.

5 The PARTY OF THE SECOND PART has no grievance against the PARTIES OF FIRST PART and hence does not wish to proceed against the PARTIES OF THE FIRST PART.”

The said 'Consent Terms' also contain arrangements in respect of muddemal properties which are not necessary to be adverted to in the instant order.

2 The respondent no.1, i.e., the complainant Mandar Babu Shetty has filed affidavit-in-reply in the above Criminal Application No.819 of 2017. The said affidavit-in-reply bears today's date i.e., 16.8.2017 and is also affirmed before the same Notary Public, i.e, Mrs. Aliya N. Pathan. It bears Notarial Register No.26186 dated 16.8.2017. The factum of the applicant no.1 Rakesh Shiva Shetty having paid a sum of Rs.50 Lakhs to the complainant is accepted vide clause (2). Vide clause (3), return of Skoda Laura automatic car bearing No.MH-04-EQ-6789 is mentioned. In paragraph 7, it has been mentioned that the factum of filing of the above Writ Petition by the complainant for quashing of the proceedings is evidence of the amicable settlement arrived at between the parties and on the said basis, quashing of the proceedings pending before the Sessions Court at Bombay bearing Sessions Case No.958 of 2015 is sought. Hence, the 'Consent Terms' and the affidavit-in-reply filed by the respondent no.1 ex-facie discloses the settlement arrived at between the parties, i.e., the complainant and the accused who are the applicants in the above criminal application.

3 The complainant Mandar Babu Shetty is personally present in the Court. He has been identified by the learned counsel Mr. Mithilesh S. Singh. He has also been identified by his PAN Card No.BIVPS4585A. When put in the box and queried, he states that 'Consent Terms' are acceptable to him and he has signed them of his own free will and volition. He also reiterates the same in respect of the affidavit-in-reply which he has filed in the above Criminal Application.

4 Applicant No.2-Sunil Bhanushali is personally present in the Court. He has been identified by the learned counsel, Ms. Saroj Jadhav. He has also been identified by his PAN Card bearing no.AUAPB34690. When put in the box and queried, he states that he has been explained the 'Consent Terms' by the advocate on record and he has understood the same. He also accepts the fact that an amount of Rs.50 Lakhs is paid to the first informant as and by way of full and final settlement. He further states that he and the other applicants have signed the 'Consent Terms' of their own free will and volition, as an outcome of the settlement between the parties. The

'Consent Terms' are taken on record and marked as **X for Identification**. In respect of clause (4) of the 'Consent Terms', the parties may make an appropriate application before the concerned Court. The concerned Court would pass an appropriate order having regard to the 'Consent Terms' arrived at between the parties.

5 In terms of the law laid down by 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 in keeping the proceedings pending. Hence, the above criminal writ petition is allowed and made absolute in terms of prayer clause (a). In view of the fact that by the relief granted in the above writ petition, the proceeding in question has been quashed, there is no warrant to pass a separate order in the above Criminal Application for quashing the same proceeding i.e. Sessions Case No.958 of 2015.

6 In view of the fact that machinery of this Court has

been used for settlement of private disputes between the parties, it would be just and proper to direct the applicants in the criminal application no.819 of 2017 to pay cost of Rs.10,000/- to the Kirtikar Law Librarary, High Court, Bombay. Same to be done within a period of four weeks from the date.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)