

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4558 OF 2016

Santosh Kudwarkar & Ors.Petitioners
V/s.
The State of Maharashtra & Anr.Respondents

Mr. Milan Desai i/by Mr. T.R.Patel, Advocates for Petitioners.
Mr. K.V.Saste,APP for the Respondent-State.
Mr. A.A.Shaikh, Advocate for Respondent No.2.

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

DATE :- 22ND SEPTEMBER, 2017.

RC. :-

The above Petition has been filed for quashing of the C.C.No.954/PW/2016 pending before the learned Metropolitan Magistrate, 24th Court, Borivali, Mumbai. The said case has arisen out of C.R.No.246 of 2015 registered with the Bangur Nagar Police Station, Mumbai. The cause for filing of FIR was the dispute between the parties relating to the premises which was given on leave and licence by the Petitioner No.1. It is not necessary to further dilate on facts. Suffice it would be to state that parties were also before the City Civil Court, Greater Mumbai in S.C.Suit No.975 of 2015. In the said Suit, settlement was arrived at between the

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parties, which was reduced into Consent Terms dated 29.2.2016 . The Consent Terms are in detail and can be said to evidence the overall settlement arrived at between the parties. In the context of the reliefs sought in the Petition, paragraph 5 of the said Consent Terms is material and is re-produced hereunder:

“5 That the Plaintiff shall withdraw the F.I.R.No.246 of 2015 dated 20.7.2015 registered with Bangur Nagar Police Station lodge by the plaintiff against the defendants which has been filed due to misunderstanding between the parties and shall file appropriate proceedings for the Hon'ble Court for the quashing of the F.I.R.”

2 The First Informant, i.e., the Respondent No.2, Swarnika Aditya Bali is personally present in the Court. The First Informant, i.e., the Respondent No.2, Swarnika Aditya Bali (Nee Swarnika Vidhan Chandra Arya) has filed an affidavit dated 8.12.2016 sworn before the Notary Public R.A.Alate, Notary, Greater Mumbai bearing Notarial Register No.5923 dated 8.12.2016. In the context of the reliefs sought in the above Petition, paragraph 14 of the said Affidavit is material and is reproduced hereunder:

“14 I say that, as stated foregoing paras herein above, we have amicably resolved all our disputes and

have withdrawn all allegations made against each other and pursuant thereto in consent terms filed in the aforesaid civil suit I have also given undertaking to co-operate in getting the criminal case arising out of my complaint quashed and even otherwise I am desirous that the present criminal case against the petitioners arising out of my complaint be dropped and quashed. I accordingly request the Hon'ble High Court of Bombay that the charge-sheet in C.C.No.954/PW/2016 in C.R.No.246/15 filed with Bangur Nagar Police Station at my instance, be quashed against all the accused persons.”

3 The Respondent No.2 is personally present in the Court. She is identified by the learned counsel Shri A.A.Shaikh. She is also identified by her Adhar Card bearing No.6107 3036 0453. When put in the box and queried, she states that the parties have arrived at an amicable settlement as a consequence of which Consent Terms were filed in the City Civil Court, Greater Bombay. She further states that an affidavit tendered by the learned counsel Shri A.A.Shaikh is hers and that contents of the said affidavit are acceptable to her and she has signed the said affidavit of his own free will and volition. The Petitioner No.1-Santosh Kudwarkar is personally present in the Court. He is identified by the learned counsel Shri Desai appearing

for the Petitioners. He is also identified by his Aadhar Card bearing No.9420 2214 8839. The dispute was in respect of the premises belonging to the Petitioner No.1. When put in the box and queried, he accepts that the settlement has been arrived at between the parties pursuant to which Consent Terms were filed in the City Civil Court, Greater Bombay. Hence, having regard to the affidavit filed by the Respondent No.2 as also the statements made by the Petitioner No.1 and the Respondent No.2 in the witness-box which facts unequivocally point out that parties have settled the matter amicably. No useful purpose would therefore be served in continuing the proceedings. In view of 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.

4 The Petition is accordingly allowed and made absolute in terms of prayer clause (C). The Petitioners to pay costs of Rs.20,000/- to be deposited with the National Association of Blind, Worli. The Respondent No.2 also to pay cost of Rs.10,000/- to be also deposited with the National Association of Blind, Worli within

six weeks from date. Receipt to be obtained and filed in the Registry.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)