IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4564 OF 2016

Himanshu Shekhar ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

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Mr. Subhash Jha i/b. M/s. Law Global Advocates for the Petitioner.
Mr. K.V. Saste, APP for the Respondent No.1-State.
Mr. Ghanshyam Upadhyay with Mr. Kamlesh Mishra i/b. M/s. Law Juris for the Respondent No.2.

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

DATED: 30th JANUARY, 2017.

P.C.:-

Rule. The learned APP waives service for the first Respondent. The learned counsel appearing for the second Respondent waives service. Submissions were heard on the last date.

2. The prayer for quashing the First Information Report is made in this Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973. The second Respondent is the first informant at whose instance the impugned First Information Report alleging commission of offences punishable under Sections 354, 354(d) and 509 of the Indian Penal

Code was registered. The charge sheet has been filed by the police after completion of investigation. At the relevant time, both the Petitioner and the second Respondent were the employees of the City and Industrial Development Corporation of Maharashtra (for short 'CIDCO'). The second Respondent at the relevant time was employed on contract basis as a Computer Operator. It is alleged that the present Petitioner was her superior officer in CIDCO.

3. Our attention is invited to the report of the Enquiry Officer appointed by CIDCO in the departmental enquiry conducted against the Petitioner. The Enquiry Officer has recommended exoneration of the Petitioner by recording that there was a settlement between the Petitioner and the second Respondent. The second Respondent has filed an affidavit supporting the Petitioner by stating that there was a settlement between herself and the present Petitioner.

4. Looking to the allegations made by the second Respondent of sexual assault and harassment at the place of work against her superior officer, in normal course, this Court would not have interfered with the criminal proceedings at this stage.

5. Our attention is invited to the provisions of the Sexual

Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short 'the said Act'). From the objects and reasons of the said Act it appears that the said enactment was made for giving effect to the decision of the Apex Court in case of ***Vishakha Vs. State of Rajasthan***[1]**.** The said Act provides for a constitution of Internal Complaints Committee by every employer of work place. It also contemplates the constitution of the Local Complaints Committee which is to be constituted by every District Officer. Section 9 provides that any aggrieved woman may give in writing the complaint of sexual harassment at work place to the Internal Committee, if so constituted or Local Committee, in case Internal Committee is not constituted within a period of three months from the date of the incident. Section 10 of the said Act is material which reads thus :-

> "**10. Conciliation.--**(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:
> Provided that no monetary settlement shall be made as a basis of conciliation.
> (2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

1 ***(1997) 7 SCC 323***

> (3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.
> (4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be."

6. Thus, Sub Section 1 of Section 10 mandates that the Internal Committee or as the case may be, the Local Committee may before initiating an enquiry under Section 11 into the complaint and at the request of the aggrieved woman takes steps to settle the matter between her and Respondent. This is subject to an exception that no monetary settlement should be made as basis for conciliation. It is provided in Sub Section 4 of Section 10 of the said Act that where a settlement is arrived at under Sub Section (1), no further enquiry shall be conducted either by the Internal Committee or by the Local Committee. Section 11 of the said Act deals with the enquiry into the complaint which is made subject to Section 10.

7. We have perused the enquiry report of the Enquiry Officer Mr. Meshram, who is a retired Judicial Officer. Before the Enquiry Officer, an application was made by the second Respondent stating that she has compromised the dispute with the Petitioner. The application was signed by the second Respondent in presence of her husband and

the Presenting Officer. The Enquiry Officer recorded a finding that during initial separate interrogation of the witnesses and husband of the second Respondent, he was satisfied that she has voluntarily and without any influence or threat has decided not to proceed further. On page No. 10 of the enquiry report, the Enquiry Officer has referred to section 10 of the said Act and has come to the conclusion that it was necessary to take steps to settle the matter by conciliation. He has recorded that only on the failure of conciliation, the enquiry could have commenced.

8. Therefore, we find that as per the provisions of Section 10 of the said Act it is permissible for the Internal Committee or the Local Committee to settle the dispute. However, no monetary settlement shall be made as a basis for conciliation. Section 11 suggests that holding of an enquiry on the complaint is subject to Sub Section(1) of Section 10 of the said Act. Section 10 as stated earlier, permits the aggrieved woman to settle the dispute without entering into monetary settlement. If the matter would have gone before the Internal Committee or the Local Committee it would have been permissible for the Applicant and the second Respondent to compromise.

9. In the facts of the case, as evidenced by the enquiry report,

there appears to be a complete settlement between the Applicant and the second Respondent. This is supported by an affidavit filed by the second Respondent.

10. It is only in the peculiar facts which are set out above and in the light of the provisions of the said Act that we are inclined to exercise powers under Section 482 of the Code of Criminal Procedure, 1973. The continuation of criminal proceedings will not serve any purpose and chances of conviction are very bleak. Considering the settlement arrived at between the Petitioner and the second Respondent and the findings recorded by the Enquiry Officer, no purpose will be served by continuing the prosecution. Therefore, this is a fit case to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 for quashing the criminal proceedings. Accordingly, we pass following order.

11. Rule is made absolute in terms of prayer clause (a), which reads thus:

> “that this Hon'ble Court may be pleased to issue a writ of certiorari and/or any other appropriate writ, order and/or direction in the nature of certiorari thereby calling for investigation papers concerning FIR No.I-178/15 of CBD Belapur Police Station, Navi Mumbai and so also C.C. No.105/16 from the court of the Ld. JMFC at CBD Belapur, Navi Mumbai and after

examining the legality, validity and /or propriety of the same being in vogue, may be pleased to quash and set aside the same."

12. All concerned to act on authenticated copy of this order.

(ANUJA PRABHUDESSAI, J.) **(A.S. OKA, J.)**