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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.5789 OF 2016

Mahesh s/o Sahebrao Deshmukh,
Age: 37 years, Occu: Business,
R/o. 271, Palash Apartment,
Flat No.205, Behind SBI Bank,
Samarthnagar, Aurangabad

..APPLICANT

VERSUS

1. The State of Maharashtra,
through the Police Station Officer,
Kranti Chouk Police Station,
Aurangabad
2. Radhakisan s/o Gulabchand Mundada,
Age: 75 years, Occu: Retired,
R/o. 113, Gopal Bhavan,
Infront of SBI Bank, Samarthnagar,
Aurangabad

..RESPONDENTS

Mr Kuldeep S. Patil, Advocate h/f Mr N. J. Patil, Advocate for
applicant;
Mr K. S. Patil, A.P.P. for respondent No.1;
Mr C. T. Jadhav, Advocate for respondent No.2

WITH
WRIT PETITION NO.12541 OF 2016

Radhakishan s/o Gulabchand Mundada,
Age: 76 years, Occu: Retired Pensioner,
R/o.113, Gopal Bhawan, Infront of State
Bank of India, Samarth Nagar,
Aurangabad

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Medical Education and Drugs Department,
New Gokuldas Tejpal Hospital Premises,

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9th Floor, B Wing, Lokmanya Tilak Road,
Mumbai

2. The Commissioner,
Food and Drug's Administration &
Food Safety Commissioner, (MS),
Survey No.341, Bandra-Kurla Complex,
2nd Floor, Bandra (East), Mumbai – 400051
3. The Joint Commissioner (Aurangabad Division),
Food and Drug Administration, M.S.,
Aurangabad, Nath Market, 2nd Floor,
Aurangapura
4. Mahesh s/o Sahebrao Deshmukh,
Age: 37 years, Occu: Business,
R/o. 271, Palash Apartment,
Flat No.205, Behind State Bank of India,
Samarthnagar, Aurangabad

..RESPONDENTS

Mr Chetan T. Jadhav, Advocate for petitioner;
Mr K. S. Patil, A.G.P. for respondent Nos.1 to 3;
Mr Kuldeep S. Patil, Advocate h/f Mr N. J. Patil, Advocate for
respondent No.4

CORAM : PRASANNA B. VARALE
AND
SMT. VIBHA KANKANWADI, JJ.

DATE : 4th April, 2018

ORAL ORDER:

The present criminal application is filed at the instance of applicant Mahesh Sahebrao Deshmukh, who prays for quashment of C.R./First Information Report No.709 of 2016 (759/2016), registered on 20th July, 2016 at Kranti Chowk Police Station, Aurangabad for offence punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code, filed at the instance of respondent No.2 Radhakisan

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Gulabchand Mundada and further prays for quashment of the proceedings in respect of registration of C.R./First Information Report No.709 of 2016 (759 of 2016). The present writ petition is filed at the instance of Radhakisan Gulabchand Mundada (Respondent No.2 in Criminal Application No.5789 of 2016), challenging the order dated 30th August, 2016, passed by respondent No.1 – State of Maharashtra, through Secretary, Medical Education and Drugs Department, whereby the order dated 8th July, 2016, passed by respondent No.3 – Joint Commissioner, Food and Drugs Administration, Aurangabad was recalled by allowing the appeal preferred by respondent No.4 (in writ petition), partly.

2. In view of the fact that the parties to both the proceedings are common, clubbing of these two matters was prayed for and accordingly these two matters were clubbed together. Both the matters are taken for hearing/disposal with the consent of the parties.

3. In criminal application, it is submitted before this Court that as the applicant was in need of premises to start the business of medical shop, he was searching for a suitable location and as the shop owned by respondent No.2 herein, situated at Plot No.113, Samarth Nagar, Aurangabad found to be suitable for the purposes, the applicant approached the owner of the premises i.e. respondent No.2. The

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applicant had submitted the necessary documents including the copy of an agreement between the parties to the authorities for grant of requisite license. It is then submitted that the terms were agreed between the parties under the rent agreement and the said rent agreement was notarized agreement. It may not be necessary to refer to the terms arrived at between the parties and a detail reference is made to these terms in para 2 of the application.

4. The applicant submits that as per the terms of agreement, the applicant initially paid an amount of Rs.1,50,000/- and subsequently, remaining amount of Rs.50,000/- was paid to respondent No.2. As such, total amount of Rs.2,00,000/- was paid to respondent No.2 by the applicant against security deposit for shop. It is also submitted by the applicant that the period of occupying the premises was of 5 years as per the rent agreement. It is further submitted by the applicant that on expiry of period of 5 years as per the rent agreement, respondent No.2 wanted to prepare fresh rent agreement and accordingly, fresh agreement for another 5 years between the parties was prepared on 11th July, 2013 and the same was also notarized. It was agreed between the parties that though the shop was given on rent for 5 years, there should have been a separate rent agreement for every 11 months yearly and there shall be increase of Rs.500/- yearly in the rent of shop.

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5. Then it is submitted that on expiry of period of 11 months on 1st June, 2013, rent agreement was renewed on 1st July, 2014 for 11 months and the period of 11 months expired in the month of April, 2015. Respondent No.2 then directed the applicant to vacate the premises and on avoidance of the applicant, respondent No.2 had approached the Food and Drugs Administration under RTI. It is submitted by the applicant that respondent No.2 alleged that the applicant prepared certain false and fabricated documents and submitted such documents to the Food and Drugs Administration. On these allegations, respondent No.2 lodged the complaint/report to Kranti Chowk Police Station, Aurangabad on 20th July, 2016 for commission of offence punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code.

6. It is then submitted by the applicant that the applicant had initiated proceedings, namely, Regular Civil Suit No.67 of 2016 before learned Civil Court in view of civil dispute between the parties and on the premises of false report lodged to the police station and further on an apprehension of arrest, the applicant immediately approached the learned District and Sessions Judge, Aurangabad for grant of anticipatory bail. The applicant was protected by an order of interim protection and ultimately by an order dated 2nd August, 2016, the interim protection order dated 25th July, 2016 was made absolute on

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the same terms and conditions under the order of learned Additional Sessions Judge, Aurangabad.

7. It is also submitted by the applicant that the Food and Drugs Administration, Aurangabad passed the order of cancellation granting licence to the petitioner and the said order was subject matter of an appeal before the State Government and the Honourable State Minister, by an order dated 30th August, 2016, allowed the appeal partly.

8. In writ petition, petitioner Radhakishan Gulabchand Mundada raises a grievance against the order passed by the Honourable State Minister, thereby allowing the appeal filed by applicant – Mahesh Sahebrao Deshmukh. It is the submission of the petitioner in writ petition that the licence granted to the petitioner was cancelled by the authority. For grant of license, respondent No.4 - Mahesh Deshmukh in writ petition, submitted false documents before the authority and also misled the authority by submitting that civil proceedings are initiated at the instance of the licensee Mahesh Deshmukh on account of disconnection of electricity supply to the shop of respondent No.1 Mahesh Deshmukh.

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9. It was the submission of the petitioner in the writ petition that under an erroneous belief, the Honourable Minister allowed the appeal and recalled the order of cancellation of licence. On these premises, the petitioner challenges the order dated 30th August, 2016 and prays for quashment of the said order and also prays for compensation for harassment and inaction.

10. During pendency of the application and the petition, the parties submitted before this Court that they are exploring the possibility of an amicable settlement before the Trial Court. The matter was then referred to a trained Mediator to undertake the exercise of mediation. Respondent No.2 - Radhakishan Gulabchand Mundada in Criminal Application No.5789 of 2016, who is petitioner in Writ Petition No.12541 of 2016, filed an additional affidavit. It is submitted before this Court by way of an additional affidavit which reads thus:

“2.

In view of the settlement agreement between the parties dated 13/3/2018 during Mediation in R.C.S. No.3/2017 (Eviction Suit), as the Applicant has vacated the premises in question and handed over the vacant possession of the suit shop, the bitterness between the parties having come to an end, I, do hereby take oath and state on solemn affirmation that, I want to withdraw the connected Writ Petition No.12541/2016.

4.

As the Applicant has vacated the suit premises on 27/03/2018 as per mediation terms dated 13/3/2018, I have withdrawn the suit for eviction and payment of license fees arrears. A copy of the Compromise (Terms) agreement dated 13/3/2018 and a copy of disposal order passed in the Rent Suit No.3/2017 dated 27/3/2018 are annexed herewith and marked as Exhibit R-1 colly.

I say and submit that, in view of aforesaid circumstances, Mediation terms and in view of applicant vacating the premises, I have no objection if investigation in respect of First Information Report bearing Crime no.709/2016 registered with Kranti Chowk Police Station, Aurangabad is discontinued.

Hence, this short affidavit submitting no objection to pass appropriate orders in Criminal Application no.5789/2016.”

11. A copy of Mediators report is also placed on record and the same reads thus:

“This matter is referred for mediation. In due process heard Plaintiff and defendant identified by Adv. Shri. Chetan T. Jadhav and Adv. Shri. J. E. Taur respectively. As per the contents of the compromise filed by both the parties, the dispute is amicably settled between the parties and report is forwarded for further order as per law.

Hence this report.”

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12. In view of above referred facts, what emerges is, firstly the dispute between the parties was purely of civil nature. Secondly, respondent No.2 in criminal application admitted in the terms of an agreement arrived at before the learned Mediator that applicant Mahesh Deshmukh had vacated the suit premises on 27th March, 2018 and respondent No.2 - Radhakishan Mundada had withdrawn the suit for eviction and payment of arrears of license fees. Respondent No.2 also expressed his willingness for non continuation of the investigation pursuant to lodgment of First Information Report No.709 of 2016.

13. Perusal of the terms of settlement between the parties filed before learned Civil Judge Junior Division, Aurangabad shows that the parties have agreed to withdraw the allegations and counter allegations made against each other and they have no grievance against each other. It is also stated in the terms of compromise that the petitioner Radhakishan Gulabchand Mundada has prayed for withdrawal of the writ petition.

14. In view of the above referred observations and more particularly the relationship between the parties, being only a commercial relationship and dispute whatsoever was in the nature of civil dispute and that too, now settled between the parties as per the terms arrived at between them, continuation of criminal proceedings against the

applicant Mahesh Deshmukh would serve no fruitful purpose. In view of these facts, in our opinion, the interest of justice would be served by allowing the criminal application in terms of prayer clauses (C) and (D) and accordingly it is allowed.

The present writ petition is allowed to be withdrawn and same also stands disposed of.

(SMT. VIBHA KANKANWADI, J.)

(PRASANNA B. VARALE, J.)

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