

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.171 OF 2018

Deepak Kakubhai Mehta and ors. : Petitioners.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Ashish S Chavan for the Petitioners.
Mr. V B Konde-Deshmukh, Addl. PP for the Respondent/State.
Mr. Sanjeel Kadam i/by Kadam and Company for the Respondent No.2.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.**
DATE : 18th APRIL 2018

P.C.

1 The above Writ Petition has been filed for quashing of the FIR being C.R.No.229 of 2017 registered on 27/07/2017 with Azad Maidan Police Station, Mumbai against the Petitioners for the offences punishable under Sections 406, 420, 464, 465, 467, 468, 471 r/w 34 of the Indian Penal Code. The said FIR is a consequence of the dispute between the parties which has taken place in the course of the business transaction between the parties.

2 It is not necessary to dilate further on facts as the parties have entered into a settlement which is reduced into writing by way of Memorandum of Understanding which has been filed in Summons For Judgment No.50 of 2017 in Commercial Division Summary Suit No.278 of 2017 between DMSO's Metal Pvt. Ltd. v/s. Sunshine Projects Pvt. Ltd. The said Memorandum of Understanding covers various proceedings which are

pending between the parties including the present FIR being C.R. No.229 of 2017 and the cases filed under Section 138 of the Negotiable Instruments Act. Paragraph 3 (ii) of the said Memorandum of Understanding is material and is reproduced herein under :-

“3 However, notwithstanding the above and merely for statistical purposes, the parties hereto agree and undertake as follows :-

(ii) the Plaintiff undertakes to withdraw Criminal Case No.1916/SS/2016 filed against the Defendant before the 70th Court of Metropolitan Magistrate, at Mazgaon at Sewree at Mumbai, under Section 138 of the Negotiable Instruments Act, 1881 within 10 days from the date of the order quashing F.I.R. No.229/2017 filed through their Director Mr. Atul Bharani against the Plaintiff and its Directors and Officers, at Azad Maidan Police Station, Mumbai.”

3 The Respondent No.2 Mr. Atul S Bharani i.e. the first informant who is concerned with the Sunshine Projects Pvt. Ltd. has filed an affidavit dated 09/02/2018 which is affirmed before the Notary Miss. Rekha A Tolat having her office in Yusuf Building, Loft Over Shop No.1, Ground Floor, 43, M. G. Road, Mumbai – 400 001 and bearing Notarial registration No.1990. Paragraph 5 of the said affidavit refers to the Memorandum of Understanding entered into between the parties. In the context of the reliefs sought in the present Writ Petition, paragraphs 6 and 7 of the said affidavit are material and are reproduced herein under :-

“6 I state that in terms of the aforesaid MOU, I

record my no objection if C.R. No.229/2017 along with all proceedings emanating there from is quashed and set aside by this Hon'ble Court and the Petitioners are discharged from the aforesaid proceedings.

7 I state that both the parties have agreed and undertaken to unconditionally withdraw the proceedings by and against each other as set out herein-above in terms of the MOU arrived at between the parties hereto. That considering the facts and circumstances of the case, it is a fit case where it would be contrary to the interest of justice to continue with the criminal proceedings against the Petitioners”

4 The Respondent No.2 – Atul Shyamji Bharani is personally present in Court. He has been authorized by a Board Resolution passed by the said Sunshine Projects Pvt. Ltd. in the meeting held on 10/07/2017. He is identified by the learned counsel Shri Sanjeel Kadam i/by Kadam and Company. He is also identified by his Aadhar Card bearing No.916878034558. When put in the box and queried he accepts the factum of the Memorandum of Understanding being arrived at between the parties. He further states that he has read and understood the contents of the affidavit dated 09/02/2018 which is tendered by his Advocate today. He further states that he has signed the said affidavit of his own free will and volition pursuant to the authorization given to him by the said Sunshine Projects Pvt. Ltd.. He further states that the affidavit is also acceptable to the said Sunshine Projects Pvt. Ltd..

5 The Petitioner No.1 Deepak Kakubhai Mehta is also personally present in Court. His identified by his learned counsel Shri Ashish Chavan. He

is also identified by his Aadhar Card bearing No.557452826813. When put in the box and queried he accepts the factum of the parties having settled the matter and entered into a Memorandum of Understanding. He further states that it is on account of the settlement that the Respondent No.2 now does not desire to proceed with the FIR in question.

6 In view of the statements made by the Petitioner No.1, it is not necessary to record the statements of the other Petitioners.

7 Having regard to the Memorandum of Understanding entered into between the parties, the affidavit filed by the Respondent No.2 and the statements made by the Respondent No.2 i.e. the first informant and the Petitioner No.1 when put in the box and queried, the same indicate that the parties have resolved their dispute as a result of which the Respondent No.2 does not desire to proceed with the FIR in question.

8 Having regard to the judgments of the Apex Court in the matter of Gian Singh V/s State of Punjab & Anr reported in (2012) 10 SCC 303 and Narinder Singh & ors v/s. State of Punjab & Anr reported in 2014 AIR SCW 2065, no useful purpose would be served in keeping the proceedings pending.

9 The above Criminal Writ Petition is required to be allowed and is

accordingly allowed and made absolute in terms of prayer clause (b). Since the machinery of this Court has been utilized for settling the dispute between the parties, the Petitioner No.1 and the Respondent No.2 to deposit a sum of Rs.20,000/- each totalling Rs.40,000/- with the National Association of Blind, Worli within six weeks from date. Receipt to be obtained and filed with the Registry of this Court. The above Criminal Writ Petition is accordingly disposed of.

[SARANG V. KOTWAL, J]

[R.M.SAVANT, J]