

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

CRIMINAL WRIT PETITION NO.265 OF 2017

Ishwar Pragji Mistry and anr. : Petitioners.
Versus
State of Maharashtra and anr. : Respondents

Mr. A S Chavan for the Petitioners.
Mr. A R Kapadnis, APP for the Respondent/State.
Mr. S I Kantharia for the Respondent No.2.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.**
DATE : 08th JANUARY 2018

P.C.

1 The above Criminal Writ Petition has been filed for quashing of the proceedings being CC No.171/PW of 2008 which have arisen out of the FIR registered under Sections 406, 420, 465, 467, 471, 477A read with Section 34 of the Indian Penal Code which case is pending on the file of the Additional Chief Metropolitan Magistrate 17th Court at Borivali, Mumbai.

2 The FIR has arisen on account of the dispute between the Complainant and the Petitioners herein amongst whom the Petitioner No.1 is the brother of the Complainant and arising out of the funds of the partnership firm in question.

3 The learned counsel appearing for the Respondent No.2 Shri S I

Kantharia tenders an affidavit of the said Respondent. In the context of the present Writ Petition, paragraphs 2, 3, 4 5 and 6 of the said affidavit are material and are reproduced herein under :-

“2 I say that one of the Petitioner is my real brother. He is 69 years old and I am 67 years old. Both of us are suffering from heart ailments. The another Petitioner is his wife of 66 years.

3 I say that considering the blood relations between me and the Petitioners, in a spirit of forgiveness, I have settled the matter without accepting any monetary considerations from the Petitioners.

4 The losses sustained by me are of a personal nature and have no bearing on the Society at large. The offence is of a commercial nature and between close relatives.

5 I further say that in view of the amicable settlement between the Petitioners and myself, we agree that no one of us shall initiate any proceedings against the other, in the future with regard to the subject matter herein.

6 I say that I have no objection if this Hon'ble Court quashes and sets aside the MECR No.11 of 2007, under Sections 406, 420, 465, 467, 471, 477A read with Section 34 of the Indian Penal Code and the charge-sheet/proceedings arising therefrom bearing C.C.No.171/PW of 2008 before the learned Additional Chief Metropolitan Magistrate 26th Court at Borivali, Mumbai”.

4 Hence the said affidavit discloses that the parties who are brothers have amicably settled their dispute amongst themselves and therefore do not want to proceed with the case in question.

5 The Respondent No.2 – Dinesh Pragji Mistry is personally present in Court. He is identified by the learned counsel Shri S I Kantharia. He is also identified by his Aadhar Card bearing No.4073 0164 8144. When put in the box and queried, he affirms what has been stated in the affidavit dated 06/01/2018 which has been tendered by the learned counsel Shri S I Kantharia. He further states that he does not want to proceed with his complaint as the matter is settled amicably by him with the Petitioners amongst whom the Petitioner No.1 is his brother.

6 The Petitioner No.1 – Ishwar Pragji Mistry is also personally present in Court. He is also identified by the learned counsel Shri A S Chavan. He is also identified by his Aadhar Card bearing No.6958 6913 7422. When put in the box and queried, he states that he has amicably settled the dispute with his brother and that the settlement is acceptable to both him and his brother.

7 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, there is no impediment in allowing the above Criminal Writ Petition. No useful purpose would be served in keeping the proceedings pending.

8 In view of the affidavit dated 06/01/2018 tendered by learned counsel for the Respondent No.2 Shri S I Kantharia as well as in view of the statements made by the parties when put in the box, the above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (b). The above Criminal Writ Petition is accordingly disposed of.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]