

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.742 OF 2013

Gorakshnath Dattatraya Shinde & Ors. Petitioners
Vs.
Balasaheb Vanaji Pawar & Anr. Respondents

Mr. Girish Agarwal for the petitioners.

Mr. B.K. Barve a/w Mr. Sandeep Barve, i/by M/s B.K. Barve & Company for Respondent no.1.

Mr. K.V. Saste, Additional P.P. for the State.

Mr. R.S. Dhere, PI, Niphad Police Station present.

Respondent no.1 present.

Coram : R.M. Savant AND
Sarang V. Kotwal, JJ
Date : 21st March, 2018

P.C.

1 The writ petition has been filed for quashing of the F.I.R. bearing No. 1 of 2013 registered with the Niphad Police Station, District Nashik for the offences punishable under Sections 353, 323, 504, 506 read with 34 of the Indian Penal Code and also under Sections 3(1)(x) and 3(1)(xi) of the Prevention of Atrocities Act.

2 The above writ petition has been founded on the settlement arrived at between the parties. In view thereof, it is not necessary to dilate on facts. The first informant i.e. the respondent no.1 herein has filed an affidavit dated 27th February 2013. Paragraphs 4 and 5 of the said affidavit are material and reproduced hereinunder :

“4. Friendly settlement on 30/01/2013 has arrived amongst myself and the Petitioner and I do not wish to pursue the proceeding arising out of C.R. No.1/2013 registered on 21/01/2013 with Niphad Police Station.

5. I have no grievance of any nature whatsoever against the Petitioner and hence no objection for allowing the petition.”

The first informant has filed further affidavit dated 21st October, 2013 sworn before the Notary, Shri. S.K. Shetty, Government of India, having his office at 8, 'Prakash', Besant Street, Santacruz (West), Mumbai. Paragraphs 9 and 10 of the said affidavits are material and are reproduced hereinunder :

“9 I hereby declare that I do not have any grievances or allegations of whatsoever against the petitioners and has also agreed to withdraw the same. Thus no fruitful purpose will be served while conducting further futile process in the above criminal complaint, which is required to be compounded to ease tension and peaceful living in the Society.

10 In view of the aforesaid circumstances, I respectfully submits that the above Writ Petition be disposed of with appropriate directions, since I am not interested to proceed further as I have settled the matter with the Petitioners, to enable us to live peacefully in the village and also to ease tension in the two communities in the said village situated at Nandur Madmeshwar, Taluka Niphad, District Nashik.

To the said affidavit is annexed a Settlement Deed (in vernacular “Samjutpatra”), which is executed by the petitioners and the first informant, Balasaheb Vanaji Pawar, and the affidavit-cum-declaration dated 21st October, 2013 also executed before the Notary, Shri. S.K. Shetty and also signed on behalf of B.K. Barve & Company by Shri. B.K. Barve. In paragraph 10 of the said declaration, they have stated that the same may be used for the purpose of compounding the offences in C.R.No.II-01 of

2013 registered with Niphad Police Station. It is further stated that he has assured the petitioners that he would not proceed further in the matter. Hence, the two affidavits filed by the first informant Balasaheb Vanaji Pawar as also the Settlement Deed dated 30th January 2013 and the affidavit-cum-declaration dated 21st October 2013 disclose that the parties have amicably resolved their dispute.

3 The learned counsel appearing on behalf of the petitioners, Shri. Girish Agarwal has drawn our attention to the judgment of two Division Benches of this Court, sitting at Aurangabad. First of the said judgments is reported in (2014) ALL M.R. (Criminal), page 1212 in the matter of Sitaram s/o Madhavrao Wagh & Anr. Vs. The District Superintendent of Police and Others and the second judgment is reported in (2015) ALL MR (Criminal) page 1778, in the matter of Ashraf Mohammad Calcattawala & Ors. vs. The State of Maharashtra & Another. The said judgments can be said to be an exposition of the Division Benches of this Court as regards whether the power

under Section 482 Code of Criminal Procedure and under Article 226 of the Constitution of India can be exercised for quashing of an F.I.R., wherein the offences under the Prevention of Atrocities Act, 1989 are alleged, in view of the settlement arrived at between the parties. The said judgments of the Division Benches have referred to the conspectus of law concerning the said exercise of power and have come to a conclusion that the power under Section 482 Code of Criminal Procedure and under Article 226 of the Constitution of India could be exercised for quashing of an F.I.R. or proceedings wherein the offences alleged are under the Prevention of Atrocities Act if a settlement is arrived at between the parties.

4 The respondent no.1 Balasaheb Vanaji Pawar is personally present in Court. He is identified by the learned counsel, Mr. B.K. Barve. He is also identified by his Election Identity Card bearing No. YZP 6248876. When put in the box and queried, he states that a settlement is arrived at between

him and the petitioners. He further states that two affidavits i.e. dated 27th February 2013 and 21st October, 2013, which are part of the record are his. He has read and understood the contents of the said affidavits and that he has signed them of his own free will and volition. The petitioner no.1 - Gorakshnath Dattatraya Shinde is also personally present in Court. He is identified by the learned counsel, Shri. Agarwal. He is also identified by his Adhar Card bearing No. 6267 2616 6868. When put in box and queried, he accepts the factum of the settlement arrived at between the parties. Hence, the statement made by the respondent no.1 – Balasaheb Vanaji Pawar and the petitioner no.1 Gorakshnath Dattatraya Shinde when put in the box and queried indicate that the parties have settled the dispute amicably. The sum total of the affidavits filed by the respondent no.1 i.e. the first informant and the statements made by them would unequivocally lead to a conclusion that the dispute stands settled between the parties.

5 Having regards to the pronouncement of the Division Benches of this Court, wherein as indicated above, the offences alleged were also held to be compoundable under the Prevention of Atrocities Act, there is now no impediment in quashing of the F.I.R.. The petition would accordingly be required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (a).

6 The learned counsel, Mr. Agarwal has handed over the demand draft of Rs.45,000/-, which is in the name of the respondent no.1, Balasaheb Vanaji Pawar and which is towards the balance consideration to Shri. B.K. Barve, the learned counsel appearing for respondent no.1. The learned counsel accepts the said demand draft for being handed over to the respondent no.2. The photocopy of the demand draft is taken on record and marked "X" for identification.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)