

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1095 OF 2018**

Sanjay Kailash Agarwal & Ors

..Petitioners

Vs.

The State of Maharashtra & Anr

..Respondents

Mr. Shirish Gupte Senior Advocate a/w Mr. Tejas Dande a/w Mr. Bharat Gadhavi i/b Tejas Dande & Associate for the Petitioners

Mr. N. P. Bhavake i/b Mr. Umesh V. Nikam for the Respondent No.2

Mr. Deepak Thakare PP a/w Mr. K. V. Saste Addl PP for the Respondent State

**CORAM :R. M. SAVANT, &
REVATI MOHITE DERE,JJ
DATE : 15th JUNE, 2018**

P.C.

1 At the outset, the Learned Counsel for the Petitioner seeks leave to amend so as to correct the prayer clause (b). Leave granted. Amendment to be carried out forthwith.

2 The Petitioners herein are arraigned as accused as FIR being CR No.I-205/2016 has been registered at the Chhavani Police Station, Malegaon, Nashik for the offence punishable under Section 417, 418, 420, 472, 468, 474, 199 and 200 of the Indian Penal Code, 1860 read with Section 3(1)(iv) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. The said FIR has arisen out of the transaction of sale of land wherein the Petitioners herein who are the accused, are the purchasers. It seems that the first informant i.e.

the Respondent No.2 who is a person belonging to the reserved category claims to be the owner of the land in question. It seems that after the FIR came to be registered by him he made an application to the Deputy Superintendent of Police, Malegaon, Nashik a/w affidavit expressing his desire for withdrawing all the allegations against the present Petitioners. In the instant Petition, the Respondent No.2 has filed an affidavit both in english and marathi dated 27-2-2018. In so far as the affidavit in english is concerned, it has been affirmed in this Court. The affidavit in marathi was notarised before the Notary Government of India, Mr. S. M. N. Naqvi and has been entered in the register of the said notary at Sr. No.492 page 45 and bears notarial registration No.278 dated 1-3-2018. The said marathi affidavit it seems was also affirmed in this Court on 27-2-2018. In the marathi version of the affidavit it has been stated that the dispute between the parties has been amicably settled and that the Respondent No.2 has no objection for withdrawal of the same. He has in the last paragraph of the said affidavit i.e. paragraph 3 has stated that whatever has been stated in paragraphs 1 and 2 is true and correct which he believes to be true.

3 In so far as the english version of the affidavit is concerned, paragraph 2 of the said affidavit is material and is reproduced hereinunder:

2. I further say that I have no objection to quash the said FIR bearing CR No.I-205 of 2016

registered with Chhavani Police Station, Malegaon Nashik, as I do not intend to pursue the said complaint.

Thereafter paragraph 4 reads thus

4. My Advocate has read over and explained to me the contents in vernacular language and in addition to the present Reply Affidavit I have also affirmed one Affidavit in Marathi Language.

4 Hence the affiant accepts the fact that his Advocate has read over and explained the contents of the english version in vernacular, meaning thereby that the contents were explained to him in marathi and that he has followed the said contents.

5 The Respondent No.2 Ratan Tulshiram Kuwar is personally present in Court. He is identified by the Learned Counsel Mr. N. P. Bhavake i/b Mr. Umesh Nikam. He is also identified by Pan Card bearing No.BVLPK0388R. When put in the box and queried, he states that he accepts the factum of two affidavits filed by him one in english and one in marathi. He further states that he has understood the contents of the said affidavit and that in view of the settlement between the parties he does not desire to proceed with the FIR in question.

6 The Petitioner No.1 Sanjay Kailash Agarwal, is personally present in Court. He is identified by the Learned Senior Counsel Mr. Gupte i/b by Mr.

Tejas Dande. He is also identified by his Adhar Card No.328613777695. When put in the box and queried he accepts the factum of the settlement having taken place between the Petitioners and the Respondent No.2 as a consequence of which the Respondent No.2 does not desire to proceed with the case in question. It is not necessary to record the statements of the other Petitioners, though they are personally present in court in view of the statement recorded of the Petitioner No.1.

7 The affidavit filed by the Respondent No.2, statements made by the Respondent No.2 and the Petitioner No.1, when put in the box and queried indicate that the parties have settled their dispute as a consequence of which the Respondent No.2 does not desire to proceed with the case in question. In identical fact situation involving an offence registered under the SC and ST (Prevention of Atrocities) Act, the Division Benches of this Court have exercised powers under Section 482 of the CrPC for quashing and setting aside the FIR where there is a settlement between the parties and the first informant has filed an affidavit. In fact the affidavit filed by the first informant in the instant case is almost parimateria to the affidavit filed in the case before the Division Bench in Sitaram Madhavrao Wagh & Anr Vs. The District Superintendent of Police and Ors reported in (2014) ALL MR (Criminal) page 1212. One of us R. M. Savant J., was also a party to an order passed of quashing the FIR in exercise of the powers conferred by Article 226 of the

Constitution of India in Writ Petition No.742 of 2014 in the matter of Gorakshnath Dattatraya Shinde & Ors. Vs. Balasaheb Vanaji Pawar & Anr., in which case also the offence under the SC and ST (Prevention of Atrocities) Act was involved. One more judgment of the Division Bench is in Ashraf Mohdammad Calcattawala & Ors. Vs. The State of Maharashtra reported in (2015) ALL MR (Criminal) page 1778.

8 Having regard to the pronouncement of the Division Benches of this Court (Supra) and considering the fact situation in the instant case, wherein the Respondent No.2 who is the first informant has filed an affidavit accepting the settlement between the parties as a result of which he does not desire to proceed with the case in question. In our view case for exercise of the Writ Jurisdiction of this Court is made out. The Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (b).

9 The Petitioners to pay costs of Rs.25,000/- to be deposited with Tata Memorial Center, Parel, within 6 weeks from date. Receipt to be obtained and filed in the registry.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]