

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 455 OF 2018**

Vishal Laxman Mestry	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Satyam R. Dubey for the Applicant

Mr. K. V. Saste, A.P.P for the Respondent No.1-State

Mr. Dalbag Singh Rai for the Respondent No. 2

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
THURSDAY, 5th JULY, 2018***

P.C. :

1 The above Application has been filed for quashing and setting aside of the proceeding being C. C. No. 262/PS/2013 pending on the file of the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai. The said case has arisen out of the FIR being No. 122 of 2012 registered with the Parksite Police Station, Mumbai, for the offences punishable under Sections 287 and 338 of the Indian Penal Code, 1860. The said FIR has arisen out of the incident which took

place on 13th March 2012, which was an accident, which ultimately has resulted in the Respondent No. 2 herein losing three fingers of his left hand.

2 It appears that the Respondent No. 2 had filed proceedings under the Workmen's Compensation Act, in which proceedings, he was awarded the compensation of Rs. 2,50,000/-. It appears that his employer i.e. the Applicant herein had also given him an amount of Rs. 1 lakh on account of the accident. The above Application had come up before a Division Bench of this Court (Coram: R. M. Savant and Sarang Kotwal, JJ.) on an earlier occasion, when the Division Bench had expressed that the compensation given by the Applicant to the Respondent No. 2 was inadequate, considering the fact that the Respondent No. 2 had lost three fingers of his left hand. The hearing of the above Application was accordingly deferred, so as to enable the learned counsel for the Applicant to seek instructions as regards additional compensation to be paid to the Respondent No. 2. Accordingly, the Applicant has paid the additional compensation of Rs. 4 lakhs to the Respondent No. 2 which was by a

demand draft drawn on the State Bank of India, Bhandup Branch. The said demand draft has been encashed, as can be seen from the statement of the account of the Respondent No. 2 of the Kotak Mahindra Bank. The closing balance as on 30th June 2018 is a sum of Rs. 3,89,512.18. The Respondent No. 2 seems to be employed with one Spick & Span Services, wherein, he is drawing the salary of about Rs. 8,500/-. The statement of account also shows withdrawals by the Respondent No. 2 in small sums of Rs. 2,000/-, 3,000/-. Hence, insofar as the additional compensation given to the Respondent No. 2, we are satisfied with the same. We hope and trust that the said amount would be kept with the Respondent No. 2 and that the Applicant would not claim the amount back from the Respondent No. 2.

3 The Respondent No. 2 had earlier filed an affidavit dated 4th May 2018 giving his no objection to the quashing of the proceedings, in view of the settlement between the parties. The said affidavit has been affirmed before Mr. R. R. Sharma, Advocate and Notary, Government of India, having his office at Bندوق Wala Compound, Opp. S. T. Bus Depot, Sayni Road, Mumbai – 400 025.

To the said affidavit, is annexed a photo copy of the Applicant's cheque for Rs. 4 lakhs. Today, another affidavit has been filed on behalf of the Respondent No. 2 which affidavit has been affirmed today i.e. 5th July 2018 before the same Notary. The said affidavit bears notarial register No. 2782 bearing today's date. It has been stated in the said affidavit that the amount of Rs. 4 lakhs has been deposited in his account. As indicated above, the statement of account of the Respondent No. 2 with the Kotak Mahindra Bank has been annexed to the affidavit as Annexure `A'.

4 The Respondent No. 2-Tanaji Jairam Kadam is personally present in Court. He is identified by the learned counsel Mr. Dalbag Singh Rai. He is identified by his Aadhar Card bearing No. 303683550526. When put in the box and queried, he states that in view of the settlement between the parties, he does not desire to proceed with the case in question. He assures the Court that he would keep the amount of additional compensation with him and use it for purchasing an accommodation in Kalyan, Dist. Thane.

5 The Applicant- Vishal Laxman Mestry is personally present in Court. He is identified by the learned counsel Mr. Dubey. He is also identified by his Aadhar Card bearing No. 457103019897. When put in the box and queried, he states that in view of the settlement between the parties, he has paid an additional compensation of Rs. 4 lakhs to the Respondent No. 2.

6 The affidavit filed by the Respondent No. 2 as also the statements made by the Respondent No.2 and the Applicant when put in the box and queried, indicate that the parties have resolved their dispute, as a result of which, the Respondent No.2 does not desire to proceed with the case in question, which is pending before the learned Metropolitan Magistrate, 69th Court, Vikhroli, Mumbai.

7 In the said context, a useful reference could be made to the judgments of the Apex Court in the matters of ***Gian Singh vs. State of Punjab & Anr.***¹ and ***Narinder Singh & Ors. vs. State of***

1 (2012) 10 SCC 303

Punjab & Anr.², which would assist in quashing of the proceedings, as no useful purpose would be served in keeping the proceedings in question pending.

8 The above Criminal Application is required to be allowed and is accordingly allowed in terms of prayer clause (a) and is disposed of.

9 In the facts and circumstances, where the machinery of this Court has been utilized to settle the dispute, the Applicant to deposit costs of Rs.25,000/- with the Tata Memorial Hospital, Parel, Mumbai, within six weeks from date. Receipt to be obtained and filed in the Registry.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.

² 2014 AIR SCW 2065