

nsc.

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

CRIMINAL WRIT PETITION NO.1660 OF 2018

Gopal Sadashiv Satam	...Petitioner
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr.G.K.Jadhav, for the Petitioner.

Mr.Avinash Kamkhedkar, A.P.P for the Respondent-State.

Mr.Bennardo Reis i/b Ms.Varsha Palav, for the Respondent No.2.

I.O – PSI, Shankar Olekar, Andheri Police Station, Mumbai.

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.***

DATE : 9th JULY, 2018

P.C. :

1. Leave to amend is granted so as to incorporate the case number in prayer clause (a) as also to correct prayer clause (a).
Amendment to be carried out forthwith.

2. The above Petition has been filed for quashing of the FIR

being C.R.No.139 of 2018 registered with the Andheri Police Station, Mumbai, for the offences punishable under Sections 195(A), 506 and Section 34 of the Indian Penal Code.

3. The said FIR is the fall out of an incident which took place on 2nd April, 2016. The gravamen of the allegation against the Petitioner herein, who is a practicing Advocate is as regards the alleged threat given to the First Informant i.e. the Respondent No.2 herein to withdraw the proceedings in question.

4. The Respondent No.2 herein and her in-laws are engaged in the proceedings arising out of the case filed by the Respondent No.2 under Section 498(A) of the Indian Penal Code. The alleged incident took place on the day when the said case was slated for hearing before the concerned Court. The allegations made in the FIR are against the Petitioner as also the father-in-law and his brother. The quashment of the FIR is sought by way of the above Writ Petition only qua the Petitioner who was appearing in the said proceedings as an Advocate for the father-in-law and mother-in-law. It seems that the Respondent No.2 and her husband are together and

have arraigned themselves against the parents of the husband i.e. the in-laws of the Respondent No.2.

5. Be that as it may, the Petitioner herein who was appearing for the father-in-law and mother-in-law of the Respondent No.2 has filed and affidavit-cum-undertaking in the above Writ Petition. Clauses 1 and 2 of the said affidavit-cum-undertaking are relevant in the context of the relief sought in the above Petition. The same are reproduced herein under for the sake of ready reference:-

- “1. I say that I was appearing for Accused in Case No.536/PW/2009 pending before Ld. Addl. Metropolitan Magistrate, 10th Court, Andheri, Mumbai.
2. That I have already given no objection on vakalatnama in present case and I further undertake that I will not appear in the said case No.536/PW/2009 pending before Ld. Addl. Metropolitan Magistrate, 10th Court, Andheri, Mumbai.”

6. Hence, the said affidavit-cum-undertaking discloses that the Petitioner has given his no objection on the vakalatnama to his clients i.e. in-laws of the Respondent No.2 herein and he has further undertaken that

he would not appear in the said case No.536/PW/2009. The copy of the said affidavit-cum-undertaking was furnished to Mr.Bennardo Reis, the learned counsel appearing on behalf of the Respondent No.2. The learned counsel has accordingly shown the said affidavit-cum-undertaking to the Respondent No.2, who is personally present in Court and upon instructions he states that he is satisfied with the said affidavit-cum-undertaking. In view of the change in the fact situation as disclosed by the affidavit-cum-undertaking, the continuation of the proceedings against the Petitioner herein would be a futile exercise.

7. In the said context, a useful reference could be made to the judgment of the Apex Court in the matter of ***Narinder Singh & Ors. vs. State of Punjab & Anr.***¹, wherein the Apex Court has expounded the circumstances in which powers under Section 482 of the Code of Criminal Procedure can be exercised. Though, we are exercising our power under Article 226 of the Constitution of India, the same analogy would be applicable insofar as writ jurisdiction of this Court is concerned. The FIR in question is accordingly, required to be quashed and set aside only insofar as

1 2014 AIR SCW 2065

the Petitioner herein is concerned.

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

9. The above Criminal Writ Petition is accordingly disposed of.

10. We clarify that the instant order would be applicable insofar as the Petitioner herein is concerned. If there are any other applications for quashing, the same would undoubtedly be decided on their own merits and in accordance with law.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)