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

WRIT PETITION NO. 2043 OF 2018

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| 1. | Mr. Subodh Santosh Maskara
Age-52 years, Occ.- Business,
R/at : 72, Madhuli Apartments, 7 th Floor,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018 |]
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| 2. | Mr. Kamal Baid
Age-67 years, Occ.- Retired
R/at : 402, Satguru, C Wing,
Liberty Gardens, Turel Pakhadi Road,
Malad (West),
Mumbai – 400 064 |]
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| 3. | Mr. Vinit Baid
Age-43 years, Occ.- Service,
R/at : 402, Satguru, C Wing,
Liberty Gardens, Turel Pakhadi Road,
Malad (West),
Mumbai – 400 064 |]
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] | .. Petitioners |

Versus

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|----|--|-----------------------|----------------|
| 1. | State of Maharashtra
Through Public Prosecutor, |]
] | |
| 2. | Polygenta Technologies Ltd.
Having registered office at
B-302, Dipti Classic Building,
Suren Road, Andheri (East),
Mumbai – 400 093. |]
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] | |
| 3. | Mr. Vaibhav Sharma
Age-27 years, Occ.-Legal Manager,
R/at : Shyam Sadan, Bhaskar Marg,
Gaondevi, Grant Road (W),
Mumbai. |]
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]
] | .. Respondents |

Mr. Pranav Badheka a/w. Ms. Smruti Kanade, Ms. Prachi Parmar i/b Mr. Prashant Pawar for the Petitioners.

Petitioner No.1 Mr. Subodh Santosh Maskara present in person.

Mr. Ranjit Shetty a/w. Mr. Rahul Dev i/b Argus Partners for Respondent Nos. 2 & 3.

Mr. Rajan Salvi, APP for Respondent No.1-State.

Mr. S. K. Olekar, PSI, Andheri Police Station present.

CORAM : A. A. SAYED & V. L. ACHLIYA, JJ.

DATE : 13th JUNE, 2018

ORDER (Per V. L. Achliya, J.)

1. The Petitioners have filed this petition for quashing and setting aside FIR No. 200 of 2017 registered with Andheri Police Station, Mumbai (hereinafter referred as 'said FIR') against the petitioners at the instance of respondent No.2 through respondent No.3. The relief claimed in the petition reads as under:

“a. Be pleased to quash and set aside the F.I.R. No. 200 of 2017 dated 11.04.2017 registered under Sections 406, 409, 420, 465, 467, 468, 471, 477(A), 34 and 120-B of the Indian Penal Code, 1960, by the Andheri Police Station , Mumbai against the Petitioners.”

2. The said FIR came to be lodged on 11.04.2017 at the instance of respondent No.2-Company through respondent No.3-Vaibhav Sharma who was then serving as the Legal Manager of respondent No.2-Company. On the basis of said complaint, the offences under Sections 406, 409, 420, 465, 467, 468, 471, 477(A) read with Sections 34 and 120-

B of the Indian Penal Code came to be registered against the petitioners vide C. R. No. 200 of 2017 with Andheri Police Station, Mumbai.

3. The learned Advocate for the parties have tendered the Consent Terms dated 21.05.2018 recorded between the parties and submitted that the petitioners and respondent No.2 have amicably resolved all their disputes and they have filed Consent Terms in Suit No. 285 of 2014 and vide order dated 21.05.2018 (Coram: S. J. Kathawala, J.) disposed of the Suit in terms of Consent Terms filed in said Suit. It is submitted that the complaint at the instance of respondent No.2 was filed by respondent No.3. The respondent No.3 has left the job and the respondent No.2 has authorized Mr. Marc Lawrence Lopresto, the Director of respondent No.2 to sign, execute and admit the Consent Terms on behalf of respondent No.2. It is further submitted that the resolution to that effect authorizing Mr. Marc Lawrence Lopresto has been passed in the meeting of Board of Directors of respondent No.2 held on 12.02.2018, the copy of which annexed as Annexure 'A'.

4. The parties present along with their respective Advocates admit their respective signatures on the Consent Terms and further admit the contents of the Consent Terms are recorded truly and correctly as per the settlement arrived at between the parties and they have signed the same voluntarily. The Consent Terms is taken on record and marked as 'X' for

the purpose of identification.

5. Mr. Marc Lawrence Lopresto, the authorized signatory of respondent No.2 has filed affidavit supporting the Consent Terms. In the affidavit, respondent No.2 has specifically recorded that the parties have amicably settled all the disputes and differences and decided to compromise/quash/set-aside the civil as well as criminal proceedings filed against each others. It is further stated that respondent No.2 has unconditionally withdrew all the allegations made against the petitioners and they have no objection to quash/set aside the FIR No. 200 of 2017 registered against the Petitioners.

6. The parties have also filed the Minutes of the Order signed by parties and their respective Advocates. The Minutes of Order is taken on record and marked as 'Y' for the purpose of identification.

7. The learned Advocates for the parties submit that the parties have decided to settle all disputes and agreed to quash/set aside the criminal proceedings initiated by them against each other. It is submitted that the cross-complaint registered as FIR No. 6 of 2014 (subsequently registered as C. R. No. 11 of 2014 on transfer of investigation with Economic Offences Wing, Unit-III, C. B. C. I. D., Mumbai) at the instance of the petitioner No.1 against the respondent No.2 its Directors as well as its

employees, the parties have also filed Consent Terms as well as affidavit of the petitioner No.1 to quash the proceeding against the accused in the case instituted at the instance of petitioner No.1. It is further submitted that the parties have filed Consent Terms in Suit No. 285 of 2014 filed in this Court by respondent No.2 against the petitioners and others (copy of which has been annexed with the Consent Terms as Annexure 'B'). They have also produced the copy of order dated 21.05.2018 passed by this Court (Coram : S. J. Kathawala, J.) recording the compromise and disposal of suit in terms of compromise.

8. Learned APP submits that in view of settlement arrived at between the parties, appropriate order may be passed in the matter.

9. On due consideration of submissions advanced in the light of overall facts of the case and the nature of accusation made against the petitioners /accused, we are of the view that the case is made out to invoke the powers under Section 482 of the Code of Criminal Procedure to quash the FIR. Perusal of the cross-complaints lodged against each other leading to registration of C. R. No. 6 of 2014 with Marine Drive Police Station, Mumbai and C. R. No. 200 of 2017 registered with Andheri Police Station, Mumbai prima facie reveals that on account of commercial dispute between the parties led to registration of offences against each others. The nature of accusation made in the First Information Report against the

petitioner, prima facie reveals that on account of dispute amongst the Directors of the Company led to lodging of cross-complaints against each others. The dispute between the parties, predominantly civil in nature, given criminal dimension. It appears that the parties are essentially seeking redressal of commercial dispute. The fact that the settlement has reached between the parties in the civil proceeding i.e. Civil Suit No. 285 of 2014 itself indicates that the criminal complaints came to be lodged against each others on account of commercial disputes. The offences as charged against the Petitioners are not in the nature to have impact over the society. The criminal complaints came to be lodged against each others on account of business disputes amongst the Petitioner No.1 and Directors of respondent No.2-Company. The petitioner was director of respondent No.2. In terms of compromise, the parties have decided to settle all the disputes i.e. civil as well as criminal. In terms of settlement, the parties have filed the Consent Terms, for quashing the cross-complaints lodged against each others. In view of the settlement arrived at between the parties, chances of conviction are very bleak.

10. In the case of **Gian Singh Vs. State of Punjab & Anr. (2012) 10 SCC 303**, the Apex Court after examining the scope of exercise of powers under Section 482 of the Code of Criminal Procedure and laid down the broad principles to be followed in exercise of powers under Section 482 of the Code of Criminal Procedure. In para 61 of the Judgment the Apex

Court has observed as under :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the

possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

11. Thus, considering the overall facts of the case in the light of broad principles of law laid down by the Apex Court in the case of **Gian Singh** (supra), we are of the view that the case is made out to invoke the powers under Section 482 of the Code of Criminal Procedure to quash the FIR in view of settlement arrived at between the petitioners and respondent No.2 i.e. complainant.

12. Accordingly, we allow the petition in terms of prayer clause (a) and subject FIR i.e. FIR No. 200 of 2017 dated 11.04.2017 registered against the petitioners with Andheri Police Station at the instance of respondent No.2 through respondent No.3 hereby quashed and set aside.

13. Learned Advocate for the petitioners submits that pursuant to the suggestion made by the Court, the petitioner No.1 has deposited Rs.5 lakhs with Tata Memorial Hospital vide Pay Order No. 165383 dated 12.06.2018 and further deposited Rs.5 lakhs with Naam Foundation vide Pay Order No. 165382 dated 12.06.2018. He further submits that petitioner No.1 undertakes to deposit Rs.2.5 lakhs to Mumbai Police Welfare Fund and produce receipt of payment. The receipts tendered for payments of Rs.5 lakhs each to Tata Memorial Hospital and Naam Foundation are taken on record. The petitioner is directed to pay and produce receipt of payment of Rs.2.5 lakhs to Mumbai Police Welfare Fund on or before 05.07.2018.

14. The petition stands disposed of in above terms.

[V. L. ACHLIYA, J.]

[A. A. SAYED, J.]