

nsc.

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

CRIMINAL WRIT PETITION NO.2314 OF 2018

Rajesh Nanalal Shah and Ors.

...Petitioners

Versus

State of Maharashtra and Ors.

...Respondents

Mr.A.P.Mundargi, Senior Advocate a/w Mr.Murtaza Federal, Mr.Prakhar Parekh, Mr.Digvijay S. Sarangdhar i/b Parab and Associates, for the Petitioners.

Mrs.P.A.Thakker, for the Respondent Nos.2 and 3.

Mr.R.M.Pethe, A.P.P for the Respondent-State.

All parties present.

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

DATE : 7th JUNE, 2018

P.C. :

1. The above Writ Petition has been filed for quashing of the FIR being C.R.No.I-169 of 2017, registered with the Narpoli Police Station, Thane, for the offences punishable under Sections 379, 420, 465, 467, 468, 471 r/w 34 of the Indian Penal Code and under Sections 103, 104 and 107 of the Trade Marks Act, 2000. The said FIR has arisen out of the dispute

between the parties in respect of the wrongful use of the Trade Mark other than the one which was assigned to the Petitioners herein. It is not necessary to dilate further on facts in view of the fact that the parties have entered into the Consent Terms in the earlier round of litigation being Writ Petition No.881 of 2017. The Consent Terms are dated 11th May, 2018. To the Consent Terms is annexed a schedule of the FIR/cases pending between the parties, amongst which at item no.2 is the instant FIR being C.R.No.I-169 of 2017. In the context of the relief sought in the above Petition, clause – 5 of the Consent Terms is relevant and is reproduced hereinunder:

“5. The Contesting Respondents hereby consent and agree that the disputes raised by the Contesting Respondents are essentially of a civil nature relating to rights, liabilities and usage of Trademarks and the Contesting Respondents hereby consent and declare that the criminal complaints/proceedings set out in Schedule IV hereto are the only complaints/proceedings filed by or through them or on their instance or through their nominees, agents, officers or employees or subsidiaries or associates on the basis of advice as was then provided, as the case may be, and there are no other complaints/proceedings filed against any or all the Petitioners. The Contesting Respondents and Petitioners hereby consent and agree to

this Hon'ble Court as the differences have been amicably resolved out of Court that all the criminal complaints/proceedings set out in Schedule IV hereto may kindly be quashed by this Hon'ble Court. The Contesting Respondents undertake to this Hon'ble Court that they will file any Affidavit, or any other document, if required, in the proceedings seeking quashing of all the said FIR/Complaint. The Contesting Respondents further agree and undertake to this Hon'ble Court that they shall file necessary applications immediately and in any event within 10 days hereof for withdrawal of the complaints filed by them. The Contesting Respondents undertake to this Hon'ble Court that they will provide all assistance and sign such documents, applications that any or all the Petitioners may require for inter alia releasing their goods seized (valued at approximately Rs.20 Crores) pursuant to FIRs stated in Schedule IV and various Panchnamas in Schedule V hereto."

2. Hence, the parties in the said Consent Terms have provided that they would co-operate in quashing of the FIR which has been lodged by the Respondent Nos. 2 and 3 herein. The Respondent No.2 has also filed an affidavit dated 1st June, 2018 as an authorized signatory of the

Respondent No.3, which is affirmed in this Court. Paragraph 10 of the said affidavit is material and is reproduced hereinunder:-

“10. The Contesting Respondents are filing this present affidavit out of their own will and desire, based on the aforesaid Consent Terms /Settlement Terms and accordingly give our no objection and also give our consent to the prayers made by the Petitioners for quashing of the aforesaid F.I.R. vide CR No.I-169 of 2017 lodged with the Narpoli Police Station, unsealing of the Bhivandi Godown of the Petitioners and handover of all materials seized by the Respondent No.1 along with their documents, without any force or coercion and hence the Contesting Respondents do not wish to pursue the same.”

3. The Respondent No.2 is personally present in Court. He is identified by the learned Counsel Mrs.Thakker. He is also identified by his Aadhar Card bearing No. 9830 8375 9504. When put in the box and queried, he accepts the factum of the settlement having taken place between the parties which is evident by the document which has been annexed to the above Petition at page 49. He further accepts that the affidavit dated 1st June, 2018 has been filed by him pursuant to the

authorization given to him by the Respondent No.3. He lastly states that he has no objection to the FIR in question being quashed and set aside.

4. The Petitioner No.1 – Rajesh Nanalal Shah is also personally present in Court. He is identified by the learned Senior Counsel Mr. Mundargi, i/b Parab and Associates. He is also identified by his Aadhar Card bearing no.4647 7949 2225. When put in the box and queried, he accepts the factum of the settlement having taken place between the parties, as a result of which the Respondent Nos.2 and 3 are not desirous of proceeding with the case in question.

5. In view of the statement recorded of the Petitioner No.1, it is not necessary to record the statements of the other Petitioners, who are also personally present in Court. Having regard to the settlement arrived at between the parties, which is evident by the document, which is at page 49 of the above Petition, as also the affidavit dated 1st June, 2018 filed by the Respondent No.2 as authorized signatory of the Respondent No.3 and especially the averment made in paragraph 10 thereof, as also having regard to the statements made by the Respondent No.2 and the Petitioner

No.1 when put in the box and queried, the same indicate that the parties have amicably resolved their dispute.

6. It is required to be noted that in an identical fact situation in respect of another FIR lodged by the Respondent Nos.2 and 3, this Court in Writ Petition No.881 of 2017 has by order dated 11th May, 2018, quashed and set aside the said FIR, in view of the settlement between the parties. Having regard to what has been stated hereinabove, no useful purpose would be served in continuing with the proceedings. The allegations made against the Petitioners are personal in nature and do not impact the society as such.

7. A useful reference could be made to the judgments of the Apex Court in the matter of ***Gian Singh vs. State of Punjab & Anr.***¹ and ***Narinder Singh & Ors. vs. State of Punjab & Anr.***², which would assist the parties in having the proceedings quashed on account of the settlement which has been arrived at between the parties.

1 (2012) 10 SCC 303

2 2014 AIR SCW 2065

8. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clauses (a), (b) and (c).

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

10. In the facts and circumstances of the case, where the machinery of this Court is utilized for settling the dispute between the parties, the Petitioners to deposit costs of Rs.50,000/- with the Mumbai Police Welfare Fund in the office of the Commissioner of Police, Mumbai, within six weeks from date. Receipt to be obtained and filed in the Registry.

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)