

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

CRIMINAL WRIT PETITION NO.2451 OF 2018

Charles Thomas Cherian & Anr.

..Petitioners

Vs.

The State & Anr.

..Respondents

Mr.Milan Desai i/b Mr.T.R. Patel for the Petitioners.

Mr.A.A. Shaikh for the Respondent No.2.

Mr.R.M.Pethe APP for the Respondent State.

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

DATE : 18th JUNE, 2018

P.C.

1 The above Writ Petition has been filed for quashing of the FIR being C.R.No.296 of 2018 registered with Malwani Police Station, Mumbai for the offences punishable under Sections 323, 326, 504 and 34 of the Indian Penal Code. The said FIR is a result of the incident which took place on 17th April 2018 at about 14.00 hrs. In the said incident, the parties herein were allegedly involved. The First Informant i.e. the Respondent No.2 herein Firdaus Shaikh has filed an affidavit dated 7th June 2018 and affirmed before Mr.Deepak K. Malkani, Advocate & Notary, Govt. of India having his office at Divya Park, Off. Marve Road, Malad (West), Mumbai – 400 095. Paragraph Nos.3, 10 and 12 of the said affidavit are material and are reproduced hereinunder.

“3. I say that having settled out disputes amicably I have realized that the entire episode was product of misunderstanding, and have further realized that under such misconceptions and misunderstanding I have filed the aforesaid FIR with the Mawlani Police Station against the aforesaid persons and having so realized I immediately approached the Malwani Police Station and have requested them to permit me to withdraw my said complaint against the aforesaid persons.

10. I say that I accordingly request the Hon'ble High Court of Bombay that the C.R.No.296/18 filed with Malwani Police Station at my instance, be quashed.

12. I say that I am making the present affidavit for the purpose giving my consent to the application to be preferred by the aforesaid persons for quashing the above said criminal case filed against them at my instance.”

2 The Respondent No.2 is personally present in Court. He is identified by the learned counsel Mr.A.A. Shaikh. He is also identified by his Driving Licence bearing No.MH02 20070116349 issued on 15th November 2007 and valid upto 30th November 2024. When put in the Witness Box and queried, he states that the affidavit tendered by the learned counsel Mr.Shaikh today is his. He has read the said affidavit and understood the contents thereof. He further states that he has filed the said affidavit of his own free will and volition. Lastly he states that on account of the settlement that has been arrived at between the parties, he does not desire to proceed with the FIR

in question. He also states that the injury which he has suffered is now healed and that there is a free movement of his palm.

3 The Petitioner No.1-Charles Thomas Cherian is also personally present in the Court. He is identified by the learned counsel Mr.Milan Desai i/b Mr.T.R. Patel. He is also identified by his Aadhar Card bearing No.2795 8977 9198. When put in the Witness Box and queried, he states that he accepts the factum of settlement arrived at between the parties. As a result of which, the Respondent No.2 does not desire to proceed with the FIR in question. The Petitioner No.2 is also present. However, it is not necessary to record his statement in view of the statement recorded of the Petitioner No.1. The affidavit filed by the Respondent No.2, the statements made by the Respondent No.2 and the Petitioner No.1 when put in the Witness Box and queried indicate that the parties have settled their dispute amicably. As a result of which, the Respondent No.2 is not desirous of proceeding with the FIR in question.

4 Since one of the offences alleged is punishable under Section 326 of IPC, we had requested the learned APP to produce the Medical Certificate. On such perusal, we find that the injured i.e. the First Informant had suffered a fracture to his palm. Save and except the said injury, there is no other injury as disclosed by the First Informant in his statement. He is recovered from the said

injury and there is free movement of his palm. There is no other person who is injured.

5 Having regard to the judgments of the Apex Court in the matter of **Gian Singh V/s State of Punjab & Anr¹** and **Narinder Singh & ors v/s. State of Punjab & Anr²** and having regard to the facts as aforesaid, no useful purpose would be served in keeping the FIR in question pending. The above Criminal Writ Petition is required to be allowed and is accordingly allowed and made absolute in terms of prayer clause (c), resultantly the charge sheet would stand quashed and set aside. The above Criminal Writ Petition is accordingly disposed of.

6 The Petitioners to deposit costs of Rs.10,000/- in total with the Bombay Police Welfare Fund in the Office of the Commissioner of Police, Mumbai and the Respondent No.2 to deposit costs of Rs.5,000/- with the Kirtikar Law Library, High Court Bombay within 6 weeks from date. Receipts to be obtained and filed in the registry.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

¹ (2012) 10 SCC 303

² 2014 AIR SCW 2065