

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

CRIMINAL WRIT PETITION NO.2458 OF 2018

Mahesh Narayan Garule and ors. : Petitioners.
Versus
State of Maharashtra and ors. : Respondents.

**ALONG WITH
CRIMINAL WRIT PETITION NO.2460 OF 2018**

Rohit Vitthal Gaware and ors. : Petitioners.
Versus
State of Maharashtra and ors. : Respondents.

Mr. Shirish Gupte, Senior Advocate a/w Mr. D G Dhanure i/by Mr. Rushikesh Kale for the Petitioners in Writ Petition No.2458 of 2018 and for the Respondent Nos. 3 and 4 in Writ Petition No.2460 of 2018.

Mr. V B Koshe a/w Mr. Sachin H Deokar for the Petitioners in Writ Petition No.2460 of 2018 and for the Respondent Nos.3 and 4 in Writ Petition No.2458 of 2018.

Mr. Deepak Thakare, PP a/w Mr. K.V. Saste, Addl.PP for the Respondent/State in both the Petitions.

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

DATE : 16th JULY 2018

P.C.

1 The above Writ Petitions have been filed for quashing of the FIR being No. 576 of 2017 registered with Nigdi Police Station, Pune on 11/10/2017 for the offences punishable under Section 395 of the Indian Penal Code and under Sections 3(25), 4(25) of the Arms Act (subject matter of Writ Petition No.2458 of 2018) and, FIR being No.574 of 2017 registered with the same Nigdi Police Station, Pune on 11/10/2017 for the offences punishable under Sections 120B, 143, 144, 148, 149, 294, 323, 324, 341, 307, 504, 34 of

the Indian Penal Code and under Sections 37(1)(3) and 135 of the Maharashtra Police Act and under Sections 3(25), 4(25) of the Arms Act (subject matter of Writ Petition No.2460 of 2018).

2 The said FIRs have been registered in view of the incident which took place between two sets of Petitioners above-named on 11/10/2017. The said incident had its genesis in some monetary transaction between the two sets of Petitioners.

3 It is not necessary to dilate further on facts as the first informant and the injured i.e. the Respondent Nos.3 and 4 in Writ Petition No.2458 of 2018 have filed their affidavits. In the context of the reliefs sought in the above Writ Petition No.2458 of 2018 paragraph 5 (excerpt) of the affidavit of the Respondent No.3 Rohit Vitthal Gaware, who is the first informant dated 26/06/2018 which has been notarized before Shri Sunil P Kad, Advocate & Notary, Govt. of India, Thergaon, Chinchwad, Dist. Pune bearing notarial registration No.695 of 2018 is relevant and is reproduced herein under :-

“I, respondent No.3 herein most respectfully pray that this Hon'ble Court may be pleased to quash the First Information against the Petitioners/accused in the Nigdi Police Station, Pune, CR No.576 of 2017 for the offences punishable under Section 395 & 397 of IPC and Sec. 37(3) r/w 135 of Bombay Police Act and Sec. 3(25) & 4(25) of Arms Act, and pending case about the same on the file of the learned J.M.F.C. Court, Pimpri for trial bearing R.C.C. No.249 of 2018 in the interest of justice and equity.”

The Respondent No.4 – Hemant Yashwant Bhosale has also filed his affidavit dated 30/05/2018 which is notarized before Shri Y T Pillay, Notary Govt. of India, Pune bearing notarial registration No.349 of 2018. The said affidavit is also identical to the affidavit filed by the Respondent No.3 and the said excerpt is also appearing in the affidavit of the Respondent No.4.

By the said affidavits therefore both the first informant and the injured have given their no objection to quashing of the FIR being CR No.576 of 2017.

4 In so far as the first informant and the injured in the FIR being CR No.574 i.e. the Respondent Nos.3 and 4 are concerned, they have also filed identical affidavits both dated 30/05/2018 which have been notarized before Shri Y T Pillay, Notary Govt. of India, Pune bearing notarial registration No.347 of 2018 and 348 of 2018 respectively.

Paragraph 5 (excerpt) of the affidavit of Respondent No.3 – Mahesh Narayan Garule is material and is reproduced herein under :-

“I, respondent No.3 herein most respectfully pray that this Hon'ble Court may be pleased to quash the First Information against the Petitioners/accused in the Nigdi Police Station, Pune CR No.574 of 2017 for the offenses punishable under Section 120-B, 143, 147, 148, 149, 294, 323, 324, 341, 307, 504 r/w 34 of I.P.C.

and Sec. 37(1)(3), 135 of Bombay Police Act and Sec. 3(25) & 4(25) of Arms Act and pending case about the same on the file of the learned Sessions Court, Pune for trial bearing Sessions No.77 of 2018 in the interest of justice and equity.”

The affidavit of the injured i.e. the Respondent No.4 – Kalidas Sahebrao Gade is also identical to the affidavit of the first informant i.e. the Respondent No.3 Mahesh Garule in so far as the excerpt reproduced as above is there.

By the said affidavits therefore both the first informant and the injured have given their no objection to quashing of the FIR being CR No.574 of 2017.

5 The first informant in Writ Petition No.2458 of 2018 – Rohit Vitthal Gaware is personally present in Court. He is identified by learned counsel Shri V B Koshe who is appearing along with learned counsel Shri Sachin H Deokar. He is also identified by his PAN Card bearing No.AQGPG0119G. When put in the box and queried, he states that he has read and understood the contents of the affidavit dated 26/06/2018. He further states that he has also filed the said affidavit in view of the settlement arrived at between the parties. He lastly states that he does not desire to proceed with the case in question in view of the settlement between the parties and that he has filed the said affidavit of his own free will and volition.

6 The injured i.e. Respondent No.4 in Writ Petition No.2458 of 2018 - Hemant Yashwant Bhosale is also personally present in Court. He is also identified by the learned counsel Shri V B Koshe who is appearing along with the learned counsel Shri Sachin H Deokar. He is also identified by his Aadhar Card bearing No.884594571411. When put in the box and queried he states that he has read and understood the contents of his affidavit dated 30/05/2018. He further states that he has recovered from the injury which was caused to him in the instant in question. He lastly states that he does not desire to proceed with the case in question in view of the settlement between the parties and that he has filed the said affidavit of his own free will and volition.

7 The first informant i.e. the Respondent No.3 in Writ Petition No.2460 of 2018 – Mahesh Narayan Garule is concerned, we are informed that he is incarcerated. However, his brother Manoj Narayan Garule is personally present in Court. He is identified by the learned counsel Shri Rushikesh Kale. He is also identified by his Aadhar Card bearing No.366375580234. He states that he has read and understood the contents of the affidavit dated 30/05/2018 filed by his brother Mahesh Narayan Garule. He states that the said affidavit has been filed in view of the settlement arrived at between the parties and that in view of the settlement, the first informant does not desire to proceed with the FIR in question which he has got registered.

8 Shri Bharat Gade, who is the brother of the victim Kalidas Sahebrao Gade is also personally present in Court. He states that he has read and understood the contents of the affidavit of his brother Kalidas Sahebrao Gade who is incarcerated. He states that the said affidavit has been filed in view of the settlement arrived at between the parties.

9 Though the other Petitioners in the above Writ Petitions are personally present in Court, it is not necessary to record their statements in view of the statements recorded of the first informant and injured, albeit through relations, and the affidavits filed by them.

10 Hence the affidavits filed by the first informants and the injured i.e. the victims as also the statements recorded as above indicate that the parties have amicably settled their dispute. It is required to be noted that the incident took place on 30/09/2017 and the FIRs have been registered on 11/10/2017 i.e. a good 10 days after the incident. In view of the fact that one of the offences alleged against the Petitioners is punishable under Section 307 of the Indian Penal Code we have gone through the injury certificate . On perusal of the medical certificate we do not find that the injuries were of serious nature. The allegation is of threatening the other side with fire arms. This would have to be viewed in the context of the fact that the FIRs in

question have been registered a good 10 days after the incident allegedly took place, as also the fact that the parties have now amicably resolved their dispute would in our view impact the consideration of the above Writ Petitions which hve been filed for quashing of the FIRs in question.

11 In the said context, a useful reference could be made to the judgment of the Apex Court in the matter of *Gian Singh V/s State of Punjab & Anr* reported in (2012) 10 SCC 303 and *Narinder Singh & ors v/s. State of Punjab & Anr* reported in 2014 AIR SCW 2065. One of the considerations which the Apex Court has laid down in the judgment in *Narinder Singh's* case (supra) is the factum of evidence not coming forward on account of the settlement between the parties. In our view, having regard to the fact that the parties have settled their dispute , it is hardly possible for any evidence to come forward during the course of the trial. Hence the instant case would be a case where our jurisdiction under Article 226 of the Constitution of India would have to be exercised.

12 In that view of the matter the above Writ Petitions would have to be allowed and are accordingly allowed in terms of prayer clauses (B) and (E) of Writ Petition No.2458 of 2018, and prayer clauses (B) and (E) of Writ Petition No.2460 of 2018 restricted to the Petitioner No.14 as the Petitioner Nos. 1 and 13 are already released on bail.

13 In the facts and circumstances of the instant case where the machinery of this court is utilized for quashing of the FIR, the Petitioners in both the Writ Petitions to deposit costs of Rs.50,000/- i.e. totalling Rs.1,00,000/- to be paid over to the Tata Memorial Hospital, Parel, Mumbai in one set of Rs.50,000/- and, the other set of Rs.50,000/- to the Children Aid Society, Mumbai within six weeks from date. Receipts to be obtained and filed in the Registry of this Court.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

**Laxmikant
Gopal
Chandan**

Digitally signed by
Laxmikant Gopal
Chandan
Date: 2018.07.17
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