

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

CRIMINAL APPLICATION NO.722 OF 2018

Bijal Bharat Shah : Applicant.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Karan Kadam & Ms. Deepa Shetty I/by M/s. Nankani & Associates for the Applicant.

Mrs. P P Shinde, APP for the Respondent/State.

Ms. Vaishali Dholakia for the Respondent No.2.

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

DATE : 06th JULY 2018

P.C.

1 At the outset the learned counsel for the Applicant Shri Karan Kadam seeks leave to amend the prayer clause (b) of the above Criminal Application so as to delete the word “converted into” to be substituted by the words “renumbered as” and also delete the word “registered”. Leave granted. Amendment to be carried out forthwith.

2 The above Criminal Application has been filed for quashing of the proceedings being CC No.190/PW/2012 pending on the file of the learned Additional Chief Metropolitan Magistrate, 19th Court at Esplanade, Mumbai. The said FIR has arisen out of the business transaction in respect of diamonds between the parties and the allegations against the Applicant herein is of forgery of certain documents disclosing deposit of the amount in the account of

the first informant. The Applicant herein is a green card holder and is a resident of the United States of America for the last about 25 years. It appears that he has not come to India since the last about 10 years. The Applicant is ailing and is in urgent need of a liver transplant in support of which a medical certificate of NYC Health+ Hospital, Bellevue, New York has been annexed to the above Criminal Application at page 23 as also the Certificate issued by the Jaslok Hospital, Mumbai dated 18/06/2018 which has been issued on the basis of the papers disclosing the clinical history, blood & radiological investigations which were furnished to the Jaslok Hospital, Mumbai.

3 The learned counsel appearing on behalf of the Respondent No.2 Ms. Vaishali Dholakia would submit that having regard to the ailment of the Applicant, that the Respondent No.2 – first informant has taken a sympathetic view and therefore does not desire to prosecute the proceedings for the offences alleged against the Applicant.

4 The Respondent No.2 has filed an affidavit which is affirmed on 12/06/2018 before Santosh Mishra, Advocate & Notary Govt. of India having his office at Lele Wadi Pipe Line, J B Nagar, Andheri (E). In the context of the relief sought in the above Criminal Application, paragraph 4 of the said affidavit is material and is reproduced herein under :-

“4 I further consent to quashing of the said C.R. No.11/2011 and the chargesheet filed on 2nd March 2012 in C.C. No.190/PW/2012 as the matter has been amicably settled between the parties. I have already addressed a letter to E.O.W. stating the same, a copy whereof is annexed herewith.”

5 The Respondent No.2 – Apurva Kothari is personally present in Court. He is identified by the learned counsel Ms. Vaishali Dholakia. He is also identified by his Aadhar Card bearing No.756511113118. When put in the box and queried he states that he has read and understood the contents of the affidavit. He further states that in view of the ailment of the Applicant as mentioned in the medical reports, he is not desirous of proceeding with the case in question.

6 The Power of Attorney of the Applicant who is the brother of Applicant Shri Dhawal Bharat Shah is also personally present in Court. He is identified by the learned counsel Shri Karan Kadam. He is also identified by his PAN Card No.AKZPS5441E. When put in the box and queried, he states that the Applicant, who is his brother, is in the United States of America and that the Applicant is in urgent need of a liver transplant.

7 Having regard to the affidavit filed by the Respondent No.2, the statements made by the Respondent No.2 and the Power of Attorney of the Applicant when put in the box and queried, the same indicate that the

Respondent No.2 is not desirous of proceeding with the case in question having regard to the health condition of the Applicant. If that be so no useful purpose would be served in keeping the proceedings in question pending.

8 Having regard to the judgments 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, there is no impediment in allowing the above Criminal Application.

9 The above Criminal Application is required to be allowed and is accordingly allowed and made absolute in terms of prayer clauses (b) and (c) . The above Criminal Application is accordingly disposed of.

10 In view of the quashing of the proceedings, the Lookout Notice which has been issued in respect of the Applicant would not survive.

11 In the facts and circumstances of the case, where the machinery of this Court is used to settle the dispute between the parties, the Applicant to deposit costs of Rs.50,000/- with the Mumbai Police Welfare Fund in the office of the Commissioner of Police, Mumbai and Rs.50,000/- with the Tata Memorial Hospital, Parel, Mumbai making a total of Rs.1,00,000/- within six weeks from date. Receipt to be obtained and filed in the Registry of this Court.

12 The learned APP to communicate the aforesaid developments to
all the concerned authorities.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

Laxmikant
Gopal Chandan

Digitally signed by
Laxmikant Gopal Chandan
Date: 2018.07.10 12:09:39
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