

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3604 OF 2017**

Adrain de Souza

..Petitioner

Vs.

Geo Chem Laboratories Pvt Ltd. & Ors

..Respondents

Mr. Subodh Desai a/w Ms Kaneez Runjee i/b S. Mohamedbhai & Co. for the Petitioner

Mr. G. S. Vaidya for the Respondent No.1

Mr.A. R. Kapadnis APP for the Respondent State

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ
DATE : 10th JANUARY, 2018**

P.C.

1 The above Criminal Writ Petition has been filed for quashing of the Criminal Case being No.163/PW/2013 pending on the file of the Learned Addl.Chief Metropolitan Magistrate 38th Court, Ballard Pier, Mumbai. The said case is arising out of MECR No.9 of 2010 registered by the Respondent No.2 with the MRA Police Station, Mumbai, for offences punishable under Sections 379, 381, 403, 406, 420, 468 of the IPC and Sections 65 and 66 of the Information Technology Act. The said MECR came to be registered on account of the inter-se dispute between two groups/families engaged in common business i.e. in respect of the Respondent No.1.

2 On behalf of the first informant, its representative Mr. Vithal Shintre has filed an affidavit dated 15-11-2017 which is annexed to the above

Petition at page 82. A reference to the said affidavit would be made a bit later. It seems that in view of the disputes between the parties, the matter was referred to the Arbitral Tribunal consisting of a Learned Senior Advocate practicing in this Court. The claimant in the said arbitration proceeding was the Petitioner herein, whereas the other groups/family members were arrayed as Respondent Nos.1 to 11 before the Learned Sole Arbitrator. The parties arrived at a settlement before the Learned Sole Arbitrator which was reduced in to writing by way of the Consent Terms dated 24-7-2017, as can be seen from the docket of the said Consent Terms. The said Consent Terms are annexed to the above Petition. In the context of the present Petition clause N(c) is relevant and is reproduced hereinunder:

N(c) It is hereby agreed and confirmed that all allegations made in Criminal Complaint No.162/PW/2013 pending before the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai stands withdrawn unconditionally. It is further agreed, confirmed and undertaken that all necessary steps shall be taken and cooperation extended for quashing Criminal Complaint No.163/PW/2013 and / or withdrawing the Complaint and/or perform such acts, such as remaining present before the appropriate authorities/Courts etc. for the effective immediate termination of the criminal proceedings being the aforesaid Criminal Case No.163/PW/2013 pending before the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.

2 Hence by virtue of the said clause N(c) all the allegations as made in the Criminal Complaint were withdrawn and the parties were ad-idem as

regards taking steps for the effective immediate termination of the Criminal proceeding being instant CC No.163/PW/2013.

3 Now coming to the affidavit filed by the representative of the Respondent No.1, paragraphs 4 and 5 of the said affidavit are material and are reproduced hereinunder:

4 I say that pursuant to this settlement, the board of directors of Respondent No.1 vide resolution dated 7-9-2017 have given a 'No Objection' for the quashment of CC No.163/PW/2013 pending before the Court of the Learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai , as the continuation of the prosecution of all the accused in this complaint would be futile.

5 I say that the Respondent No.1 has resolved to provide its consent for quashment of the complaint as prayed in the Petition on account of amicably settlement and also to avoid any further financial loss to the Respondent No.1 in litigation/s, therefore the Petitioner shall solely bear all the costs, penalty, or any financial sentence, if any, imposed by the Hon'ble Court on any party while quashing the complaint impugned in this Writ Petition.

Hence the Respondent No.1 on whose behalf the FIR is lodged has passed a resolution in the meeting of its Board of Directors dated 7-9-2017 to give no objection for quashing of the said Criminal Complaint as continuation of the prosecution according to the Respondent No.1 would be futile. It further can be seen from paragraph 5 that on account of the amicable settlement the

Respondent No.1 has resolved to consent for quashing of the complaint.

4 The Representative of the Respondent No.1 Mr. Amar Bahadur Yadav is personally present in Court as he is deputed by the Respondent No.1 to remain present since Mr. Vithal Shintre is indisposed. He is identified by the Learned Counsel Mr. Vaidya. He is also identified by his Pancard bearing No.AAKPY8906B. He has produced the authority letter in his favour issued by the Respondent No.1 bearing today's date i.e. 10-1-2018 and signed by the Director Mr. Anil Saxena of the Respondent No.1. When put in the box and queried he states that the affidavit filed by Mr. Vithal Shintre is on the authorisation given to Mr. Shintre by the Company and the same is acceptable to the Company. He states that the Consent Terms filed before the Learned Sole Arbitrator are also acceptable to the Company and that the instant proceedings are being consented to be quashed on the basis of the said Consent Terms. The authorisation dated 10-1-2018 given to Mr. Amar Yadav is taken on record and marked as "X" for identification.

5 The Petitioner Adrain DeSouza is personally present in Court. He is identified by his Learned Counsel Mr. Desai. He is also identified by his Driving Licence bearing No.MH01 20080119922 issued on 15-1-1990 and valid up to 15-8-2022. When put in the box and queried he states that the parties have amicably resolved their disputes which have been reduced into writing by

way of the Consent Terms filed before the Learned Sole Arbitrator and that the Respondent No.1 has agreed to the quashing of the Criminal Complaint No.163/PW/2013 on the basis of the said Consent Terms.

6 In view of the affidavit filed by Mr.Vithal Shintre and the statements made therein in paragraphs 4 and 5 which are reproduced hereinabove as also having regard to the statements made in the box by the representative of the Respondent No.1 Mr. Amar Yadav, Assistant General Manager, Account and Finance and the Petitioner, it can be seen that the parties have amicably settled their disputes. The Respondent No.1 therefore does not desire to prosecute the said Criminal Complaint No.163/PW/2013. Having regard 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, there is no impediment in allowing the above Criminal Writ Petition. No useful purpose would be served in keeping the proceedings pending, the above Criminal Writ Petition is accordingly allowed and made absolute in terms of prayer clause (a). The above Criminal Writ Petition is accordingly disposed of.

7 In view of the fact that the machinery of this Court has been used to settle the dispute, it would be just and proper that the Petitioner and the

1 (2012) 10 Supreme Court Cases 303

2 2014 AIR scw 2065

Respondents to deposit costs of Rs.25,000/- each with the Tata Memorial Hospital, Parel within 8 weeks from date. Hence the total costs would be 50,000/-. Receipt to be obtained and filed in the registry.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]