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

WRIT PETITION NO. 4147 OF 2014

- | | | | |
|----|------------------------------------|---|---------------|
| 1. | Polygenta Technologies Limited |] | |
| | A company incorporated under the |] | |
| | The provisions of the Companies |] | |
| | Act, 1956, having its registered |] | |
| | office at B-302, Dipti Classic |] | |
| | Premises, Suren Road, Andheri (E), |] | |
| | Mumbai 400 093. |] | .. Petitioner |

Versus

- | | | | |
|----|---|---|----------------|
| 1. | State of Maharashtra |] | |
| | Through Public Prosecutor, |] | |
| | High Court, Appellate Side, |] | |
| | Mumbai. |] | |
| | |] | |
| 2. | The Senior Inspector, |] | |
| | Marine Drive Police Station, |] | |
| | Mumbai. |] | |
| | |] | |
| 3 | Subodh Maskara, |] | |
| | an Indian Inhabitant, |] | |
| | R/at : 72, Madhuli Apartments, |] | |
| | 7 th Floor, Dr. Annie Besant Road, |] | |
| | Worli, Mumbai 400 018. |] | .. Respondents |

**ALONGWITH
WRIT PETITION NO. 1064 OF 2015**

- | | | | |
|----|--|---|---------------|
| 1. | Perpetual Global Technologies Limited |] | |
| | being a body incorporated under the |] | |
| | laws of Mauritius, having its registered |] | |
| | office at C/o. AAA Global Services Ltd. |] | |
| | 1 st floor, The Exchange, 18 |] | |
| | Cybercity, Enene, Mauritius |] | .. Petitioner |

Versus

- | | | | |
|----|--------------------------------------|---|--|
| 1. | State of Maharashtra |] | |
| | (At the instance of Sr. P.I., E.O.W. |] | |
| | Unit-III, C.B.C.I.D., Mumbai) |] | |

- | | | | |
|----|---|---|----------------|
| 2. | Subodh Maskara, |] | |
| | Age-48 years, Occ.-Business, |] | |
| | R/at : 72, Madhuli Apartments, |] | |
| | 7 th Floor, Dr. Annie Besant Road, |] | |
| | Worli, Mumbai 400 018. |] | .. Respondents |

ALONGWITH
CRIMINAL APPLICATION NO. 996 OF 2014

- | | | | |
|----|---|---|--------------|
| 1. | Mr. Paresh Damania |] | |
| | having his office at B-302, Dipti Classic |] | |
| | Premises, Suren Road, Andheri (E), |] | |
| | Mumbai 400 093. |] | .. Applicant |

Versus

- | | | | |
|----|---|---|----------------|
| 1. | The Senior Inspector of Police |] | |
| | Marine Drive Police Station |] | |
| | |] | |
| 2. | The State of Maharashtra |] | |
| | |] | |
| 3. | Mr. Subodh Maskara |] | |
| | an Indian Inhabitant, |] | |
| | R/at : 72, Madhuli Apartments, |] | |
| | 7 th Floor, Dr. Annie Besant Road, |] | |
| | Worli, Mumbai 400 018. |] | .. Respondents |

Mr. Shirish Gupte, Sr. Counsel a/w. Mr. Subodh Desai, Mr. Ranjit Shetty, Mr. Harish Khedkar i/b Vis Legis Law Practice for the Petitioner in WP 1064/15.

Mr. Amit Desai, Sr. Counsel a/w. Mr. Ranjit Shetty, Mr. Rahul Dev, Ms. Priyanka Shetty i/b Argus Partners for the Petitioner in WP 4147/14.

Mr. Marc Lopresto, Authorized Representative of Petitioners in WP 4147/14, 1064/15

Mr. Pranav Badheka a/w. Ms. Smruti Kanade, Ms. Prachi Parmar i/b Mr. Prashant Pawar for Respondent No.3 in WP 4147/14 and Respondent No.2 in WP 1064/15 and Respondent No.3 in APL 996/14.

Mr. Subodh Santosh Maskara, Respondent No.3 in WP 4147/14, APL 996/14 and Respondent No.2 in WP 1064/15 present in person.

Mr. Prashant Phophale i/b PMH Law for the Applicant in APL 996/14.

Mr. Paresh Damania, Applicant in APL 996/14 present in person.

Mr. Rajan Salvi, APP for Respondent No.1-State.

Mr. Ajay Kadam, API, EOW, Unit-IX, Mumbai.

CORAM : A. A. SAYED & V. L. ACHLIYA, JJ.
DATE : 13th JUNE, 2018

ORDER (*Per V. L. Achliya, J.*)

1. Petitioners/Applicants have filed these petitions/application for quashing the criminal proceeding i.e. Criminal Case No. 4700421/PW/2015 pending on the file of Additional Chief Metropolitan Magistrate, 47th Esplanade Court, Mumbai arising out of C. R. No. 6 of 2014 registered with Marine Drive Police Station, Mumbai and subsequently registered as C. R. No.11 of 2014 on transfer of investigation to EOW, Unit-III, C.B.C.I.D., Mumbai.

2. FIR No. 6 of 2014 came to be registered on the basis of complaint lodged by Subodh Maskara, the respondent No.2/3 in respective petitions/application. On the basis of said complaint, the offences punishable under Sections 406, 408, 420 r/w Sec. 34 and 120-B of the Indian Penal Code came to be registered against the following accused:

1. Polygenta Technologies Ltd.
2. Perpetual Global Technologies Ltd.
3. Dr. Vivek Tandon
4. Mr. Marc Lawrence Lopresto
5. Mr. Gerard De Nazelle
6. Mr. Dharmendra Gupta
7. Mr. Paresh Damania

3. Subsequent to registration of offence vide C. R. No. 6 of 2014 with Marine Drive Police Station, the investigation of the case was transferred to Economic Offences Wing, Unit-III, C.B.C.I.D., Mumbai. On transfer of investigation, the EOW, Unit-III, C.B.C.I.D., Mumbai registered the case

against accused as C.R. No. 11 of 2014. On completion of investigation, the charge-sheet came to be filed in the Court of Additional Chief Metropolitan Magistrate, 47th Esplanade Court, Mumbai against the petitioners/accused alleging therein the commission of offences under Section 406, 408, 420 r/w Sec. 34 and 120-B of the Indian Penal Code by petitioners/applicant. In view of orders passed by this Court, the proceeding has been stayed.

4. In the year 2017, the complaint came to be lodged at the instance of Polygenta Technologies Ltd. i.e. the petitioner in WP 4147 of 2014 against Subodh Maskara - the respondent No.2/3 in respective petitions/application. On the basis of said complaint, the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 477(A) read with Sections 34 and 120-B of the Indian Penal Code came to be registered against respondent No.2/3 vide C. R. No. 200 of 2014 with Police Station, Andheri.

5. Heard the learned Counsel for the petitioners/applicant, learned APP and the learned Counsel representing the respondent No.2/3 in respective petitions/application.

6. Learned Counsel for the petitioners/applicant and respondent Nos.2/3-the complainant have submitted that the petitioners and respondent No.2/3 have amicably resolved their disputes and decided to quash the FIR/criminal proceedings initiated against each others by filing Consent Terms and affidavit of the complainant recording therein no objection to quash the proceedings. It is submitted that in terms of settlement, the petitioners and respondent No.2/3 have filed Consent Terms in Civil Suit No. 285 of 2014 and vide order dated 21.05.2018 passed by this Court (Coram : S. J. Kathawala, J.) disposed of the Suit in terms of Consent Terms. It is submitted that in terms of overall settlement

arrived at between the parties to settle all the disputes which include the present proceeding, the petitioners and respondent No.2/3 have filed Consent Terms to quash the FIR/criminal proceedings filed against each others.

7. Learned Counsel for the parties have tendered the Consent Terms, Minutes of the Order in each of the matters which are taken on record and separately marked as 'X' and 'Y' (in each of the petitions/application) for the purpose of identification.

8. Mr. Subodh Maskara, the respondent/complainant who is personally present in Court with his Advocate has filed affidavit in each of the proceeding supporting the Consent Terms to quash the proceedings against the petitioners/applicant. In the Affidavit, respondent/complainant has specifically mentioned that the parties have amicably settled all the disputes and differences amongst them and decided to compromise/quash and set aside the Civil as well as Criminal proceedings filed against each others. It is further stated that respondent/complainant has no objection to quash and set aside Criminal Case No. 4700421/PW/2015 arising out of C. R. No.6 of 2014 registered at his instance against the petitioners/accused.

9. The parties present before the Court admit their signatures on the Consent Terms filed in each of the petitions/application and further state that the contents of Consent Terms are true and correct and recorded as per settlement reached between them and they have signed the same voluntarily. They further admit that the parties have decided to settle all the disputes amongst them and accordingly Consent Terms, Minutes of the Order as well as Affidavit of the complainant are filed in each of the proceedings. The Consent Terms are also signed by learned Advocates

representing the parties. They identify the parties present in Court.

10. The learned Advocates for the parties submit that the parties have decided to settle the dispute amongst them and agreed to quash/set aside the Criminal proceedings initiated against each other. It is submitted that in respect of FIR No. 200 of 2014 registered with Police Station, Andheri at the instance of petitioner in WP No. 4147 of 2014 as against the respondent No.2/3 and his employees, the parties have filed Consent Terms, Minutes of Order as well as affidavit of the petitioner in WP No. 4147 of 2014 to quash/set aside said FIR against the petitioners in WP No. 2043 of 2018. It is further submitted that the parties have also settled the civil dispute and filed Consent Terms in Suit No. 285 of 2014. They produced the copy of order dated 21.05.2018 passed by this Court (Coram : S. J. Kathawala, J.) recording the compromise and disposal of said suit in terms of compromise.

11. Learned APP submits that in view of settlement arrived at between the parties, appropriate order may be passed in the matter.

12. On due consideration of submissions advanced in the light of overall facts of the case and the nature of accusation made against the petitioners /accused, we are of the view that the case is made out to invoke the powers under Section 482 of the Code of Criminal Procedure to quash the FIR and consequential proceeding registered after filing of subject charge-sheet. The nature of accusation made in the First Information Report filed against each other spell out that on account of dispute amongst the Directors of the Company cross-complaints came to be lodged which led to registration of cross-complaints. The dispute between the parties, predominantly civil in nature, has been given criminal dimension. It appears that the parties are essentially tried to settle Civil dispute by filing

criminal complaints against each other. The fact that the settlement has reached between the parties in Civil Suit No. 285 of 2014 itself indicates that the criminal complaints came to be lodged against each others on account of commercial dispute. The offences as charged against the Petitioners are not of nature to cause impact over the society. The respondent No.2/3 was the director of Polygenta Technologies Limited (petitioner in WP No. 4147 of 2014). The dispute between him and other directors led to his resignation and subsequently lodging of criminal complaints and other proceedings. In terms of compromise, the parties have decided to settle all the disputes i.e. civil as well as criminal. In terms of settlement, the parties have filed the Consent Terms for quashing the cross-complaints lodged against each others. In view of the settlement arrived at between the parties, chances of conviction are very bleak..

13. In the case of **Gian Singh Vs. State of Punjab & Anr. (2012) 10 SCC 303**, the Apex Court after examining the scope of exercise of powers under Section 482 of the Code of Criminal Procedure laid down the broad principles to be followed while exercising the powers under Section 482 of the Code of Criminal Procedure. In para 61, the Apex Court has observed as under :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts

and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its

jurisdiction to quash the criminal proceeding.”

14. Thus, considering the overall facts of the case in the light of broad principles laid down by the Apex Court in the case of **Gian Singh Vs. State of Punjab & Anr.** (supra), we are of the view that the case is made out to invoke the powers under Section 482 of the Code of Criminal Procedure to quash the subject FIR and consequential criminal proceedings, in view of settlement arrived at between the petitioners and respondent No.2/3 i.e. complainant. Accordingly, we allow the petitions/application and pass the following order:

ORDER

- (i) Writ Petition No.4147 of 2014 is allowed in terms of prayer clause (a).
- (ii) Writ Petition No.1064 of 2014 is allowed in terms of prayer clauses (A) and (B).
- (iii) Criminal Application No. 996 of 2014 is allowed in terms of prayer clauses (b) and (b1).
- (iv) In consequence of allowing Writ Petition Nos. 4147 of 2014, 1064 of 2014 and Criminal Application No. 996 of 2014, the proceeding of Criminal Case No. 4700421/PW/2015 pending on the file of Additional Chief Metropolitan Magistrate, 47th Esplanade Court, Mumbai arising out of C. R. No. 6 of 2014 registered with Marine Drive Police Station, Mumbai and subsequently registered as C. R. No. 11 of 2014 on transfer of investigation to EOW, Unit-III, C.B.C.I.D., Mumbai against petitioners/applicant stands quashed. The petitioners stands discharged. The petitioners/applicant are granted liberty to withdraw cash security, if any, furnished before the trial Court as well as to seek return of passport, if lying deposited with the Court/Investigating Officer.
- (v) Learned Advocate for the petitioners submits that the petitioner in

Writ Petition No. 4147 of 2014 has deposited Rs.5 lakhs with Tata Memorial Hospital vide Pay Order No. 033847 dated 12.06.2018 and further deposited Rs.5 lakhs with Naam Foundation vide Pay Order No. 033848 dated 12.06.2018. He further submits that petitioner undertakes to deposit Rs.2.5 lakhs to Mumbai Police Welfare Fund and produce receipt of payment. The receipts tendered for payments of Rs.5 lakhs each to Tata Memorial Hospital and Naam Foundation are taken on record. The petitioner is directed to pay Rs.2.5 lakhs to Mumbai Police Welfare Fund on or before 15.07.2018 and report compliance on 16.07.2018.

- (vi) The Writ Petitions and Criminal Application are disposed of in above terms.

[V. L. ACHLIYA, J.]

[A. A. SAYED, J.]