

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

CRIMINAL WRIT PETITION NO.3748 OF 2016

Vijay Shantikumar Dalmia & Ors. Petitioners
versus
State of Maharashtra & Anr. ... Respondents

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- Mr.Chaitanya A. Malgaonkar i/b. M/s GMS Legal, Advocate for the Petitioner.
- Mr.K.V. Saste, APP for the State/Respondent.
- Mr.Ashok M. Saraogi, Advocate for Respondent No.3.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 26th FEBRUARY, 2018.**

P.C. :

1. The above Writ Petition has been filed for quashing of the proceedings being C.C.No.3503/PW/2015 pending on the file of the learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai. The said proceeding has arisen out of the FIR No.570/15 dated 09/10/2015 registered with Dindoshi Police Station for the offences punishable u/s 406, 409 r/w 34 of the Indian Penal Code. The facts giving rise to the FIR have been stated in the said FIR. It is not necessary to dilate on facts in

view of the fact that the parties are now seeking quashing of the proceedings by consent. The first informant i.e. the Respondent No.3 herein i.e. Pravin Tarachand Agarwal has filed an affidavit, affirmed on 24/02/2018 in this Court. In the context of the relief sought in the above Writ Petition, paragraph Nos.4 and 11 of the said affidavit are material and reproduced hereinunder:

“4. I say that, however during the pendency of the present Petition the matter have been settled amicably between the parties and a Consent Term have been signed between the parties accordingly the same will be tender before this Hon'ble Court duly signed by all parties concerned for identification.

11. I say that since the aforesaid amounts are lying with the Bank, the Bank authorities must have given necessary interest upon the said amounts and accordingly, apart from the amounts mentioned hereinabove, I am also entitled to get interest accrued on the entire amount on such terms as this Hon'ble Court may deem fit and proper.”

2. The affidavit annexed at Ex.B. to the affidavit of Mr. Mr.Pravin Tarachand Agarwal is a writing executed by the parties providing for the interim arrangement between the parties. The parties have also executed Consent Terms bearing today's date evidencing the overall settlement between the parties. The said Consent Terms are referred to in paragraph No.4 of the affidavit of Mr.Pravin Tarachand Agarwal. In the context of the present Petition, clause 6 of the Consent Terms is material and is produced hereinunder:

“6. It has further being agreed that subject to transfer of the amounts as mentioned hereinabove, the present F.I.R. No.570 of 2015 under section 406, of IPC and the case arising out of the same being Case No.3503/PW/2015, pending to the file of 67th Metropolitan Magistrate Court, at Borivali, Mumbai be quashed with no order as to cost.”

3. The said Consent Terms also contain clause 5(a) which is handwritten and which provides that the interest, if any, accrued on all the amounts to be paid by the bank shall be paid

to the Respondent No.3 directly. The said handwritten portion has been signed by the Petitioner No.1 Vijay Shantikumar Dalmia and the Respondent No.3 Pravin Tarachand Agarwal. As also the date which is handwritten, is signed by the Petitioner No.1 and the Respondent No.3.

4. The Respondent No.3 Pravin Agarwal is personally present in Court. He is identified by the learned Counsel Mr.A.M. Saraogi. He is also identified by his Aadhar Card bearing No.9099 3335 1802. When put in the box and queried, he states that he has read the affidavit dated 24/02/2018 as well as the Consent Terms bearing today's date i.e. 26/02/2018. He has understood the contents of both, the affidavit as well as the Consent Terms. He has further stated that he has signed the affidavit as well as the Consent Terms in his own free will and volition. The Petitioner No.1 Vijay Dalmia is also personally present in the Court. He is identified by the learned Counsel Mr.Chaitanya Malgaonkar. He is also identified by his Aadhar Card bearing No.6181 9379 1044. When put in the box and

queried, he states that he has read the Consent Terms and what has been stated therein is acceptable to him. He further states that he has also read the affidavit of the Respondent No.3 and that he has understood the contents thereof. He has further stated that the handwritten portion as regards the withdrawal of the interests by the Respondent No.3 is also acceptable to him.

5. The confirming party Mr.Mohan Baburao Alshi is also personally present in the Court. He is identified by both the learned Counsel i.e. Mr.A.M. Saraogi as well as Mr.Chaitanya Malgaonkar. He is also identified by his Aadhar Card bearing No.7944 4197 5546. He confirms to what has been stated in the Consent Terms including the handwritten portion.

6. On reading of the Consent Terms, the affidavit of Respondent No.3 and the statements made by the Respondent No.3, the Petitioner No.1 and the confirming party when put in the box and queried unequivocally indicates that the parties have amicably resolved their dispute. As a consequence of which

the Respondent No.3 does not desirous to continue with the proceedings in question. In view of the statement of the Petitioner No.1, it is not necessary to record the statements of the Petitioner Nos.2 and 3 who are also personally present in the Court. The Consent Terms paginated from 1 to 5 are taken on record and marked 'X' for identification.

7. 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 Writ Petition. No useful purpose would be served in keeping the proceedings pending.

8. The Writ Petition is accordingly allowed in terms of prayer clause 16(iv). However, disbursal of amount would be in terms of the Consent Terms. In view of the fact that the machinery of this Court has been utilized for settling dispute,

the Petitioner and the Respondents to pay costs of Rs.25,000/- each i.e. totalling Rs.50,000/- with the National Association of Blind, Worli, within six weeks from date, receipts of which to be obtained and filed in the Registry.

9. The above Criminal Writ Petition is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)