

Rane

* 1/5 * APL-1248-2017 (SR.21)
Friday, 19.1.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1248 OF 2017

Rajeshkumar Rampal Paswan
and Ors.

....Applicants

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * * *

Mr. A.K. Millwala, Advocate for the applicants.

Mrs. A.S. Pai, Addl. P.P. for the State, respondent no.1.

Mr. Ajay Fernandes i/by. Mr. Vishal Ghogate, Advocate
for respondent no.2.

CORAM :-

R.M.SAVANT, &

SANDEEP K. SHINDE, JJ.

DATE :-

19TH JANUARY, 2018.

P.C. :-

1. The above Criminal Application has been filed
for quashing of the proceedings being R.C.C. No. 25 of
2016 pending on the file of the Learned Judicial
Magistrate First Class, 3rd Court, Kalyan arising out of

FIR-I-145 of 2015 for offences punishable under Sections 363, 365 read with Section 34 of the Indian Penal Code. The said FIR was lodged by a bystander who had seen the respondent no.2 being put in a car. The respondent no.2 and the applicant no.1 are real brothers and the applicant no.2 is the cousin of the respondent no.2 and the applicant no.3 is the friend of applicant no.1 and who is purported to be the owner of the vehicle in question. The dispute appears to be a family dispute between the parties. The respondent no.2 has filed an Affidavit dated 8th December, 2017. In the context of the relief sought in the above application, paras-3, 4 and 5 of the said Affidavit are material and are reproduced hereinunder :-

- “3. I state that due to misunderstanding on 14th November, 2015 dispute had arisen between myself and my brother.
4. I state that I and my brothers and other accused persons have amicably settled our family dispute and now desire to lead peaceful life.
5. I also state that due to this redressal of grievances, I affirm that the complaint is now amicably settled within us and that criminal proceedings may please be quashed.”

2. Applicants no.1 to 3 as also the respondent no.2 are personally present in the Court. Respondent no.2 is identified by Learned Counsel, Mr. Ajay Fernandes. He is also identified by his Aadhar Card bearing no. 9886 4144 8327. When put in the box and queried, he states that a settlement has been arrived at between him and the applicants, as a result of which, he does not desire to proceed with the criminal case arising out of the FIR registered by him. Applicant no.1, Rajesh Rampal Paswan is personally present in the Court. He is identified by Learned Counsel Mr. A.K. Millwala. He is also identified by his Aadhar Card bearing no. 8432 1123 2446. Though his Aadhar Card bears the surname as "Pasi", he states that the same is synonymous with the surname "Paswan" which is appearing in the cause-title. When put in the box and queried, he states that the victim is his brother and that the parties have amicably settled the dispute, as a result of which, the victim does not desire to proceed with the FIR.

3. The applicant no.2, Akash Ajay Paaswan is also personally present in the Court. He is identified by the Learned Counsel Mr. Millwala. He is also identified by his Aadhar Card bearing no.5730 4339 9256. He states that, he is the cousin of the respondent no.2 and he accepts the fact that the parties have settled the matter. The applicant no.2, Ajay Narayan Singh is also personally present in the Court. He is identified by the Learned Counsel Mr. Millwala. He is also identified by his Pancard bearing no. FSFPS 1893P. When put in the box and queried, he reiterates what is stated by applicants no.1 and 2 and the respondent no.2. In view of the Affidavit filed by respondent no.2, as also, the statement made by the applicant, it is clear that the parties have amicably resolved their disputes. We have our own doubt as regards the application of Section 363 of the Indian Penal Code having regard to the fact that the respondent is a major.

4. Considering the facts of the case and in view of the judgments of the Apex Court in the case of **Narinder**

Singh v. State of Punjab, reported in (2014) 6 SCC 466, there is no impediment in quashing the proceedings though the offences alleged are non-compoundable. Dictum of the Supreme Court in **Gian Singh v. State of Punjab reported in (2012) 10 SCC 303** would also lead to the same conclusion. That even otherwise, no useful purpose would be served by keeping the proceedings pending. The petition is therefore allowed in terms of prayer clause (a).

5. The applicants and respondent no.2 to deposit total cost of Rs.1,000/- with the Kiritkar Law Library, High Court, Appellate Side, Mumbai within a period of 4 weeks from date.

6. The Learned Counsel, Mr. Fernandes, states that vakalatnama of Mr. Vishal Goghate would be filed within one week from date. Statement accepted.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)