

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

CRIMINAL WRIT PETITION NO. 839 OF 2019

Lalita Kamal Vyas	]	
Indian inhabitant, 48 Years, Adult,	]	
Having address at F-2007 & 2008,	]	
Oberoï Splendor, JVL Road,	]	
Jogeshwari (E), Mumbai- 400 060.	]	...Petitioner

Versus

1.	The State of Maharashtra	]	
		]	
2.	Bhagwanbhai H. Donda	]	
	An adult Indian inhabitant of	]	
	Mumbai, age 58 years, residing at	]	
	42, Manas Palace,	]	
	Prarathnasamaj Road, Vile Parle	]	
	(East), Mumbai 400 057	]	
	Mobie No. 9820960050	]	
	Email ID: krco06@yahoo.co.in	]	...Respondents

Mr. Kapil P. Dave for Petitioner.

Mr. Rajender Singh Saluja for Respondent No. 2.

Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 4th OCTOBER 2019

(ORAL JUDGMENT)

1. Rule. Rule made returnable forthwith.

2. This petition is filed with following substantive prayer:-
 - (c) The impugned order dated 8th December 2017 passed in C.C. No. 2072/SS/2017 by the Learned

Metropolitan Magistrate, 43rd Court, Borivli, Mumbai and the order dated 19th January 2019 passed in Criminal Revision Application No. 1106 of 2018 by the Hon'ble Sessions Court at, Mumbai, be set aside.

3. Learned counsel appearing for the Petitioner has tendered across the bar memorandum of understanding/consent terms. The same is taken on record and marked as "X" for identification.

4. Learned counsel appearing for Respondent No. 2 has tendered across the bar affidavit of Respondent No. 2. The same is taken on record.

5. Learned counsel appearing for Petitioner and Respondent No. 2 submit that, the entire dispute is resolved, and the Petitioner and Respondent No. 2 have arrived at a settlement and Respondent No. 2 has no grievance against the Petitioner. Therefore, learned counsel for the Petitioner and Respondent No. 2 jointly pray that, taking into consideration the affidavit filed by Respondent No. 2 and also memorandum of understanding/consent terms dated 01.10.2019, this petition may be allowed and disposed of.

6. Respondent No. 2 is personally present in the Court. On a

specific query to Respondent No. 2, he stated that the dispute between the Respondent No. 2 and the Petitioner is amicably settled, and Respondent No. 2 has voluntarily entered into such settlement and signed the terms of settlement with free will and without any coercion. Respondent No. 2 also stated that, he has no grievance against the Petitioner, and petition may be allowed in toto.

7. Upon careful perusal of the memorandum of understanding, so also, the affidavit filed by Respondent No. 2, and also interacting with Respondent No. 2, it clearly appears that, it is voluntary act of the parties to arrive at settlement and on the basis of said settlement Respondent No. 2 has stated in his affidavit that, he does not want to proceed against the Petitioner, and therefore, he has no objection to quash the proceeding pending before the Learned Metropolitan Magistrate, 43rd Court, Borivli, Mumbai

8. Upon careful perusal of the memorandum of understanding it appears that, name of Respondent No. 2 is mentioned therein, so also, pay orders issued in his name is also mentioned. Respondent No. 2 is satisfied in receiving said pay orders, and in his affidavit he has stated that, he has no further claim against the Petitioner.

9. Since Respondent No. 2 does not wish to proceed with the complaint pending before the Learned Metropolitan Magistrate, 43rd Court, Borivli, Mumbai, in view of settlement arrived between the parties, which is voluntary act of Respondent No. 2 and the Petitioner, no purpose would be served by keeping the proceeding pending before the Learned Metropolitan Magistrate, 43rd Court, Borivli, Mumbai. Therefore, keeping in view the exposition of law by Hon'ble Supreme Court in the case of Gian Singh V/s. State of Punjab reported in (2012) 10 SCC 303, so as to secure an ends of justice and to prevent an abuse of process of the Court, the petition deserves to be allowed. Accordingly, writ petition is allowed in terms of prayer clause (c) and same stands disposed of accordingly. Rule is made absolute to above extent.

10. At this stage, learned counsel appearing for the Petitioner and Respondent No. 2 prays that, the Petitioner and Respondent No. 2 may be given liberty to file application before the concerned Court for refund of Court fees amount and also refund of bail amount.

11. Liberty to the Petitioner and Respondent No. 2 to apply before the concerned Court for such relief. In case such application is filed, the learned Magistrate, keeping in view the relevant law/notification shall pass the appropriate orders.

[S.S. SHINDE, J.]