

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

CRIMINAL APPLICATION NO. 1133 OF 2019

Mr.Vijay Sopan Machindar

.. Applicant

Vs.

1. State of Maharashtra
(Through Matunga Police Station,
Matunga, Mumbai.)

& Anr.

.. Respondents

Mr.V.S. Kapse i/b Mr. Nikhil S. Rajeshirke, for applicant.

Mrs.A.S. Pai, APP for respondent No.1-State.

Mr.Kuldeep Patil i/b Mr.Bharat G. Thorat for respondent No.2.

Mr.Vijay Sopan Machindar-applicant present.

Mr.Mahesh Madhav Vartak-power of attorney of respondent No.2 present.

**CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.**

DATE : 4TH SEPTEMBER 2019

P.C.

1 Heard the learned counsels for the applicant, respondent No.2 and the learned APP for the respondent No.1-State.

2 An application has been filed for quashing and setting aside the charge-sheet CC bearing No.345/PW/2015 pending before the learned Additional Chief Metropolitan Magistrate, First Class, 30th Court, Kurla, Mumbai under sections 288, 418, 409, 420 and 336 of Indian Penal Code, 1860 and sections 5, 13(2), 13(3) of the Maharashtra Ownership of Flat

Act against the applicant. The said case arises out of registration of first information report No.92/2014, registered with Matunga Police Station, Mumbai, at the instance of the respondent No.2, for the offences punishable under sections 288, 418, 409, 420 and 336 of Indian Penal Code, 1860 and under sections 5, 13(2), 13(3) of the Maharashtra Ownership of Flat Act.

3 Pending trial, the parties have settled their dispute amicably and have accordingly entered into the consent terms dated 6th October 2018 before the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 318 of 2018. A copy of the consent terms is annexed at Exh.'B' to the application. In terms of the understanding arrived at between the parties, they have approached this Court for quashing the subject proceedings by mutual consent. The respondent No.2 has accordingly filed an affidavit, affirmed on 27th August 2019. In paragraph 2, the respondent No.2 has stated that the litigation with the applicant is amicably settled. In paragraph 3, he has stated that he does not have any grievance against the applicant and in paragraphs 4 and 5, he has given no objection for quashing the subject criminal case.

4 The learned counsel Shri Kuldeep Patil stated that the respondent No.2 could not remain present in Court today because he is bed ridden.

However, the respondent No.2 has given the power of attorney in the name of his son-in-law namely Mahesh Madhav Vartak. Copy of the specific power of attorney is annexed at Page 101 of the application.

5 In the consent terms dated 6th October 2018 referred to above, in clause 5, by making averment that it is not possible for the complainant to appear personally and to give no objection, it is further stated therein that his son-in-law Mahesh Madhav Vartak would remain present in Court and give no objection on his behalf. The applicant and the power of attorney holder Shri Mahesh Madhav Vartak are present in Court and make common statement that the terms and conditions of the consent terms would be complied with by them. In addition to this, Shri Mahesh Madhav Vartak submitted that he has no objection for quashing the proceedings of the subject criminal case.

6 It can, thus, be seen that the matter has been amicably settled between the parties. From the perusal of complaint, it transpires that the allegations are totally personal in nature. In these circumstances, and especially, in view of the law laid down by the Apex Court in the case of *Narinder Singh Vs. State of Punjab*¹, we find that no purpose would be served by keeping the criminal proceedings pending except burdening the

1 2014 AIR SCW 2065

Criminal Courts which are already overburdened.

7 Accordingly, the application is allowed in terms of prayer clause (a).

8 At the same time, costs need to be saddled on the applicant for using the police and judicial machinery for settling their personal disputes. In view of this, the applicant to pay a sum of Rs.20,000/- as costs. This amount of Rs.20,000/- be paid to “**Tata Memorial Hospital**”, an institution that takes care of the patients suffering from cancer at advance stage and/or terminally ill due to cancer. For the quashment to take effect, the applicant shall pay the said cost and produce the receipt thereof on the file of this Court within the period of two weeks from today. Failing to pay cost and produce receipt within stipulated time, application shall stand dismissed automatically without further reference to the Court and order quashing the proceedings/FIR shall be treated as *non-est*.

9 Subject to above, the application stands disposed of.

[N.J. JAMADAR, J.]

[RANJIT MORE, J.]