

DDR

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

CRIMINAL APPLICATION NO. 317 OF 2019

Pankaj Bhavarmal Katariya

Adult : 37 years, Indian inhabitant,

Occ. : Service,

residing at Baji Gully, Bhayander (west),

District : Thane.

..Applicant

vs.

1. State of Maharashtra

at the instance of L.T. Marg Police

Station, Mumbai.

2. Mitesh Motilal Rathod

Adult : 39 years, Indian inhabitant,

Occ. : Business,

residing at 31, Katariya Mansion,

1st floor, S.V.P. Road, Mumbai 400 004.

..Respondents.

Mr. R. Sathyanarayanan for the applicant.

Ms. Fenila Nair for respondent No.2.

Mrs. S.D. Shinde, APP for State.

CORAM : S.S.SHINDE &

M.S.KARNIK, JJ.

RESERVED ON : OCTOBER 1, 2020

PRONOUNCED ON : OCTOBER 6, 2020

JUDGMENT : (PER M.S. KARNIK)

Rule. Rule is made returnable forthwith by consent of the parties.

2. This application is filed under Section 482 of the Code of Criminal Procedure for quashing of complaint as according to the parties they have compromised the dispute and therefore do not wish to further proceed with the criminal case registered by the respondent No.2.

3. The facts of the case in brief are that the respondent No.1 has registered First Information Report ('FIR' for short) on 4/1/2019 at the instance of respondent No.2 against the applicant. The offence alleged is under Section 406 of the Indian Penal Code ('IPC' for short). The respondent No.2 carries on business as wholesalers of jewellery in the name of 'Kalpana Jewellery'. Based on orders received from customers, respondent No.2 sells gold items in Maharashtra, Gujarat and Madhya Pradesh. The applicant used to procure orders from respondent No.2 and depending on the orders received, the applicant used to be paid commission. In due course of time the respondent No.2 developed trust in the applicant. On or about 18/12/2018, respondent No.2 entrusted gold items such as rings, bracelets,

chains, etc. to the applicant for the purposes of delivering it to the customers in Madhya Pradesh. It is the case of the respondent No.2 that he received phone call from the applicant on 19/12/2019 that the bag containing gold items was cut open and all the gold ornaments are stolen in transit. The applicant registered the offence under Section 380 of the IPC with Railway Police Station at Itarsi.

4. The FIR came to be registered against the applicant by the respondent No.2. During the course of the investigation, the gold was recovered. In the FIR, it is the case of the respondent No.2 that he suspects the involvement of the applicant.

5. The learned counsel for the respondent No.2 submitted that considering the long standing relations between the applicant and respondent No.2, when the applicant approached the respondent No.2 and expressed his readiness to settle the matter, the respondent No.2 considering the plight of the applicant and as the applicant pleaded for mercy, agreed to settle the matter. The parties agreed that gold recovered by the respondent No.1 during the course of the investigation would be returned to the respondent No.2.

6. We find that the details of gold recovered during the course of the investigation is indicated in the report dated 22/9/2020 submitted to this Court by Police Inspector Shri Vivek Bhosale of the Lokmanya Tilak Marg Police Station, Mumbai. We have gone through the report. In the report it is stated that in respect of the gold ornaments entrusted by the respondent No.2 to the applicant, the same came to be recovered from the witness Shri Paresh Sasmal. To indicate the ownership in respect of the said gold ornaments recovered, the respondent No.2 submitted the necessary documents to the Investigating Officer.

7. We perused the affidavit dated 21/9/2020 filed by the respondent No.2 in this Court saying that he has no objection if the said criminal proceeding is quashed as the matter has been settled between himself and the applicant. The respondent No.2 further says that 'Kalpana Gold' is the rightful owner of the gold weighing approximately 4144.880 grams which is the subject matter of the Criminal Case bearing No. 317/2019. The receipts have been annexed to the affidavit showing purchase of gold by 'Kalpana Gold'.

8. On the last occasion we had also asked to learned APP to seek instructions as to whether the gold recovered during the

course of the investigation is the same as mentioned in the FIR. The learned APP on instructions says that the gold recovered during the course of the investigation is the same as stated in the FIR.

9. We have perused the application for quashing and the affidavit filed on behalf of the respondent No.2. We have given our anxious consideration to the submissions made by the learned counsel for the applicant and the respondent No.2 that the parties have long standing business relations and as the applicant pleaded for mercy, the respondent No.2 expressed his readiness to settle the matter. The respondent No.2 says that he would be satisfied if the gold which rightfully belongs to him, recovered during the course of the investigation and presently with the respondent No.1 as mentioned in the report is returned back to him.

10. Having heard learned counsel for the parties, we are of the opinion that FIR registered by the respondent No.2 against the applicant which is the subject matter of the present proceedings deserves to be quashed. In our view, this is a fit case for quashment of the criminal case as the same does not come in the category of heinous or serious offence against the society

having a social impact. The parties have settled their dispute. Considering the nature of the dispute, the possibility of a conviction appears to be very remote and bleak in view of the settlement. The respondent No.2 is not going to depose against the applicant in the said criminal case. There is, therefore, no purpose in keeping the criminal proceeding pending.

11. Having due regard to the nature and gravity of the crime, we do not find that the same can be categorised as heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. which cannot be fittingly quashed even though the parties have settled the dispute. In our opinion and as indicated earlier, on the face of the settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. We are satisfied that continuance of the criminal prosecution would be nothing but an abuse of the process of the Court in the light of the law laid down by the Apex Court in the case of **Giansingh vs. State of Punjab and Another**¹. The criminal proceedings, therefore, deserves to be quashed, however, subject to payment of cost by the parties as indicated in the operative order. Hence the following order :

1 2012 (10) SCC 3030

ORDER

(i) The application is allowed in terms of prayer clause (a).

(ii) The applicant to deposit cost of Rs.25,000/- (rupees twenty five thousand only) in the below mentioned account.

Bank Name : Bank of India
Branch Name : Main Branch, Fort, Mumbai.
A/c. Name : "Bar Council of Maharashtra and Goa Covid-19".
A/c. No. : 000110110013597
IFSC Code : BKID0000001

(iii) The respondent No.2 to pay cost of Rs.1,00,000/- (rupees one lakh) of which Rs.50,000/- (rupees fifty thousand only) to be paid in the above mentioned account of Bar Council of Maharashtra and Goa Covid-19 and Rs.50,000/- (rupees fifty thousand only) to the Police Welfare Fund in the following account :

Bank Name : Axis Bank Ltd.
Branch Name : Worli, Mumbai - 400 025.
A/c. Name : Police Welfare Fund
A/c. No. : 914010029005759
IFSC Code : UTIB0000060

(iv) The cost to be paid within a period of four weeks from today.

(v) The payment of cost is condition precedent to the quashing of the criminal proceedings.

12. The application is disposed of accordingly.

13. Rule is made absolute in above terms.

14. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

Diksha
Rane
Digitally
signed by
Diksha
Rane
Date:
2020.10.06
17:34:31
+0530