

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 1036 OF 2019

Shri Mahesh s/o Shivratan Lakhotiya HUF (Karta) and anr.

..vs..

Gangwani Constructions Pvt. Ltd. and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N. Jetha, Advocate for petitioner.

Shri H.I. Kothari, Advocate for respondent no.1.

CORAM : VINAY JOSHI, J.

DATED : 12/03/2020

Heard.

2. The petitioners herein are challenging the order dated 05.02.2019 passed on Exhibit 39 in Criminal Complaint No. 3899 of 2016 by which the learned Magistrate has refused to dismiss the complaint on account of alleged compromise between the parties.

3. The petitioners have filed private complaint in terms of Section 138 of the Negotiable Instruments Act, 1881 bearing Criminal Complaint No. 169 of 2017 against Gangwani Constructions Pvt. Ltd. through its Directors Murlidhar Gangwani, Mahesh Gangwani and in the personal capacity against Mahesh Gangwani also. Likewise, Gangwani Constructions Pvt. Ltd. through its authorized Director Murlidhar Ghangwani had filed another Criminal Complaint No. 3899 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 against the present petitioner.

4. The petitioner's complaint was placed before the Lok Adalat i.e. Criminal Complaint No. 169 of 2017 where the petitioner and Mahesh Gangwani i.e. accused nos. 1 and 2 have settled the dispute by way of arriving the compromise Pursis marked as Exhibit 10. It was agreed that petitioner would withdraw his Complaint No. 169 of 2017 whilst respondent Mahesh Gangwani would withdraw the Complaint No. 3899 of 2016. On the basis of said Pursis, the complaint was withdrawn, and accordingly, the petitioner's Criminal Complaint No. 169 of 2017 was disposed of on 09.12.2017. After period of one year, the petitioner had moved an application Exhibit 25 in respondent's Criminal Complaint No. 3899 of 2016, seeking for dismissal of complaint on account of compromise took place before the Lok Adalat. The learned Magistrate has declined to dismiss the complaint vide impugned order dated 05.02.2019.

5. Learned Counsel for the petitioner submits that in terms of Exhibit 10-compromise Pursis, his complaint is withdrawn. However, respondents have not withdraw their complaint bearing No. 3899 of 2016 pending at Nagpur Court. As against this, learned Counsel for the respondent demonstrates that the Criminal Complaint No. 3899 of 2016 was filed by the Director namely Murlidhar Gangwani, who was duly authorized vide Resolution dated 20.10.2015. According to him, the Complainant i.e. Murlidhar Gangwani was neither present for settlement nor signed on the document of compromise Exhibit 10. It is not denied that Murlidhar Gangwani was not present at the time of executing compromise Exhibit 10 nor he was

present when the matter was settled. In the wake of said position, it reveals that the respondent's Complaint No. 3899 of 2016 was filed by the Murlidhar Gangwani who was not a party to the compromise. Obviously, the terms therein are not binding on him. Moreover, for the period of one year from the settlement no steps were taken for which there is no explanation. The entire thrust of the petitioner is on the compromise but the complainant Murlidhar Gangwani was not a party to compromise who has filed Criminal Complaint No. 3899 of 2016. In view of said position, the complainant Murlidhar Gangwani not being undertaken any obligation, the impugned order cannot be faulted with.

6. In view of that Writ petition stands dismissed. No costs. All the point raised in this Writ Petition are kept open.

JUDGE

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